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TITLE 7. ENVIRONMENTAL PROTECTION
CHAPTER 26. SOLID WASTE
SUBCHAPTER 16. SOLID AND HAZARDOUS WASTE LICENSING AND REVOCATION-- DISCLOSURE
STATEMENTS AND INTEGRITY REVIEW

N.J.A.C. 7:26-16.1 (2009)

§ 7:26-16.1 Scope and authority

(a) This subchapter 16 implements P.L. 1983, c.392 (*N.J.S.A. 13:1E-126 et seq.*), and the public policy declared therein to preclude from participation in the solid and hazardous waste industries persons with known criminal records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise or competence that his or her participation would create or enhance the danger of unsound, unfair or illegal practices, methods or activities in the business of those industries.

(b) This subchapter applies to any proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a solid waste or hazardous waste business in New Jersey, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

(c) All subcontractors and prime contractors, as defined under *N.J.A.C. 7:26-3.2(a)1*, are subject to the registration requirements of *N.J.S.A. 13:1E-1 et seq.* and to *N.J.S.A. 13:1E-126 et seq.* and to this subchapter.

7:26-16.2 Definitions

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

"Applicant" means any business concern which has filed a disclosure statement with the Department and the Attorney General and is seeking an initial license, provided that the business concern has furnished the Department and the Attorney General with any information required pursuant to P.L. 1991, c.269.

"Application" means the forms and accompanying documents filed in connection with an applicant's or permittee's request for a license.

"Broker" means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

"Business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization.

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

"Disclosure statement" means a statement containing information about an applicant or licensee as set forth in *N.J.A.C. 7:26-16.4*.

"Exempt transporter" shall 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)*.

"Key employee" means any individual employed by the applicant, the permittee or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste.

"License" means the initial approval and first renewal by the Department of any registration statement or engineering design pursuant to *N.J.S.A. 13:1E-1 et seq.* and/or *N.J.S.A. 13:1E-49 et seq.* for the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State, except that

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"license" shall not include any registration statement or engineering design approved for any of the persons listed in *N.J.A.C. 7:26-16.3(d)*. "License" includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

"License" shall include any registration statement approved for any person who transports any other hazardous waste in addition to hazardous wastes which are or contain precious metals.

"Licensee" shall be defined as set forth in N.J.S.A. 13:1E-127i.

"Permittee" shall be defined as set forth in N.J.S.A. 13:1E-127i.

"Person" means any individual or business concern.

7:26-16.3 Licensure; filing of disclosure statement

(a) No person shall engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license, or without complying with all the provisions of *N.J.S.A. 13:1E-126* et seq., and with the provisions of this subchapter and of *N.J.A.C. 7:26-16A*. Every applicant and permittee shall file a disclosure statement with the Attorney General at the time the application is filed, unless exempted under (d) below. Applicants for siting under the Major Hazardous Waste Facilities Siting Act, *N.J.S.A. 13:1E-49* et seq., shall file a disclosure statement at the time specified in *N.J.A.C. 7:26-13A.6*.

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Attorney General at the following address:

New Jersey Division of Law

A-901 Unit

PO Box 093

Trenton, New Jersey 08625-093

Payment of fees is to be made by check, payable to "Treasurer--State of New Jersey," and sent to the following address:

Department of Treasury

Bureau of Revenue

160 South Broad Street

PO Box 417

Trenton, New Jersey 08625-0417

1. Additional conformed copies of disclosure statement, or any portions thereof, shall be supplied upon the request of the Attorney General.

2. Within 30 days of receipt of a disclosure statement from an applicant, the Attorney General shall advise the applicant, if the disclosure statement is incomplete on its face, and shall specify what additional information is required.

(c) Any person required to be listed in the disclosure statement, other than a nonsupervisory employee required to be listed under *N.J.A.C. 7:26-16.4(a) 9*, shall be fingerprinted for identification and investigation purposes in accordance with procedures established by the Attorney General.

1. Completed fingerprint cards shall be supplied by the applicant, permittee or licensee with the filed disclosure statement. The applicant, permittee or licensee shall arrange for the taking of fingerprints.

2. Fingerprints shall be supplied on fingerprint cards specified for the purpose by the Attorney General and made available by the Department. Fingerprints must be taken and verified by an employee of a police agency authorized to take fingerprints. (Most local police departments will provide this service. Some charge a fee).

