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ENVIRONMENTAL PROTECTION

DIVISION OF SOLID AND HAZARDOUS WASTE
Solid Waste, Hazardous Waste, and Recycling Regulation Corrections

Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 1.7, 1.12, 2.4, 2.7, 2.9, 2.10, 2.11, 2.13, 2A.5, 2A.7, 2A.8, 2B.5, 2B.8, 3.1, 3.3, 3.5, 3.6, 3A.8, 3A.35, 3A.39, 4.3, 5.4, 6.2, 6.10, 6.11, 6.12, 15.5, 15.6, 15.7; 7:26A-1.3, 1.4, 3.2, 3.5, 3.7, 3.18, 4.4, 4.5, 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7; 7:26G-1.1, 3.3, 4.2, 6.1, 7.1, 7.2, and 7.4; and 7:26H-5.5.


Authorized By: Robert C. Shinn, Jr., Commissioner
Department of Environmental Protection.


DEP Docket Number: 22-00-06/135
Proposal Number: PRN 2000-

A public hearing concerning this proposal will be held on August 8, 2000, at 9AM at:
On June 16, 2000 this proposal was filed with the Office of Administrative Law, who will edit it before publishing it in the New Jersey Register. Please refer to the July 17, 2000 New Jersey Register for the official text of the proposal.

New Jersey Department of Environmental Protection
Public Hearing Room - First Floor
401 East State Street
Trenton, NJ 08625

Submit written comments by August 16, 2000 to:
Ann Zeloof, Esquire
Att: DEP Docket Number 22-00-06/135
New Jersey Department of Environmental Protection
Office of Legal Affairs
P.O. Box 402
Trenton, NJ 08625-0402

Comments on disk

The New Jersey Department of Environmental Protection (Department) can now review comments on diskette. This reduces the time and staff necessary to respond to public comments. The Department requests that any commenter who has access to any of the word processing software packages listed below submit comments on this proposal to the Department on paper as well as on diskettes, either
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3-1/2 inch (preferred) or 5 1/4 inch. The Department will upload the comments onto its office automation equipment, and will use the paper version to ensure that the uploading was accomplished successfully. Submission of the disk is not a requirement; the Department will accept all comments submitted in writing prior to the end of the comment period.

The Department prefers Microsoft Word 97, Wordperfect 5.x or 6.0, and ASCII, but can convert and review many other formats as well, such as Wordperfect 5.1; Wordperfect 5.2; Wordperfect 6.1; Word for DOS; Display Write RFT; Office Writer; Professional Write 2.0; Word for Windows; WordStar; and ASCII. Macintosh formats should not be used. Any commenter who wishes to use software other than that listed above may contact the Division at (609) 984-9880 to check compatibility.

Text enhancements such as underlines, bold, etc., are often not converted correctly between software documents. Therefore, when suggesting text revisions, commenters should show the text as they desire to see it in the rule. Comments on the proposal summary should be included with comments on the pertinent section of the rule text, wherever possible, to eliminate duplicative comments and facilitate the
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Department's task of organizing and responding to comments. Since comments will be sorted electronically, the following format should be used for each comment:

\[(\text{tab})\text{citation(\text{tab})COMMENT: Commenter name followed immediately with the phrase “believes that” and comment text. For example:}\]

1.7(e) \hspace{1cm} COMMENT: ABC Corporation believes that the exemption from solid waste facility permitting for on-site disposal of construction and vegetative waste removed in preparation for new construction should be retained by the Department.

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection (Department) proposes to make corrections to its solid waste regulations, as readopted on December 16, 1996 and amended on December 1, 1997, its hazardous waste rules as adopted on October 21, 1996 and amended on January 19, 1999, its
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recycling rules as readopted on December 16, 1996, and its solid waste utility rules as readopted on May 6, 1996 and amended on December 1, 1997. These adoptions made sweeping changes to the previous solid waste and hazardous waste management systems in New Jersey, and introduced many new procedures and new regulatory language. Since that time, the Department has become aware of errors and issues requiring clarification within the solid and hazardous waste rules. Some of the errors were corrected in the Administrative Notice of Technical Correction published on November 2, 1998 (30 NJR 3948), but others are either more significant and required more of an explanation than is afforded in such a Notice or were not discovered in time to be included in the Notice. In this rulemaking, the Department proposes amendments to the solid and hazardous waste rules to either clarify existing regulations or correct errors which were not addressed in the November 2, 1998 Notice.

Specific amendments are discussed below by topic. Unless clearly indicated in the topic title, the affected regulatory citations appear in parenthesis.
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Amendments to N.J.A.C. 7:26

Removal of Hazardous Waste References in Scope (N.J.A.C. 7:26-1.1(a))

On October 21, 1996, the Department adopted regulations which separated the hazardous waste regulations from the solid waste regulations. See 28 N.J.R. 1693 and 28 N.J.R. 4606. This separation was accomplished through a repeal of all regulations at N.J.A.C. 7:26 which pertained to hazardous waste and the creation of a chapter (N.J.A.C. 7:26G) specifically addressing the regulation of hazardous waste. Due to an oversight, references to hazardous waste facilities remain in the scope of the Solid Waste Rules at N.J.A.C. 7:26-1.1(a). These references contradict the purpose of the October 1996 rulemaking by making it appear that the Department still intends to regulate the hazardous waste facilities and establish hazardous waste fees at N.J.A.C. 7:26. To clarify that N.J.A.C. 7:26 regulates solid waste and not hazardous waste entities, the Department is proposing to remove the phrase “and hazardous waste” at N.J.A.C. 7:26-1.1(a).
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Definition of Expansion (N.J.A.C. 7:26-1.4)

The definition of the term “expansion” includes an increase in the design capacity but not in the permitted capacity. This term should also include any increases in permitted capacity because changes in design capacity are not necessarily the same as or include changes in permitted capacity. For example, through the equipment used at the facility, the owner/operator of the facility may be able to process more solid waste than the amount of solid waste he is authorized to process in accordance with the facility permit. Factors determining the permit limitations include the solid waste quantities limits listed in the solid waste management plan for the district in which the facility is located and any limitations set by local authorities. Additionally, an increase in permitted capacity may not require changes in design capacity for this same reason. In order to appropriately list all capacity changes that are included in an “expansion”, the Department is proposing to include the phrase “and/or permitted capacity” in the definition of this term.

In addition, the Department has noted a typographical error in the definition of this term and is proposing to correct it by replacing the word “aerial” with “areal.” The Department has consistently defined an increase in the blue print or “area” of a
facility as an expansion, as well as a change in the vertical or “aerial” elevation, and has communicated the same to the regulated community. The change from “aerial” to “areal,” therefore, should have no impact on the regulated community and is done for clarification purposes only.

Definition of “Recycling center” (N.J.A.C. 7:26-1.4)

The Solid Waste Rules (N.J.A.C. 7:26) and Recycling Rules (N.J.A.C. 7:26A) set standards for the entire universe of non-hazardous secondary materials. The ultimate destination of these materials helps determine their regulatory status. For example, certain non-hazardous secondary material that are source separated and sent to a recycling center for reprocessing into a usable product is not considered solid waste subject to the regulations at N.J.A.C. 7:26. Therefore, common terms found both in the Solid Waste Rules and the Recycling Rules should have the same meaning. “Recycling center” is one such term.