(d) Exemptions: The following persons are exempted from the requirement to submit a disclosure statement:

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1. Any department, division, agency, commission or authority of the Federal government or any State, or any county, municipality or agency thereof;

2. Any person whose application, permit or license is solely for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste generated by that person; provided, however, that this exemption shall not apply where the waste generated is from a facility requiring a license and not itself exempted under this subsection;

i. Example--a corporation that operates a hazardous waste treatment facility organizes a hauling subsidiary to transport its "own" waste from the facility. If the facility must file a disclosure statement, the hauling subsidiary must do so as well;

3. Any person whose application, permit or license is for the operation of a hazardous waste facility, if at least 75 percent of the total design capacity of that facility is utilized to treat, store or dispose of hazardous waste generated by that person;

4. Any person whose application, permit or license is for the operation of a hazardous waste facility which is considered as such solely as the result of the reclamation, recycling or refining of hazardous wastes which are or contain any of the following precious metals: gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, or copper;

5. Any person whose application, permit or license is solely for the transportation of hazardous wastes which are or contain precious metals to a hazardous waste facility described in (d)4 above for the purposes of reclamation;

6. Any person whose application, permit or license is solely for the collection, transportation, treatment, storage or disposal of granular activated carbon used in the absorption of hazardous waste; and

7. Any regulated medical waste generator for the treatment or disposal of regulated medical waste at any noncommercial incinerator or noncommercial facility in this State that accepts regulated medical waste for disposal.

(e) Where an applicant, permittee or licensee owns or operates more than one facility or operation requiring a license, or is one of two or more business concerns requiring licenses which are under common ownership or management, the business concerns may file disclosure statements concurrently as a group. In the case of such a group filing:

1. Disclosure statements covering all members of the group must be filed in a single submission;

2. A cover letter must be supplied indicating the intent to file disclosure statements as a group and identifying the members of the group and their relationships;

3. A single set of Personal History Disclosure Forms for any individual identified in any of the group's disclosure statements will be accepted, even though the name appears on more than one statement;

4. The Department in its discretion may authorize departures from the disclosure statement forms so as to minimize duplicate reporting of information;

5. For the purposes of fee calculation under *N.J.A.C. 7:26-16.13*, the group shall be treated as a single applicant, permittee or licensee; and

6. A group filing may be made even if one or more members of the group have previously filed disclosure statements separately. However, those members will not be regarded as part of the group filing and no refund of fees or credit for fees paid shall be allowed on account of the earlier separate filings.

7:26-16.4 Content of disclosure statement

(a) The disclosure statement shall be filed on forms supplied by the Division of Law, and shall include the following information:

1. The full name, business address, home address, date of birth, social security number and/or Federal Employer Identification Number of the applicant, permittee or licensee, of any officers, directors, partners, or key employees thereof and all persons holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons holding more than five percent of the equity in or debt liability of that

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business concern, except that where the debt liability is held by a chartered lending institution, the applicant, permittee or licensee need only supply the name and business address of the lending institution;

2. The full name, business address, home address, date of birth and social security number of all officers, directors, or partners of any business concern disclosed in the disclosure statement and the names and address of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant, permittee or licensee need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores, transfers or disposes of solid waste or hazardous waste in which the applicant, permittee or licensee holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste possessed by the applicant, permittee or licensee, or by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any state or Federal authority, in the 10 years immediately preceding the filing of the application, which are pending or have resulted in a finding or a settlement of a violation of any law or regulation relating to the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste by the applicant, permittee or licensee, or by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or Federal statute or local ordinance, against the applicant, permittee or licensee, or against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes (N.J.S.A.), other than a violation of the provisions of *N.J.S.A. 39:5B-18* et seq., *39:5B-25* et seq., or *39:5B-30* et seq., or comparable motor vehicle offenses in jurisdictions other than New Jersey;

7. A listing of all labor unions and trade and business associations in which the applicant, permittee or licensee was a member or with which the applicant, permittee or licensee had a collective bargaining agreement during the 10 years preceding the date of filing of the disclosure statement;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant, permittee or licensee in connection with its collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste;

9. A listing of all persons employed by the applicant, permittee or licensee in its solid waste or hazardous waste operations in New Jersey and not otherwise required to be listed, and as to each, the full name, home address, date of birth and social security number;

10. As to every person required to be listed in the disclosure statement (other than holder of debt liability or non-supervisory employee required to be listed under *N.J.A.C. 7:26-16.4(a)9*), a completed Personal History Disclosure Form or forms supplied by the Department, including information about family, education and employment history. Holders of debt liability or non-supervisory employees may be required to provide Personal History Disclosure Forms if this information is requested by the Department or the Attorney General; and

11. Any other information the Attorney General or the Department may require that relates to the competency, reliability, honesty, integrity or good character of the applicant, permittee or licensee.

(b) The disclosure statement shall be sworn to or affirmed and subscribed and dated by the applicant, permittee, licensee or the author before a person legally competent to take an oath or affirmation, who shall himself subscribe and date the signature of affiant and indicate the basis of his authority to take oaths and affirmation. Personal History Disclosure Forms shall be sworn to or affirmed and subscribed in the same manner, by the individual and the oath-taker. The following statement shall immediately precede the signature of the affiant: "I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

(c) Disclosure statements shall be signed by each of the following:

1. If of a corporation, by its president, its chairman of the board, any other chief executive officer thereof, its secretary and its treasurer.

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2. If of a partnership, by each of its partners; if of a limited partnership, only by each of its general partners.
3. If of any other business concern, by its chief executive officer, its secretary and its treasurer.
4. If of a natural person, by the person himself or herself.

(d) Personal History Disclosure Forms shall be signed by the individual described thereon.

(e) All signatures shall be signed in ink and dated on original papers, but may be photocopied, typed, stamped or printed on copies. The name and address of the signatory shall be typed, stamped or printed beneath each signature.

7:26-16.5 Investigative report by Attorney General

(a) The Department shall not issue any license to an applicant, permittee or licensee until it has received and reviewed an investigative report from the Attorney General.

(b) In conducting a review of the application, the Department shall include a review of the disclosure statement and investigative report.

(c) In its discretion, the Department may issue a temporary license for not more than six months at a time to an applicant or permittee if such issuance is necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body; or the issuance of a temporary license otherwise serves some interest of the general public. The issuance of a temporary license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease its solid waste or hazardous waste operations upon the expiration date of the temporary license if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

(d) In its discretion, the Department, may renew a temporary license for incremental periods of six months at a time prior to its receipt and review of an investigative report from the Attorney General if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary license otherwise serves some interest of the general public. The renewal of a temporary license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease its solid waste or hazardous waste operations upon the expiration date of the temporary license if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

7:26-16.6 Change of information on disclosure statement; sales or transfers of ownership

(a) Where an applicant or permittee has an application pending before the Department and any of the information required to be included in a disclosure statement changes, or any additional information should be added after the filing of the statement, the applicant or permittee shall provide that information to the Department and the Attorney General in writing within 30 days of the change or addition.

(b) Licensees shall report to the Department and the Attorney General within 30 days any changes or additions in the following information required to be included in the disclosure statement:

1. The name of the licensee;
2. The names or identities of any officers, directors, partners or key employees of the licensee;
3. Unless previously disclosed under (i) below, the names or identities of any holders of equity in or debt liability of the licensee, if they would have been required on the original disclosure statement; except that holders of less than five per cent of the debt liability of the licensee need only be reported on the annual update described in (c) below;
4. The name and business address of any company which collects, transports, treats, stores, transfers or disposes of solid waste or hazardous waste in which the licensee acquires an equity interest;

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5. A listing and explanation of any notices of violation, administrative orders or license or permit revocations issued by any State or Federal authority, except that notices issued by the Department and notices demanding a penalty of less than \$ 5,000 and not involving an intent to revoke a license or permit need only be reported annually;

6. Any criminal charge or conviction and any conviction for a disorderly persons offense filed or entered against the licensee or against any key employee, officer, director, equity holder required to be disclosed, or partner thereof, other than for a motor vehicle offense;

7. Any collective bargaining agreement entered into with a labor union not previously listed on a disclosure statement, and any new membership in a trade or business association.

(c) All changes to the information contained in a permittee's or licensee's disclosure statement currently on file with the Department and the Attorney General shall be reported on an annual update to be filed with the Division of Law at the time of the permittee's or licensee's annual renewal of its registration with the Department; provided, however, that amending or updating of Personal History Disclosure Forms, other than to report a criminal or disorderly persons conviction, or the filing of a criminal or disorderly persons charge, is not required unless specifically requested by the Department or Attorney General.

(d) Changes of information required to be filed within 30 days pursuant to (b) above may be filed by letter, on amendment forms supplied by the Department, or on copies of applicable portions of disclosure statement forms. The person filing the report of change shall swear to or affirm the truth of the information contained therein.

(e) Annual updates shall be filed on amendment forms supplied by the Department, or on copies of applicable portions of the disclosure statement or Personal History Disclosure Form. Annual updates shall include a recapitulation of any changes previously reported on a 30-day notice.

(f) Changes of information shall be filed by submitting an original and one conformed copy to the Department, which shall transmit copies to the Attorney General.

(g) Annual updates shall be sworn to or affirmed and subscribed in the manner prescribed for original disclosure statements at *N.J.A.C. 7:26-16.4(b)*.