Although similar, the definitions of “recycling center” in the Solid Waste Rules and Recycling Rules are not identical in language. Therefore, the Department is
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proposing amendments to the current definition of “recycling center” that result in one common definition in both the Solid Waste Rules and the Recycling Rules. Two factors determine the amendments needed to create a single definition of this term: the differences in the definitions and the definition of “recycling center” in the Solid Waste Management Act (the statutory authority upon which the Solid Waste Rules and Recycling Rules are based).

One difference between the two definitions is the lack of a descriptive listing in the definition in the Recycling Rule when compared to the definition in the Solid Waste Rule. N.J.A.C. 7:26-1.4 lists the material received at a recycling center as source separated nonputrescible or commingled nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard or other recyclable materials approved by the Department. The Recycling Rule replaces this listing with a simple reference to source separated recyclable materials. This general reference to source separated recyclable materials is supplemented by the Department’s definition of “Class A recyclable material”, “Class B recyclable material”, “Class C recyclable material”, and “Class D recyclable material” in the Recycling Rule. These various classes of materials encompass all source separated recyclable materials currently
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recognize by the Department.

Although different in language, the materials referenced in the definitions are the same. The “nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard” are by definition Class A recyclable material, while “other recyclable material approved by the Department” are Class B, Class C, and Class D recyclable material as defined at N.J.A.C. 7:26A-1.3. Simply based on these facts, it is logical to favor the use of the definitions of “recycling center”, “Class A recyclable Material”, “Class B recyclable Material”, “Class C recyclable Material” and “Class D recyclable Material” in the Recycling Rule when developing a single definition of “recycling center.”

The Department’s strategy in developing a single “recycling center” definition is further proven to be appropriate upon reviewing the definition of “recycling center” in the Solid Waste Management Act. The definition of “recycling center” in the Solid Waste Rules reflects an older Solid Waste Management Act definition for this term, while the definition for “recycling center” in the Recycling Rule reflects the current Solid Waste Management Act definition of this term. See N.J.S.A. 13:1E-99.12.
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The incorporation of the various classes of recyclable material in the regulatory definition of “recycling center” does not increase the universe of entities that the Legislature considered to be recycling centers when it adopted the Solid Waste Management Act definition of this term. Instead these classes of recyclable materials will serve to provide additional clarity as to what secondary materials currently constitute “source separated” recyclable materials.

Therefore, using the Recycling Rule definition of “recycling center” as a foundation, the Department is proposing to make the following amendments to the definition of “recycling center” in the Solid Waste Rules: replace the word “and” with the word “or”, replace the physical description listing of recyclable materials with the phrase “Class A, Class B, Class C, and/or Class D recyclable materials as defined at N.J.A.C. 7:26A-1.3”, and exclude recycling depots, manufacturers, or scrap processing facilities as defined at N.J.A.C. 7:26A-1.3 from the definition of recycling center. See Clarification of Regulatory Status of Scrap Processing Facilities in Amendments to N.J.A.C. 7:26A below for a more detailed explanation regarding scrap processing facilities. These amendments will clarify that a facility does not have to engage in all the listed activities to be considered a recycling center and that
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Recycling depots, manufacturers, or scrap processing facilities will not be considered recycling centers.

Definition of Class I Sanitary Landfill (N.J.A.C. 7:26-1.4)

A Class I Sanitary Landfill is defined at N.J.A.C. 7:26-1.4 as a sanitary landfill which may accept all non-hazardous waste including ID 72 (bulk liquids and semiliquids as defined at N.J.A.C. 7:26-2.13h). However, in accordance with the prohibition at N.J.A.C. 7:26-2A.4(q)6, bulk liquids and semiliquids (ID 72) shall not be disposed of at a sanitary landfill. Clearly the definition is inconsistent with the prohibition.

Unlike other provisions in the rules, definitions do not impose requirements upon the regulated community but merely provide a common frame of reference when using certain terms. Therefore, when the definitions are inconsistent with the regulations, the regulations prevail. Although the definition of “Class I Sanitary Landfill” suggests that ID 72 waste can be disposed of at a sanitary landfill, it is clearly prohibited. The Department is proposing to remove the reference to ID 72 in the definition of “Class I Sanitary Landfill” for consistency and clarity.
Also the current definition does not reflect all the variants of ID 27, but rather has a reference only to ID 27. There are two variants of ID 27, specifically ID 27A (asbestos containing waste) and ID 27I (incinerator ash waste). See N.J.A.C. 7:26-2.13(g)viii and ix. Solid waste meeting the description of ID 27A and ID 27I may be disposed of at a Class I sanitary landfill. For clarity, the Department is proposing to reference these additional solid waste types in the definition of “Class I sanitary landfill.”

Clarification of Phrase “consistent with the district Solid Waste Management Plan”

(N.J.A.C. 7:26-1.7(f)4, 1.7(f)5x, and 2.9(g)2)

The phrase “consistent with the district Solid Waste Management Plan” or a variation of this phrase appears at N.J.A.C. 7:26-1.7(f) for Research, Development and Demonstration (RD&D) projects and at N.J.A.C. 7:26-2.9(g) for new solid waste facilities. The meaning of this phrase is ambiguous. The Department considers a facility that is included in the appropriate district’s solid waste management plan to be “consistent with the district Solid Waste Management Plan.” This inclusion is either through a full plan amendment or an administrative action. See N.J.A.C.
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7:26-6.10(b) and N.J.A.C. 7:26-6.11(b) respectively. A RD&D project can be included in the plan through an administrative action while a new solid waste facility usually requires a full plan amendment. For clarity, the Department is proposing language at N.J.A.C. 7:26-1.7(f)4 and 5x requiring RD&D projects be included by administrative action within the district solid waste management plan. Also a proposed amendment at N.J.A.C. 7:26-2.9(g)2 requires an applicant for a proposed solid waste facility to demonstrate that the proposed facility is included in the district solid waste management plan. The distinction between an administrative action and full plan amendment is not specified at N.J.A.C. 7:26-2.9(g) since that determination is dependent upon the specific type of solid waste facility as identified in N.J.A.C. 7:26-6.10 and 6.11. See “Clarification of Administrative Action Requirements” below for corresponding proposed amendments to N.J.A.C. 7:26-6.11(b).

Confidentiality of Medical Waste Transporter Reports

(N.J.A.C. 7:26-1.12(b) and 3A.35(f))

A transporter of regulated medical waste must submit a regulated medical waste transporter report to the Department pursuant to N.J.A.C. 7:26-3A.35. This
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The report includes information regarding the customers of the transporter (i.e. the generators from whom the waste is collected) such as the name, address, and type of generator (i.e. doctor, hospital). In In the Matter of Request for Solid Waste Utility Customer Lists, 106 N.J. 508 (1987) a group of solid waste utilities appealed an order of the Board of Public Utilities requiring them to provide the Board with a complete list of all their customers. In its ruling, the New Jersey Supreme Court not only upheld the Board’s authority to compel such lists as long as adequate safeguards were provided, but also addressed the issue whether customer lists should be treated confidentially. The Court stated “The power of the regulator to obtain information in the public interest should not be subverted by competitors into a means of obtaining otherwise unavailable information for their private gain” and “the interest of anyone seeking the disclosure is unlikely to outweigh the interest of the public and the industry in keeping the records confidential.” The Department believes that the Court’s decision applies to the medical waste transporter reports. Accordingly, the Department is proposing rules at N.J.A.C. 7:26-1.12(b) which deem these reports not to be public record and identifies the limited access to these reports. The proposed language mirrors the language at N.J.A.C. 7:26H-5.9(c)5
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which deems customer lists submitted by utilities to the Department not to be public records and identifies limited access to these records.

For completeness, a cross-reference to the proposed N.J.A.C. 7:26-1.12(b) is added at N.J.A.C. 7:26-3A.35(f), along with a statement that this report is deemed not to be public record.

Design Requirements for Small-Scale Material Recovery Facilities or Transfer Stations (N.J.A.C. 7:26-2.4(c)2iv)

Currently N.J.A.C. 7:26-2.4(c)2iv requires that the engineering design of a small-scale materials recovery facility or transfer station comply with the general solid waste facility design requirements at N.J.A.C. 7:26-2.10. There is no reference to the additional design requirement for transfer station and materials recovery facility at N.J.A.C. 7:26-2B.5. These small scale solid waste facilities are indeed subject to the additional design requirements. Therefore, for clarity the Department is proposing to amend N.J.A.C. 7:26-2.4(c)2iv to include a cross-reference of these additional design requirements found N.J.A.C 7:26-2B.5.
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Correction of Reference to Requirements for Transfer of Solid Waste Permits

(N.J.A.C. 7:26-2.4(g)13)

The requirements at N.J.A.C. 7:26-2.4(g), which outline the procedures that the Department must follow in processing Solid Waste Facility permit applications, contain a cross-reference to the requirements governing the transfer of solid waste permits, specifically at N.J.A.C. 7:26-2.4(g)13. This cross-reference is listed as N.J.A.C. 7:26-2.7(d) and is incorrect. N.J.A.C. 7:26-2.7(d) addresses the enforcement of an expiring or expired solid waste permit not the transfer of a permit. The Department is proposing to correct the cross-reference to the appropriate citation of N.J.A.C. 7:26-2.7(e).

Correction of Reference to Administrative Record for Solid Waste Permit Renewals

(N.J.A.C. 7:26-2.7(b)8)

N.J.A.C. 7:26-2.7(b)8 states that the Department’s final decision on a permit renewal must be based on the administrative record. To define the term “administrative record”, there is a cross-reference to a citation that should outline the items to be included in the administrative record. The current cross-reference of
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N.J.A.C. 7:26-2.4(a) is incorrect because such a citation does not exist. The Department is proposing to amend this cross-reference to the correct citation of N.J.A.C. 7:26-2.4(g).

Correction of Reference of GIS requirements for Submittals of Maps

(N.J.A.C. 7:26-2.10(b)1 and 3A.39(d))

Maps are a part of all solid waste permit applications. The Department has developed a computer mapping system to be used in the analysis of geographic data and databases known as Geographic Information Systems (GIS). In order to be able to utilize this important tool, the Department requires these maps to be GIS compatible by meeting the Mapping and Digital Data Standards at N.J.A.C. 7:1 Appendix A. Upon review of the general requirements for the engineering design for solid waste facilities at N.J.A.C. 7:26-2.10(b) and the permit application requirements for the operation of a commercial medical waste collection facility at N.J.A.C. 7:26-3A.39(d), the Department noted that the cross-reference to the Mapping and Digital Data standards is incorrect. The Department proposes to correct the citation of N.J.A.C. 7:1E, Appendix C to N.J.A.C. 7:1, Appendix A in the
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following regulations: N.J.A.C. 7:26-2.10(b)1 and 3A.39(d).

Update Datum References for Maps (N.J.A.C. 7:26-2.10(b)5, 2.10(b)6, 2A.5(a)2ii, and 2A.8(b)45)

Maps which have contour elevation and vertical and horizontal location information must conform to the appropriate Datum. The Datum currently referenced is the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929). This is not the most current Datum. The Department's most current GIS standards require the contour elevation and vertical location to be based on the North American Vertical Datum of 1988 whenever possible. If it is not possible to use this 1988 Datum then the information shall be based on the 1929 Datum. The Department is proposing to reflect the most current GIS Datum standards by inserting the phrase “the North American Vertical Datum of 1988 whenever possible rather than” at the following citations: N.J.A.C. 7:26-2.10(b)5 and 2.10(b)6.

The information using either the 1988 Datum or 1929 Datum is keyed into the North American Datum of 1983. This North American Datum of 1983 replaced the New Jersey Plane Coordinated Datum 1927. Most solid waste citations reflect
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the North American Datum of 1983. However, N.J.A.C. 7:26-2.10(b)5 and 2A.8(b)45 still contain references to the New Jersey State Plane Coordinated Datum 1927. The Department is proposing to replace these incorrect references with the most current Datum, specifically the North American Datum of 1983.

N.J.A.C. 7:26-2A.5(a)2ii is proposed to be rewritten. This provision already contains the correct reference to the North American Datum of 1983, but needs a reference to the North American Vertical Datum of 1988. Unlike N.J.A.C. 7:26-2.10(b)5 and 2.10(b)6, where the phrase “the North American Vertical Datum of 1988 whenever possible rather than” can be inserted easily into the existing sentences, the insertion of this phrase would result in a long and awkward sentence. Therefore the Department is proposing to remove and replace the one full sentence with two sentences. The GIS Datum standards will be clear and consistent: For the horizontal contours the North American Datum of 1983 shall be used, while for vertical elevations the North American Vertical Datum of 1988 shall be used when possible instead of the North American Vertical Datum of 1929 (Mean Sea Level Datum 1929).
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Correction of Scientific Scale reference (N.J.A.C. 7:26-2.10(b)6)

According to the requirements at N.J.A.C. 7:26-2.10(b)6, site plan maps for solid waste facilities are to be drawn using a minimum scale of one inch equals 200 feet. The scientific reference to this scale is incorrect by indicating a minimum scale of one foot equals 200 feet. The Department is proposing to correct this scientific reference by amending (1'=200') to (1"=200').

Inspection Plans for Solid Waste Facilities (N.J.A.C. 7:26-2.10(b)9)

The inspection plan, which must be included in the Operations and Maintenance (O and M) Manual pursuant to N.J.A.C. 7:26-2.10(b)9, can be divided into two plans: a facility inspection plan and a waste inspection plan. The facility inspection plan would address the inspection of the equipment, which is used either for processing the waste or for safety/emergencies, and the inspection of areas where the waste is loaded or unloaded. A waste inspection would outline the steps taken to identify wastes that the facility is not authorized to accept and the training given to facility personnel to identify these unauthorized waste types.