(h) Where an applicant, permittee or licensee has submitted multiple amendments to its disclosure statement; or the information concerning an applicant, permittee or licensee has undergone substantial change; or if the disclosure statement currently on file with the Department is more than five years old, the Department, in its discretion, may require the applicant, permittee or licensee to file a new disclosure statement.

(i) When a permittee or licensee leases ten (10) or more solid waste vehicles and operators from a single lessor which is not a permittee or licensee, or when such leased vehicles represent at least 20 percent of the permittee's or licensee's fleet of solid waste vehicles, the permittee or licensee shall, within 30 days of entering into the lease, file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to *N.J.S.A. 13:1E-128(b)*, demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(j) Permittees and licensees which lease 20 or more solid waste operators from a single lessor which is not also a permittee or licensee, shall file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor, within 30 days of entering into the lease. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to *N.J.S.A. 13:1E-128(b)*, demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(k) Permittees and licensees who have 10 or less leased solid or hazardous waste vehicles and/or operators in their total fleet shall be exempt from the business concern disclosure statement requirements pursuant to *N.J.A.C. 7:26-16.6(i)* and (j).

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(l) No permittee or licensee shall enter into a management agreement with a business concern which is not authorized to conduct that solid waste activity as a permittee or licensee. For the purposes of this section, a management agreement is an agreement under which a business concern assumes effective management and control of a permittee or licensee.

7:26-16.7 Additional information; duty to cooperate

(a) All applicants, permittees and licensees shall have the continuing duty to provide any assistance or information requested by the Department or the Attorney General, and to cooperate in an inquiry or investigation conducted by the Attorney General or the State Commission of Investigation and any inquiry, investigation, or hearing conducted by the Department. If, upon issuance of a formal request to answer any inquiry or produce information, evidence or testimony, any applicant, permittee or licensee refuses to comply, the application of the business concern for a license may be denied, or the license of that business concern may be revoked by the Department.

(b) Upon request, the applicant shall supply physical evidence, including but not limited to photographs or handwriting exemplars of any individual listed on the disclosure statement or any amendment thereof.

7:26-16.8 Disqualification criteria

(a) No license shall be approved by the Department unless the Department finds that the applicant or permittee, in any prior performance record in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, has exhibited sufficient integrity, reliability, expertise, and competency to engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof, or if no prior record exists, that the applicant or permittee is likely to exhibit that integrity, reliability, expertise and competence.

(b) No license shall be approved by the Department if any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, the permittee or the licensee, has been convicted of any of the following crimes under the laws of New Jersey or the equivalent thereof under the laws of any other jurisdiction:

1. Murder;
2. Kidnapping;
3. Gambling;
4. Robbery;
5. Bribery;
6. Extortion;
7. Criminal usury;
8. Arson;
9. Burglary;
10. Theft and related crimes;
11. Forgery and fraudulent practices;
12. Fraud in the offering, sale or purchase of securities;
13. Alteration of motor vehicle identification numbers;
14. Unlawful manufacture, purchase, use or transfer of firearms;
15. Unlawful possession or use of destructive devices or explosives;

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16. Violation of *N.J.S.A. 2C:35-5*, except possession of 84 grams or less of marijuana, or violation of *N.J.S.A. 2C:35-10*;

17. Racketeering, *N.J.S.A. 2C:41-1* et seq.;

18. Violation of criminal provisions of the "New Jersey Antitrust Act," *N.J.S.A. 56:9-1* et seq.

19. Any purposeful, knowing, willful or reckless violation of the criminal provision of any Federal or state environmental protection laws, rules, or regulations, including, but not limited to, solid waste or hazardous waste management laws or regulations;

20. Violation of *N.J.S.A. 2C:17-2*;

21. Perjury, false swearing or any other offense set forth in Chapter 28 of the New Jersey Code of Criminal Justice, *N.J.S.A. 2C:28-1* et seq.

22. Violation of the criminal provisions of the Solid Waste Utility Control Act, *N.J.S.A. 48:13A-1* et seq. or *48:13A-6.1*.

(c) Notwithstanding the provisions of (b) above, no applicant, permittee or licensee shall be denied a license on the basis of a conviction of any individual required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, for any of the offenses enumerated in (b) above as disqualification criteria, if the person has affirmatively demonstrated by clear and convincing evidence his or her rehabilitation. In determining whether a convicted individual has affirmatively demonstrated rehabilitation, the Department shall request a recommendation thereon from the Attorney General, and shall consider the following factors and weigh them in light of the policies set forth in *N.J.A.C. 7:26-16.20* et seq.:

1. The nature and responsibilities of the position which a convicted individual would hold;

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the individual when the offense was committed;

6. Whether the offense was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense;

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

(d) No license shall be approved by the Department if the Attorney General determines that there is a reasonable suspicion to believe that a person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, does not possess a reputation for good character, honesty and integrity, and that person or the applicant, permittee or licensee fails, by clear and convincing evidence, to establish his reputation for good character, honesty and integrity.