For clarity, the Department is proposing to separate the current inspection requirements at N.J.A.C. 7:26-2.10(b)9i into these two categories of inspection.
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The word “facility” is proposed for insertion at N.J.A.C 7:26-2.10(b)9ii, while the requirements currently at N.J.A.C. 7:26-2.10(b)9ii(1) is proposed to be moved to N.J.A.C. 7:26-2.10(b)9vii, with an indication that this inspection plan is a waste inspection plan.

Amendments are also proposed to the inspection requirements that the Department is now identifying as being part of a waste inspection. As currently written the focus of the inspection is to identify incoming hazardous waste, a prohibited waste type. However, the concern is for any unauthorized waste type, whether it be solid waste or hazardous waste. Acceptance of any unauthorized waste type would result in a violation of the facility’s authorization to operate. The Department is recognizing this concern through the following proposed amendments: the addition of the phrase “of all unauthorized waste types, including” at N.J.A.C. 7:27-2.10(b)9vi; the addition of the phrase of “unauthorized waste types,” at N.J.A.C. 7:26-2.10(b)9vii(A); and the addition of the phrase of “any unauthorized waste types, including” at N.J.A.C. 7:26-2.10(b)9vii(C) and 2.10(b)9vii(D).

A final amendment to the waste inspection requirements involves the reference
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to PCB hazardous waste. At one time such a reference was appropriate since PCB waste was a listed hazardous waste in New Jersey’s Hazardous Waste Rule. However, in the October 21, 1996 hazardous waste rulemaking that incorporated the 1993 Federal Hazardous Waste Rules by reference, the Department removed PCB waste as a listed hazardous waste and incorporated the federal regulation at 40 C.F.R. 261.8 regarding PCB waste by reference. United States Environmental Protection Agency (USEPA) allows the disposal of PCB containing dielectric fluid and electric equipment containing such fluid as solid waste provided it is already regulated at 40 C.F.R. Part 761, the Toxic Substance Control Act (TSCA). Due to this change in New Jersey’s Hazardous Waste Rule, the reference to PCB hazardous waste is no longer appropriate and must be amended to TCSA waste. The Department proposes this amendment at N.J.A.C. 7:26-2.10(b)9vii(A).

Clarification of Final Operation and Maintenance (O and M) Manual

(N.J.A.C. 7:26-2.10(b)10)

An O and M manual is submitted as part of the solid waste permit application. In accordance with N.J.A.C. 7:26-2.10(b)10, the Department reviews
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this manual and notifies the applicant of any deficiencies. The applicant revises the O and M manual to address these deficiencies. A revised O and M manual is only considered to be final when it has been approved by the Department. The point at which the O and M manual becomes final is not accurately reflected in the regulations. Additionally, although it is hoped that the applicant submits a revised O and M manual that will become the final manual on his first attempt to address all the Department’s noted deficiencies, this may not always be the case. Therefore, for practical reasons the reference to final O and M manual at N.J.A.C. 7:26-2.10(b)10 is also not appropriate. Therefore, the Department is proposing to replace the references to a final O and M manual with the references to a revised O and M manual at N.J.A.C. 7:26-2.10(b)10.

Odor Requirements for Solid Waste Facilities

(N.J.A.C. 7:26-2.11(b)5, 2A.8(b)30, 2B.8(j) and 2B.5(b)7)

As currently written the Solid Waste regulations regarding off-site odors from the operations of a solid waste facility conflict with the Air Pollution regulations at N.J.A.C. 7:27. The rules at N.J.A.C. 7:26-2.11(b)5, 2A.8(b)30, and 2B.8(j)
address controlling odors during the operation of a solid waste facility so no odors migrate off-site. Meanwhile, the term “air pollution” is defined at N.J.A.C. 7:27-5.1, in part, as “the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, plant or animal life or property, or would unreasonably interfere with the comfortable enjoyment of life or property throughout the State...” Further, N.J.A.C. 7:27-5.2 prohibits air pollution as defined by N.J.A.C. 7:27-5.1. Therefore, it appears that the Solid Waste regulations do not allow any odors from the operation of a solid waste facility to migrate off-site, while Air Pollution regulations allow the odors to migrate off-site but not in quantities or for a duration injurious to human health and the environment or precluding the enjoyment of life and property.

The processing of solid waste is odorous since solid waste, by its very nature, is odorous. Despite their best efforts, solid waste facilities cannot always prevent the migration of odors off-site. Therefore, the no odors off-site during the operation of a solid waste facility is an ideal standard and not a realistic one. This is a fact that must be recognized by the Department. The Department does so and instead turns its attention to balancing the nature of operating a solid waste facility with the
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protection of public health and the environment. This balance is reflected in the Air Pollution standards, which allow odors to migrate off-site but not in quantities or for a duration injurious to human health and the environment or precluding the enjoyment of life and property. It also should be noted that, unlike solid waste facilities, all other types of facilities regulated by the Department (i.e., hazardous waste facilities, waste water treatment facilities) are not subject to separate odor requirements beyond those Air pollution standards at N.J.A.C. 7:27. Therefore to reflect a more realistic operating standard and for consistency with air standards at all facilities regulated by the Department, the Department is proposing to remove the no migration of odor provisions and to appropriately reference either N.J.A.C. 7:27 or N.J.A.C. 7:27-5 at the following citations: N.J.A.C. 7:26-2.11(b)5, 2A.8(b)30 and 2B.8(j).

In addition to operational odor standards, there are also solid waste regulations that require the design of a solid waste facility to prevent the off-site migration of odors: N.J.A.C. 7:26-2B.4(b)14 and 2B.5(b)7. The Department recognizes a difference between a design requirement and an operational
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The design requirement can be different from the operational requirement, in that it strives for the ideal or higher goal. However, for operational purposes, this ideal or higher goal may not be attainable, due perhaps to the limitations of current technology. This fact should not excuse the operator of a solid waste facility from improving his facility as newer and improved technology becomes available; thereby, allowing to him to attain an operational standard closer to the ideal goal. In this case, the ideal design goal is that no odors migrate off-site (a goal that exceeds the air pollution standard at N.J.A.C. 7:27-5) while the operational requirement is the prevention of air pollution in accordance with N.J.A.C. 7:27-5.

For this reason, despite the changes the Department is proposing to the operational standards to allow odors to migrate off-site but not in quantities that would constitute air pollution, the design requirement will continue to reflect the goal of no odors migrating off-site. Because this design goal exceeds the air pollution standards at N.J.A.C. 7:27, the Department is proposing to remove any reference to N.J.A.C. 7:27 at N.J.A.C. 7:26-2B.5(b)7.
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Transfer Stations and Material Recovery Facilities Recordkeeping Requirements

(N.J.A.C. 7:26-2.11(b)13)

Operators of all solid waste facilities are required to keep records of the amount of waste accepted. N.J.A.C. 7:26-2.11(b)13 provides instructions for facility operators who are not required to weigh so that weight conversions may be made from volume measurements of waste. Operators of transfer stations and materials recovery facilities (TS/MRF) are specifically instructed to use the formula found at N.J.A.C. 7:26-2B for this volume to weight conversion. This formula is no longer codified. Therefore a reference to a citation is inappropriate. Accordingly, the Department is proposing to remove the sentence specific to TS/MRF at N.J.A.C. 7:26-2.11(b)13. Operators of TS/MRF, like operators of other solid waste facilities, must contact the Department for a conversion formula.