(e) No license shall be approved by the Department if the Attorney General determines that any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, has been identified by the State Commission of Investigation or the Federal Bureau of Investigation as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel, where such identification, membership or association creates a reasonable belief that the participation of that person in any activity required to be licensed under this act would be inimical to the policies of *N.J.S.A. 13:1E-126* et seq. For the purposes of this subsection, "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and a "career offender cartel" means any group of persons who operate together as career offenders. Also, for purposes of this subsection, association of a person required to be listed in a disclosure statement, or shown to have a beneficial interest in the business of the applicant, permittee, or licensee, with career offenders or members of career offender cartels, will be considered "inimical" to

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the policies of *N.J.S.A. 13:1E-126* et seq. where the nature and quality of the association create a risk that the career offender or member of a career offender cartel might exercise some degree of influence or control over the applicant with regard to operations required to be licensed under *N.J.S.A. 13:1E-126* et seq. or other business incidental to such operations.

(f) No license shall be approved by the Department with respect to the approval of an initial license, if there are current prosecutions or pending charges in any jurisdiction against any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant or the permittee, for any of the crimes enumerated in (b) above, provided, however, that at the request of the applicant, permittee or the person charged, the Department shall defer decision upon such application during the pendency of such charge.

(g) No license shall be approved by the Department if any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee or the licensee, has pursued economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, where such pursuit creates a reasonable belief that the participation of that person in any activity required to be licensed under this chapter would be inimical to the policies of *N.J.S.A. 13:1E-126* et seq. For the purposes of this subsection, "occupational manner or context" means the systematic planning, administration, management or execution of an activity for financial gain. Also for the purposes of this subsection, pursuit of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State will be considered "inimical" to the policies of the act where the nature and quality of the activity in question create a risk that the applicant will, after licensure, engage in civil or criminal violations of the Solid Waste Utility Control Act, *N.J.S.A. 48:13A-1* et seq., the New Jersey Antitrust Act, *N.J.S.A. 56:9-1* et seq., the Solid Waste Management Act, *N.J.S.A. 13:1E-1* et seq., or other New Jersey environmental statutes and their implementing regulations while engaged in any activity required to be licensed under *N.J.S.A. 13:1E-126* et seq. or other business incidental to such activities.

(h) No license shall be approved by the Department if the applicant, permittee or licensee refuses to comply with inquiries as required under *N.J.A.C. 7:26-16.7*.

(i) No license shall be approved by the Department if the applicant, permittee or licensee in its application, disclosure statement or any other materials supplied to the Department or the Attorney General shall supply information which is untrue or misleading as to a material fact pertaining to the disqualification criteria.

(j) A license may be approved by the Department for any applicant or permittee if the information contained within the disclosure statement and investigative report, including any determination made by the Attorney General concerning the character, honesty and integrity of any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant or permittee, would not require disqualification pursuant to (a), (b), (c), (d), (e), (g), (h) or (i) above.

(k) A license approved by the Department for any applicant, licensee or permittee pursuant to this section is nontransferable and shall be valid only for the length of time for which it is given.

7:26-16.9 Cause for license revocation

(a) In addition to any other cause set forth in this chapter, any license may be revoked by the Department for any of the following causes:

1. Any cause which would require disqualification, pursuant to *N.J.S.A. 7:26-16.8*, from receiving a license upon original application;
2. Fraud, deceit, or misrepresentation in securing the license, or in the conduct of the licensed activity;
3. Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of *N.J.S.A. 13:1E-1* et seq., *N.J.S.A. 13:1E-126* et seq., or of any other law relating to the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, or of any rule adopted pursuant thereto;
4. Coercion of a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee or licensee; or

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5. Preventing, without authorization of the Department, any permittee or licensee from disposing of solid waste or hazardous waste at a licensed, authorized or approved treatment, storage, transfer or disposal facility.

7:26-16.10 Administrative hearing; requests

(a) Any applicant or permittee who is denied an initial license pursuant to this subchapter shall, upon written request transmitted to the Department within 30 days of that denial, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the "Administrative Procedure Act," *N.J.S.A. 52:14B-1* et seq.

(b) Any licensee who receives a notice of intent to revoke a license or notice of refusal to renew a license shall have 20 days from receipt of the notice to transmit to the Department a request for a hearing.

(c) Requests for hearings shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402.

7:26-16.11 Severance of disqualifying individuals

(a) Notwithstanding the disqualification of any applicant, permittee or licensee pursuant to *N.J.A.C. 7:26-16.8* or *16.9*, the Department may issue or renew a license if the applicant, permittee or licensee severs the interest of or affiliation with the person who would otherwise cause that disqualification.

(b) Where the disqualifying individual is the owner of an equity interest or interest in the debt liability of the licensee, permittee or applicant, the individual must completely divest himself or herself of that interest. Where immediate sale of the interest would work an economic hardship on the individual, the licensee, permittee or applicant, the Department may, in its discretion, allow for divestiture over a period of time not to exceed one year.

(c) Arrangements such as blind trusts will be acceptable only as part of a divestiture arrangement under which the trustee is obliged to sell the disqualifying individual's interest within a period not to exceed two years.

(d) Before the Department will issue or renew a license to an applicant, permittee or licensee which has severed a disqualifying individual, the applicant, permittee or licensee must submit to the Department an affidavit, sworn to by the chief executive officer, attesting to the severance of the disqualifying individual and describing the terms, circumstances and conditions of that severance. Any instruments pertaining to that severance (such as a trust agreement) shall be submitted with the affidavit.

7:26-16.12 License revocation; ineligibility for reapplication

(a) The Department will not issue a license to any person who has had an application denied, or a license revoked, for any of the reasons set forth in *N.J.A.C. 7:26-16.8* or *16.9*, for a period of 5 years following such denial or revocation.

(b) A person that is a business concern shall be considered as the same person if the management structure of the business concern includes the person or persons that were the cause of the original disqualification.

7:26-16.13 Annual solid waste license approval renewal; fees

(a) Every business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (*N.J.S.A. 13:1E-126* et seq.) shall submit, upon initial filing and annually thereafter, a fee to the Attorney General to cover the expenses incurred by any State agency in the performance of enforcing P.L. 1983, c.392 (*N.J.S.A. 13:1E-126* et seq.), reviewing disclosure statements, post-licensing compliance monitoring, including special investigations, conducting investigations to verify claims of exemption from A-901, conducting pre-licensing investigations, securing confidential documents, maintenance, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.391 (*N.J.S.A. 13:1E-126* et seq.). For purposes of this subsection, "State agency" means any State department, division, agency commission or authority. The A-901 annual fee shall be \$

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600.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to *N.J.A.C. 7:26-16.4(a)9*) or who is otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, in addition to a per-company fee to be calculated as follows:

1. Business concerns with one individual required to be listed pursuant to *N.J.A.C. 7:26-16.3* and *16.4* shall pay an annual per-company fee of \$ 635.00;
2. Business concerns with two or three individuals required to be listed pursuant to *N.J.A.C. 7:26-16.3* and *16.4* shall pay an annual per-company fee of \$ 1,775;
3. Business concerns with four to seven individuals required to be listed pursuant to *N.J.A.C. 7:26-16.3* and *16.4* shall pay an annual per-company fee of \$ 5,150; and
4. Business concerns with more than seven individuals required to be listed pursuant to *N.J.A.C. 7:26-16.3* and *16.4* shall pay an annual per-company fee of \$ 15,650.

(b) The applicant, permittee or licensee shall calculate the amount of each fee due and submit to the Division of Law a check for the total fee amount, made payable to "Treasurer--State of New Jersey." An application or disclosure statement will not be accepted as complete for filing unless accompanied by the appropriate fee payment.

(c) If on the basis of investigation, the Department or the Attorney General determines that a person not listed on the disclosure statement should have been listed thereon, or that a person not listed on the disclosure statement otherwise has a beneficial interest in the business of the applicant, permittee or licensee, the Department may require the payment of additional fees along with the submission of additional information, including a Personal History Disclosure Form, pertaining to that person. The applicant, permittee or licensee shall pay such additional fees promptly upon demand. Nothing in this subsection shall be construed as limiting the power of the Department to deny or revoke a license if the Department finds the omission of a person from the disclosure statement was intended to mislead or conceal information from the Department.

(d) If a business concern subject to P.L. 1983, c.392 (*N.J.S.A. 13:1E-126* et seq.) files a change of information pursuant to *N.J.A.C. 7:26-16.6*, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the business concern shall pay additional fees of \$ 600.00 to the Attorney General per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to *N.J.A.C. 7:26-16.4(a)9*). Checks are to be made payable to "Treasurer--State of New Jersey." Individuals disclosed pursuant to *N.J.A.C. 7:26-16.6* shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.

(e) All individuals or business concerns required to be disclosed pursuant to *N.J.A.C. 7:26-16.4(a)1* and 2 as holding any equity in or debt liability of the original business concern filing the disclosure statement shall be considered to be additions to the original business concern filing the disclosure statement for the purposes of fee calculation.