Correction of Reference to Local Health Services Act (N.J.A.C. 7:26-2.13(b) and (f))

N.J.A.C. 7:26-2.13(b) and (f) contain a citation intended to reference the Local Health Services Act. The citation of N.J.S.A. 26:3A-2 is incorrect. The Department is proposing to correct the reference to a citation of N.J.S.A. 26:3A-1.
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et. seq.

Additional Operational Requirements for Transfer Stations and Materials Recovery Facilities (N.J.A.C. 7:26-2.13(c) and 2B.9(a) through 2B.9(e))

The Department is proposing to create a new section at N.J.A.C. 7:26-2B.9 addressing the additional operational requirements for transfer stations and materials recovery facilities. This new section will include two provisions that the Department has identified as operational standards for (TS/MRF) located in other existing sections. In addition the Department will propose three operational standards that correspond to existing design standards for TS/MRFs.

Currently included in the solid waste facility recordkeeping requirements at N.J.A.C. 7:26-2.13(c) is a provision that states that ID 27 waste cannot be processed at a TS/MRF to alter the physical appearance of the material prior to disposal. This provision is an operational requirement for all TS/MRFs and will be moved with little change in text to N.J.A.C. 7:26-2B.9(a). The only change to the text is the removal of the reference to TS/MRF that is no longer needed due to the relocation to a section specific to TS/MRFs.
As mentioned in Design Requirements for Transfer Stations and Materials Recovery Facilities below, the Department is proposing to move the operational standards currently listed at N.J.A.C. 7:26-2B.5(b)12 to N.J.A.C. 7:26-2B.9(c) with no change in text. This move will allow owners and operators of TS/MRF to refer to a single section for the operational standards for these solid waste facilities.

The Department believes that there is a direct relationship between design requirements and operational requirements. For each design standard there is a corresponding standard requiring the operations to occur within the design of the facility. For example, since a TS/MRF must be designed so that all processing and handling of materials occurs within the confines of an enclosed building (N.J.A.C 7:26-2B.5), there should be a corresponding operational standard requiring that all processing and handling of the materials occur within the confines of an enclosed building. Currently no such corresponding operational standard exists. The Department is proposing this standard at N.J.A.C. 7:26-2B.9(b).

Similarly, N.J.A.C. 7:26-2B.5(b)8 requires TS/MRF be designed so that queuing of vehicles occurs on-site and in a manner that prevents traffic backups and traffic hazards on access roads. The corresponding operational standard would be
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that no queuing occurs on access roadways and all queuing occurs in a manner which prevents backups or traffic hazards on access roads to the facility. Currently these operational standards are not specified in the regulations. The Department is proposing two operational standards at N.J.A.C. 7:26-2B.9(d) and 2B.9(e) corresponding to the design requirement stated at N.J.A.C. 76:26-2B.5(b)8. The proposed provision at N.J.A.C. 7:26-2B.9(d) will prohibit the queuing and staging of solid waste vehicles on any public roadway. Certainly by allowing the queuing and staging of solid waste vehicles on public roadways, the owner/operator of the TS/MRF would not prevent backups or traffic hazards on the access roads to the facility. In addition, the proposed provision at N.J.A.C. 7:26-2B.9(e) would require the queuing and staging of solid waste vehicles to be in accordance with the approved on-site queuing plan.

Transporter O & D Forms Requirements for Waste Disposed at New Jersey Facilities

(N.J.A.C. 7:26-2.13(c)1, 2.13(c)2 and 3.5(g)3)

Currently in the facility recordkeeping requirements at N.J.A.C. 7:26-2.13(c) are transporter requirements regarding the Origin and Destination (O & D)
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forms for solid waste disposed at New Jersey solid waste facilities. The transporter is required to copy an official Department O & D form for each load of solid waste, complete the form, and sign it. See N.J.A.C. 7:26-2.13(c)1 and 2. The Department is proposing to recodify these requirements, without any changes to the text, as paragraph (g) in a section(N.J.A.C. 7:26-3.5) addressing transporter requirements. This move will enable transporters to read one section of the solid waste regulations for a complete listing of their regulatory obligations.

This proposed move to another section creates the need for another amendment. Pursuant to the current rule at N.J.A.C. 7:26-2.13(c)4, retention of these O & D forms lies with the solid waste facility accepting the waste shipment. Since the transporter initiates the O & D form, which must be completed for each waste shipment, but the facility retains it, it is logical to conclude that the transporter must give the O & D form to the facility. Such a rule directing the transporter to turn over the O & D form does not currently exist and is not essential given the current location of the transporter O & D requirements. However, a result of moving the transporter requirements to its own section is the loss of the overall picture of the life cycle of the O & D form. Therefore, the Department is proposing,
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at N.J.A.C. 7:26-3.5(g)3, a requirement directing the transporter to give the O & D form to the facility. A cross-reference to the facility recordkeeping requirement is included for completeness.

Clarification of Submission of Monthly Facility Reports (N.J.A.C. 7:26-2.13(e))

Pursuant to N.J.A.C. 7:26-2.13(e), the owner or operator of a solid waste facility is required to submit a monthly summary of waste received to the Department's Division of Solid and Hazardous Waste and the Solid Waste Coordinator of the district of destination. Since the facility is receiving the waste, it is the destination facility. Therefore, the appropriate solid waste coordinator to whom the facility shall submit a monthly report of waste received is the coordinator for the district where the facility is located. The Department is proposing that the phrase “of destination” used to describe the district be amended to “where the facility” is located. This proposed amendment does not alter the requirement in any way but will identify the appropriate Solid Waste Coordinator in terms of an easy point of reference, specifically the location of the facility.
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Correction of Reference Regarding Health Department Access to Customer Lists

(N.J.A.C 7:26-2.13(f))

N.J.A.C. 7:26-2.13(f) addresses local agency access to customer lists supplied to the Department by solid waste facilities. As set forth in the Right to Know Law (N.J.S.A. 47:1A-1 et seq.) these customer lists are not considered public information. Therefore, access to this information is restricted. A certified county or local health agency or a local health department authorized to conduct solid waste enforcement can obtain access to these lists provided certain requirements are met. The reference for these requirements is a regulation in the Board of Public Utilities Regulations, specifically N.J.A.C. 14:3-10.15(b)4. However, on May 6 1996, the regulations in Subchapter 10 of the Board of Public Utilities Regulations regarding customer lists were recodified at N.J.A.C. 7:26H-5. Therefore, the citation as it currently appears at N.J.A.C. 7:26-2.13(f) is incorrect. The Department is correcting the reference to N.J.A.C. 7:26H-5.9.