(f) Where business concerns file disclosure statements concurrently as a group pursuant to *N.J.A.C. 7:26-16.3(e)*, for the purposes of fee calculation under this section the group shall be treated as a single applicant, permittee or licensee, and fees shall be calculated on the basis of the total number of individuals required to be listed in all of the disclosure statements filed by members of the group. Individuals whose names appear on more than one disclosure statement shall be counted only once for purposes of fee calculation.

7:26-16.14 Confidential information

(a) As used in this section, the following terms shall mean:

1. "Authorized personnel" means any employee of the Department or the Attorney General authorized to act in the enforcement of P.L. 1983, c.392, *N.J.S.A. 13:1E-126* et seq.

2. "Confidential information" means:

i. Any information required to be furnished to the Department or the Attorney General by an applicant, permittee, licensee or an individual required to be listed on a disclosure statement, which pertains to private financial

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matters of the applicant, permittee, licensee or individual which are not otherwise subject to public disclosure by any statute or regulation;

ii. Any information which pertains to the criminal record, family or personal background of an applicant, a permittee, a licensee or an individual required to be listed on a disclosure statement which is not otherwise subject to public disclosure by any statute or regulation;

iii. Any information obtained by the Department or the Attorney General pursuant to an interrogatory issued pursuant to *N.J.S.A. 13:1E-129* or a subpoena issued pursuant to *N.J.S.A. 13:1E-130*; and

iv. Any other information which is confidential pursuant to applicable statutory provision, judicial decision or rule of court.

3. "Secure storage facility" means any area, room, furniture, equipment, machinery or other device used for the storage of confidential information, access to which is limited to authorized personnel at all times by locks, alarms, codes or other appropriate security precautions.

(b) Confidential information shall not be released or disclosed to any person except in accordance with the provisions of this section.

(c) Except as otherwise provided in (k) below, access to confidential information within the possession of the Department or the Attorney General shall be restricted to authorized personnel who require such information in the performance of their official duties.

(d) Confidential information not currently being used by authorized personnel shall be stored in secure storage facilities. Every such facility shall be under the direct supervision of a supervisor designated by the Commissioner or Director. The said supervisor shall periodically review for their effectiveness all security measures. Measures determined to be ineffective shall be immediately corrected or improved.

(e) The Commissioner or Director shall designate in writing all Department personnel authorized to have access to confidential information.

(f) Authorized personnel shall not remove confidential information from designated secure storage facilities unless such removal is necessary to the fulfillment of their official duties. Confidential information which is not presently being utilized by authorized personnel shall be promptly returned to its secure storage facility.

(g) A record shall be maintained of all confidential information which is removed from secure storage facilities. This record shall include:

1. The names of the person removing the information;
2. The name of the person for whom the information is being obtained;
3. The date of removal;
4. A description of the information removed or the number of the file which has been removed; and
5. The date the information is returned.

(h) Confidential information shall not be removed from the offices of the Department without the prior approval of an appropriate supervisor. Such approval shall only be granted where removal of the confidential information is necessary to the performance of the official duties of authorized personnel.

(i) The integrity of confidential information in the possession of authorized personnel shall be preserved at all times. It shall be the personal responsibility of any individual granted temporary custody of confidential information to insure that the information is not shown, released or disclosed to any unauthorized person or to any otherwise authorized person who does not require such information in the performance of their official duties. Confidential information temporarily stored outside designated secure storage facilities shall be maintained in a locked desk or filing cabinet, or protected by other appropriate security precautions.

(j) A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the Department shall only be made where absolutely necessary to the administration of *N.J.S.A. 13:1E-126* et seq., or where an authorized release of the confidential information is made pursuant to the provisions of (k) and (l) below.

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1. Where confidential information is stored on a computer or magnetic medium to which access is physically restricted to authorized personnel, a record shall be kept of the persons who access the data, including the time and date of the access.

2. If confidential information is stored on a computer system or on magnetic media, access to which is shared with users who are not authorized personnel, access to the confidential information shall be restricted to authorized personnel by means of secure access codes, code names and other appropriate software safeguards. In addition, the computer shall be programmed so as to maintain a list of all requests for display or printout of confidential information, identifying the user who made the request.

(k) Confidential information within the possession of the Department shall not be released or disclosed in whole or in part to any person except:

1. Upon lawful order of a court of competent jurisdiction;

2. In the course of the necessary administration of *N.J.S.A. 13:1E-126* et seq., including issuance of Administrative Orders denying or revoking a license, or granting a license on condition;

3. With the approval of the Attorney General, to a duly authorized law enforcement agency;

4. Upon presentation of proper identification, to the applicant, permittee, licensee or individual who furnished the confidential information to the Department or the Attorney General; or

5. Upon presentation of a duly executed and notarized release authorization by the applicant, permittee, licensee or individual who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(l) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (k)2 through 5 above, written notice shall be given to any applicant, permittee, licensee or individual affected prior to the release or disclosure, whenever possible, unless such notice would otherwise imperil the administration of *N.J.S.A. 13:1E-126* et seq. To the extent known, the notice shall include:

1. The name and address of the person to whom the information was released or disclosed;

2. A description of the information released or disclosed; and

3. The date of the release or disclosure.

(m) Any confidential information disclosed in the course of any proceeding in the administration of *N.J.S.A. 13:1E-126* et seq., or in the course of a judicial proceeding in which disclosure has been made pursuant to lawful order of the court, shall cease to be confidential information to the extent the record of the proceeding becomes a public record.

(n) Any knowing or willful disclosure of confidential information by personnel of the Department, other than a disclosure authorized under this section, shall be a violation of the Department's code of ethics and shall subject the violator to the penalties proved by *N.J.S.A. 52:13D-23(d)*, following notice and the right to a hearing before the Executive Commission on Ethical Standards. The violator may also be subject to disciplinary action, including suspension or dismissal. Unauthorized disclosure of information obtained pursuant to interrogatory or subpoena may subject the violator to criminal penalties under *N.J.S.A. 13:1E-131*.

7:26-16.15 through 7:26-16.19 (Reserved)

7:26-16.20 Policies on disqualification

(a) To guide in the exercise of its discretion under *N.J.A.C. 7:26-16.8* and *16.9*, the Department from time to time shall promulgate policies and publish them as regulations in this subchapter.

(b) Where no published policy applies, the Department shall evaluate applicants, permittees and licensees in light of the policies expressed in *N.J.S.A. 13:1E-126*.

7:26-16.21 Convicted persons generally

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(a) No applicant, permittee or licensee shall knowingly hire as an officer, director or key employee, nor knowingly allow to acquire an equity interest or debt liability interest, any person who has been convicted of any of the crimes enumerated in *N.J.A.C. 7:26-16.8(b)*, without first obtaining the approval of the Department. This provision does not apply to persons who were employed or held their interests before June 11, 1984.

(b) In connection with any such request, the applicant, permittee or licensee shall file with the Department and the Attorney General an amended disclosure statement, containing the necessary information about the person, including any evidence the applicant, permittee or licensee wishes to bring forth demonstrating the person's rehabilitation.

(c) The Department shall request a recommendation from the Attorney General as to whether the person has affirmatively demonstrated rehabilitation, and shall consider the factors set forth at *N.J.A.C. 7:26-16.8(c)* in determining whether to grant permission to the applicant, permittee or licensee to employ the individual or allow him to acquire an interest in the applicant, permittee or licensee.

(d) Any applicant, permittee or licensee that violates (a) above may be subject to having its permit or license revoked or having its license application denied, notwithstanding the rehabilitation of the individual in question.

7:26-16.22 Persons convicted of environmental crimes

(a) In the case of persons convicted of violating the criminal provisions of any federal or state environmental protection laws, rules or regulations, including *N.J.S.A. 2C:17-2*, *N.J.S.A. 13:1E-9(e)* or (f) and *N.J.S.A. 58:10A-10(f)*, or persons convicted of any crime which involved the violation of such laws, rules or regulations, the Department will not consider such person rehabilitated unless he has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities for which he was convicted, and to make restitution to any victims injured thereby; and

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that such a conviction warrants a finding of "unreliability" under *N.J.A.C. 7:26-16.8(a)* if the date the conviction became final (including the exhaustion of any appeals) is less than ten years preceding the filing of the application or notice of intent to revoke a license.

(c) Notwithstanding (a) and (b) above, the Department may still deny or revoke a license because of a conviction more than ten years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

7:26-16.23 "Independent contractors," or "consultants"

(a) Applicants, permittees and licensees may not avoid the effects of *N.J.A.C. 7:26-16.8* and *16.9* by designating an employee as an "independent contractor" or "consultant". The Department will look beyond the form of such contracts, and if it finds that a person designated as an "independent contractor", "consultant" or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant, permittee or licensee, the Department will regard that person as an employee.

(b) The Department may deny or revoke a license if it finds that an applicant, permittee or licensee has entered into an "independent contractor" arrangement, "consultant" agreement or similar arrangement for the purpose of avoiding disqualification under *N.J.A.C. 7:26-16.8* or *16.9*.

7:26-16.24 (Reserved)