Removal of Obsolete Waste Types  (N.J.A.C. 7:26-2.13(i))

When the Solid Waste Rules were adopted in 1974, there were a
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total of 27 waste types. In 1976, 1978, and 1983 the Department amended the list of these 27 waste types to either consolidate or clarify the waste types to reflect ongoing regulatory changes. The waste listing at N.J.A.C. 7:26-2.13(i) containing eighteen waste types was adopted December 5, 1983 to provide the regulated community guidance during the transition to the current waste types. These former waste types are not recognized by the Department as valid waste types and have not been used since 1983. Only the waste types listed at N.J.A.C. 7:26-2.13(g) and (h) can be currently used. Due to the amount of time (over sixteen years) that has passed since the adoption of N.J.A.C. 7:26-2.13(i), the Department believes this list has served its explanatory purpose and is no longer necessary. Therefore, the Department is proposing to remove the list at N.J.A.C. 7:26-2.13(i) and recodify N.J.A.C. 7:26-2.13(j) as (i) without changes to text.

Deletion of N.J.A.C. 7:26-2.13(j)

N.J.A.C. 7:26-2.13(j) provides that the waste code for solid waste is determined at the site of generation by the generator. Any processing of this waste at a Transfer Station/ Materials Recovery Facility shall not alter the waste code
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established by the generator at the site of generation. This provision is duplicative of language at N.J.A.C. 7:26-2.13(c). Therefore the Department is proposing to delete N.J.A.C. 7:26-2.13(j). This deletion and the deletion of obsolete waste codes discussed above result in the proposed recodification of the provisions at N.J.A.C. 7:26-2.13(k) and (l) as N.J.A.C. 7:26-2.13(i) and (j) respectively.

Amended Deadline for Solid Waste District Annual Reports (N.J.A.C. 7:26-2.13(k))

N.J.A.C. 7:26-2.13(k) requires a solid waste district to submit an annual report by February 1 for all waste entering or leaving the district. The Department has determined that a February 1 deadline does not provide the solid waste districts sufficient time to compile the information required in the annual report given the Department's system for verifying the annual reported numbers.

The Department compiles annual waste numbers from the following sources: (for waste disposal of in-state) in-state facility monthly reports and (for waste disposed of out-of-state from a district which has not designated an in-county weighing facility) transporter monthly reports. Likewise, each district will compile its annual numbers based on the same two sources. The Department's annual report is
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forwarded to the districts for comparison with the district annual numbers. The district then resolves any discrepancies in the reported numbers and files a final annual report with the Department.

Since the monthly reports for the month of December from in-state facilities or transporters will not be received by the Department and district until January 20 and the Department cannot compile its annual report and forward the report to the districts before February, the February deadline should be changed. The Department has determined that March 15 is a reasonable deadline and is proposing to amend the current deadline accordingly.

In addition, due to the deletion of N.J.A.C. 7:26-2.13(i) and 2.13(j) as noted above, the current rule at N.J.A.C. 7:26-2.13(k) is proposed for recodification as N.J.A.C. 7:26-2.13(i) with above described amendment.

Correction of Reference to Gas Surveys for Gas Monitoring Systems at Sanitary Landfills  (N.J.A.C. 7:26-2A.7(h)6iii)

The design and construction standards for a gas monitoring system at a
sanitary landfill are established at N.J.A.C. 7:26-2A.7(h)6. N.J.A.C. 7:26-2A.7(h)6iii allows for the substitution of a periodic gas survey for the design and construction of methane gas monitoring wells. The cross-reference to the standards for periodic gas surveys, specifically N.J.A.C. 7:26-2A.10(a)5ix, is incorrect since such a citation does not exist. The correct reference is N.J.A.C. 7:26-2A.8(h)9. The Department is proposing to amend N.J.A.C. 7:26-2A.7(h)6iii accordingly.

Control of Malodorous Emissions and Solid Waste at Sanitary Landfills

(N.J.A.C. 7:26-2A.8(b)30i and 2A.8(b)30ii)

N.J.A.C. 7:26-2A.8(b)30 addresses malodorous emissions and malodorous solid waste at sanitary landfills; specifically malodorous emissions shall not result in odors off-site and shall be controlled by daily cover, while malodorous solid waste shall be covered immediately by a minimum of 6 inches of cover material. Due to amendments regarding solid waste facility odor requirements and the Air Pollution regulations (N.J.A.C. 7:27), the malodorous emissions requirement relating to off-site odors is proposed for deletion. See Odor Requirements for Solid Waste Facilities above. The Department is concerned that the remaining malodorous emission and
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Solid waste requirements will not be easily located. Therefore, the Department is proposing to recodify these remaining requirements as N.J.A.C. 7:26-2A.8(b)30i and 2A.8(b)30ii with no change in text.

Department Contact for Systems Damage at Sanitary Landfills

(N.J.A.C. 7:26-2A.8(b)33)

Should damage occur at a sanitary landfill to monitoring equipment or environmental control equipment, the owner/operator of the landfill is required to report such damage to the Department. See N.J.A.C. 7:26-2A.8(b)33. The Department contact currently listed is the Division of Enforcement Field Operations at (609)-584-4180. This listing does not reflect the current Department organizational structure. The Department is proposing to correct the reference to the Division of Enforcement Field Operations to the Bureau of Solid Waste Compliance and Enforcement. The phone number remains the same.
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Safety Requirements for Transporters of Asbestos

(N.J.A.C. 7:26-2A.8(l)2vi and 3.5(h))

N.J.A.C. 7:26-2A.8, which outlines operational requirements for sanitary landfills, contains a safety requirement for transporters of asbestos. These transporters are responsible for providing respirators, any mandatory training, and fit test for the drivers and passengers. See N.J.A.C. 7:26-2A.8(l)2vi. The Department is proposing to move this requirement with no changes in text to a section (N.J.A.C. 7:26-3.5) which outlines specific requirements for transporters. This move will enable transporters to more easily locate this requirement.

Design Requirements for Transfer Station and Materials Recovery Facilities

(N.J.A.C. 7:26-2B.5(b)2, 2B.5(b)11, 2B.5(b)12, and 2B.9(c))

The Department is proposing several amendments to the design requirements for Transfer Station and Material Recovery Facility at N.J.A.C. 7:26-2B.5. Although N.J.A.C. 7:26-2B.5(b)12 requires the installation, repair, and operation of all systems to be in conformance with the Federal Occupational Health and Safety Administration and the NJ Worker and Community Right to Know Act standards, it actually is an
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operational requirement. The Department is proposing to move this provision, with no change in text, to a new section addressing operational standards for Transfer Stations and Materials Recovery Facilities at N.J.A.C. 7:26-2B.9(c).

Replacing the current provision at N.J.A.C. 7:26-2B.5(b)12 is a design requirement which was removed in the December 16, 1996 readoption of the Solid Waste Rules. This proposed design requirement states that the layout of the facility must provide for system installations that maximize accessibility for repairs, maintenance and cleaning while affording employee safety. This amendment mirrors the design requirement for thermal destruction facilities at N.J.A.C. 7:26-2B.4(b)22 and will not impose any additional burdens since this requirement is consistent with existing requirements imposed by the Federal Occupational Health and Safety Administration and the NJ Worker and Community Right to Know Act.

The Department is proposing to add language at N.J.A.C. 7:26-2B.5(b)2 so that the provision reflects a design requirement rather than an operational requirement. This proposed amendment will clarify that transfer stations and material recovery facilities shall be designed so that all processing and storage areas are located within an enclosed building. Although the Department has always
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considered the processing of solid waste to include the loading or unloading of the waste, the Department is clarifying that the loading/unloading area also must be located in confines of an enclosed building.

N.J.A.C. 7:26-2B.5(b)11 requires transfer stations and material recovery facilities to be designed with alarm and fire protection systems capable of detecting, controlling, and suppressing any and all fires. This provision does not accurately reflect the expected capabilities of the fire protection system. Suppressing a fire means that the fire is under control but does not necessarily mean the fire has been put out. The Department expects these systems to be able to extinguish all fires and is amending N.J.A.C. 7:26-2B.5(b)11 accordingly.

Design Requirements for Dust Control for Transfer Stations or Material Recovery Facilities (N.J.A.C. 7:26-2B.5(b)7)

In accordance with N.J.A.C. 7:26-2B.5(b)7, transfer stations and material recovery facilities are to be designed to mitigate the amount of dust outside the confines of the enclosed building in accordance with N.J.A.C. 7:27. As in the case of odor control as described in Odor Requirements for Solid Waste Facilities above,
the Department recognizes a difference between a design requirement and an operation requirement. The design requirement strives for the ideal or higher standard; while the operational standard may be lower because the ideal standard may not be attainable. In addition the Department believes that in designing a facility, the owner or operator should take a proactive role to prevent a negative situation rather than a reactive role to mitigate a negative occurrence. For dust control, the Department believes that transfer stations and materials recovery facilities should be designed to prevent the migration of dust from the confines of the enclosed building rather than mitigate the amount of dust emitted from the building. For these reasons, the Department is proposing to remove the phrase “mitigate the amount of” and the phrase “accordance with N.J.A.C. 7:27 “ in the design requirement at N.J.A.C. 7:26-2B.5(b)7.

Removal of Utilities Plan in Site Plan Map for TS/MRF (N.J.A.C. 7:26-2B.5(c)5)

Currently, as part of the site plan map, the applicant for a transfer station/materials recovery facility permit shall include a utilities plan. This utilities plan identifies and locates all utilities servicing the facility. These utilities include
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storm water drainage, sanitary sewer, water supply and energy systems. The Department is proposing to delete this plan requirement from the site plan map requirements at N.J.A.C. 7:26-2B.5(c)5 because it is already included in the vicinity map requirements at N.J.A.C. 7:26-2.10(b)5vi.

Waste Determination on Residual Ash at Thermal Destruction Facilities

(N.J.A.C. 7:26-2B.8(m))

An owner/operator of a thermal destruction facility is required to perform a hazardous waste determination on all ash residual prior to disposal in accordance with N.J.A.C. 7:26-2B.8. This determination is to be conducted in accordance with N.J.A.C. 7:26-8.5. However, as part of the hazardous waste rulemaking that was proposed April 1, 1996 and adopted October 21, 1996, N.J.A.C. 7:26-8 was repealed and reserved. Therefore, the reference to N.J.A.C. 7:26-8.5 at N.J.A.C. 7:26-2B.8(m) is incorrect. The Department is proposing to amend the cross-reference to N.J.A.C. 7:26G-6, the hazardous waste subchapter addressing generator waste determinations.
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Amendment to Transportation Prohibition (N.J.A.C. 7:26-3.1(a))

In accordance with N.J.A.C. 7:26-3.1(a), solid waste and combustible matter (including used oil) must be transported in the systems established by N.J.A.C. 7:26-3, including the approved registration statement and vehicle registration programs. As currently written N.J.A.C. 7:26-3.1(a) does not acknowledge exemptions for certain individuals, specifically exemptions listed at N.J.A.C. 7:26-3.3(a), the exemption for transport of used oil from mobile field changing operations proposed for recodification at N.J.A.C. 7:26A-6.6(a)6, and the exemptions at N.J.A.C. 7:26A-6.6(a)1 and (a)5 as mentioned in the section entitled Clarification of Used Oil Transporter Requirements below. Therefore, the Department is proposing to add the phrase "Unless otherwise exempted at N.J.A.C. 7:26-3.3(a) and N.J.A.C. 7:26A-6.6(a)," at N.J.A.C. 7:26-3.1(a) to indicate that there are some exemptions to this provision.

Recodification Exemption for Transporters of Used Oil from Mobile Field Operations

(N.J.A.C. 7:26-3.3(a) and N.J.A.C. 7:26A-6.6(a)6)

N.J.A.C. 7:26-3.3 lists exemptions for certain qualifying individuals from the
provisions of N.J.A.C. 7:26-3, including the approved registration and vehicle
registration requirements. Included in this list are individuals transporting used oil
generated from mobile field changing operations. Because this exemption involves
used oil, the Department is proposing to recodify it, without changes, in the Used Oil
Management Standards at N.J.A.C. 7:26A-6.6(a)6. This exemption is only from
N.J.A.C. 7:26-3; a person who is transporting used oil from mobile field operations
shall comply with the applicable requirements regarding the management of used oil
at N.J.A.C. 7:26A-6.

Removal of the Term “Letter of Consistency” (N.J.A.C. 7:26-3.6(b)7 and 3A.39(d)6)

On December 16, 1996, the Department adopted solid waste rules at
N.J.A.C. 7:26-6.11 which provided, for the purposes of solid waste planning, an
alternative to full plan amendment known as an administrative action. Amendments
to the district solid waste management plans previously addressed through letters of
consistency are now managed as administrative actions, making the term “letter of
consistency” obsolete. In the December 1996 rulemaking, the Department intended
to remove all references to these letters. However, due to an oversight, the
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Department did not remove the references at N.J.A.C. 7:26-3.6(b)7 and N.J.A.C. 7:26-3A.39(d)6. Therefore, the Department is proposing to remove the phrase “letter of consistency” and replace it with the term “administrative action.”

See section entitled “Clarification of Administrative Action Requirements” below for corresponding proposed amendments to N.J.A.C. 7:26-6.11(b).

Correction of the Title for N.J.A.C. 7:26-3A.8

The title of N.J.A.C. 7:26-3A.8 as currently written is not correct. Following the phrase “owner and operators of” is a list of types of facilities that these individuals own or operate such as collection facilities, transfer facilities and destination. Also included in this list of facility type are transporters. By definition transporters are individuals and not facilities. Including these individuals in this list of facilities is not appropriate. The Department is proposing to modify the title by moving the reference to transporters before the reference to owner and operators of facilities.
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Medical Waste Generator Fees (N.J.A.C. 7:26-3A.8(a)1)

The current table at N.J.A.C. 7:26-3A.8(a)1, which is used to determine fees owed by generators of medical waste based on the amount of waste, has the following ranges: a category 2 generator generates 50 to 200 pounds of medical waste per year; a category 3 generator generates 200 to 300 pounds of medical waste per year; and a category 4 generator generates 300 to 1,000 pounds per year. The ranges overlap and are not separate and distinct. Therefore, a generator who generates an amount where the overlap occurs will not be able to easily determine which category applies to him. For example, a generator who generates 200 pounds of medical waste cannot easily determine whether he is a category 2 or category 3 generator.

The Department is proposing amendments to create separate and distinct ranges. The phrase “greater than” is added so that the range for category 3 generator is “greater than 200 to 300” and the range for category 4 generator is “greater than 300 to 1,000.”
Correction to Scale of Site Map for Medical Waste Collection Facilities

(N.J.A.C. 7:26-3A.39(d)10ii)

Licensed transporters of medical waste wishing to operate a commercial collection facility for medical waste are required to submit an application as described at N.J.A.C. 7:26-3A.39(d) to the Department. The application includes three copies of a site plan drawn to a particular scale. See N.J.A.C. 7:26-3A.39(d)10i. This scale must be large enough to give any plan drawn to the scale meaning. Currently the scale is no greater than one inch equals 100 feet. With the current language, a plan drawn to a scale smaller than one inch equals 100 feet, such as one inch equals 1000 feet, would be legally acceptable. However, such a scale would not be meaningful. In order to ensure that plans submitted are of a reasonable scale, the Department has determined the scale at N.J.A.C. 7:26-3A.39(d)10 ii should be the minimum scale. The word “greater” is proposed for replacement with the word “smaller.”
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Removal of the Word “Administrative” in Solid Waste Facility Fee Tables

(N.J.A.C. 7:26-4.3(d)1 through 4.3(d)5)

As a result of an amendment to N.J.A.C. 7:26-2.4(g)2, which was adopted December 16, 1986, the Department no longer uses the word “administrative” or a variation of this word to describe the completeness determination for solid waste facility permit applications. Permit applications are either incomplete or complete. Consistent with this 1986 amendment to N.J.A.C. 7:26-2.4(g)2, the Department is proposing to remove the word “administrative” associated with a completeness determination in the fee tables for solid waste facilities at N.J.A.C. 7:26-4.3(d)1a, (d)2a, (d)3a, (d)4a, and (d)5a.

Minor Permit Modifications Fees for Compost Facilities

(N.J.A.C. 7:26-4.3(d)4(e) through 4.3(d)4(g))

In a May 6, 1996 rule proposal, the Department initiated steps to amend the Solid Waste Permit fees at N.J.A.C. 7:26-4.3. Included in the summary of this proposal were fees for Minor Modifications for compost facilities. See 28 N.J.R. 2144. However, due to a Department oversight the above-mention fees for minor
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Modification for compost facilities were not reflected in the rule text of the May 5, 1996 proposal. This error in the proposal was not corrected upon adoption in the December 16, 1996 New Jersey Register. In this rulemaking, the Department is proposing fees for Minor Modifications for compost facilities; an issue the Department intended to address in the December 16, 1996 rulemaking.

The Department will propose these fees using current fiscal numbers (i.e. salaries, legal cost, etc.) rather than the 1996 numbers presented in the May 6, 1996 proposal. The current numbers differ from the 1996 numbers, bringing to light the need to review all existing fees for adjustment. The Department is currently conducting such a review and will adjust all existing fees accordingly in a future rulemaking.

Fees represent the cost of performing the activity for which fee is assessed. The Department has determined the cost of services based upon its calculation of the average hourly cost of each full-time employee and the number of hours required to perform each service. The hourly staff costs for each employee is determined by dividing the estimated annual cost for each program by the number of hours spent on the fee-funded service. Apportioned in the estimated annual cost for each program
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is the total annual cost of legal services ($1,291,872) rendered in connection with the services provided by the Division of Solid and Hazardous Waste (DSHW).

For composting facility permit modifications the DSHW's solid waste facility permitting staff is the program of interest. The calculated average annual cost for full-time solid waste facility permitting staff is as follows:

1. Estimated total salary requirement for full-time engineering staff is $3,309,667.
2. Fringe benefits average 22.75% of salary or $752,949.
3. Indirect costs average 27.49% of salary plus fringe benefits or $1,116,813.
4. Normal operating expenses, such as postage, telephone, travel, supplies, and data system management, average $7,200 per employee or $419,285.
5. The cost of legal services attributable to Solid Waste Facility Permitting is $584,999.
6. The total annual cost for the solid waste permitting staff is $6,183,712.

The hourly cost for a staff person is the annual cost divided by the number
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of hours spent on fee-funded services and the total number of employees in that program. The Department estimates that each full-time employee averages 1,420 hours per year performing fee-funded services. Therefore, with a 48 member permitting staff, the hourly rate is $90.72.

To calculate the DSHW fees for each permit activity, the Department multiplied the hourly rate of $90.72 by the number of hours required in providing the fee-funded service. The number of hours is determined by an analysis of records and size and nature of the compost facility (i.e. the class of compost facility as described at N.J.A.C. 7:26-4.3(c)4). For minor modification to a compost facility permit, the number hours to perform the activity and the fees are as follows:

Class A compost facility requires 18 hours - - fee is $1,633.
Class B compost facility requires 42 hours - - fee is $3,810.
Class C compost facility requires 90 hours - - fee is $8,165.

These new fees are proposed to be inserted at N.J.A.C. 7:26-4.3(d)4(e). The current fees at N.J.A.C. 7:26-4.3(d)4(e) and 4.3(d)4(f) are recodified as N.J.A.C.
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7:26-4.3(d)4(f) and 4.3(d)4(g) respectively with no change in text.

Fees for Review of Beneficial Use Application (In-State and Out-of-State)

(N.J.A.C. 7:26-4.3(e) and 4.3(i))

Currently the fees for beneficial use reviews are not specified and are calculated pursuant to N.J.A.C. 7:26-4.3(e). Since the December 1996 readoption of the Solid Waste Rules, the Department has reviewed 95 of these applications and, in doing so, has developed a better idea of the amount of time and resources needed to review beneficial use applications. In response to requests from the regulated community to provide specific fees for beneficial use reviews and because of the number of applications, the Department is proposing to establish specific fees for the review and issuance of certificates of authority to operate (CAO) for beneficial use projects (In-State and Out-of-State). The in-state beneficial use applications can be divided into two categories; specifically, those involving sampling results and those with no sampling results. The review of sampling results requires significant time and effort; thereby, resulting in a higher fee than an application without sampling results.
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For beneficial use application reviews, the DSHW's Bureau of Resource Recovery and Technical Program staff is the program of interest. The calculated average annual cost for full-time solid waste facility permitting staff is as follows:

1. Estimated total salary requirement for full-time reviewing staff is $181,569.
2. Fringe benefits average 22.75% of salary or $41,307.
3. Indirect costs average 27.49% of salary plus fringe benefits or $61,269.
4. Normal operating expenses, such postage, telephone, travel, supplies and data system management, average $7,200 per employee or $22,711.
5. The cost of legal services attributable to Beneficial Use Review is $31,687.
6. The total annual cost for the beneficial use reviewing staff is $338,543.

The hourly cost for a staff person is the annual cost divided by the number of hours spent on fee-funded services and the total number of employees in that
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The Department estimates that each full-time employee averages 1,420 hours per year performing fee-funded services. Therefore, with a 3.15 member reviewing staff, the hourly rate is $91.70.

To calculate the DSHW fees for each type of beneficial use review the Department multiplied the hourly rate of $91.70 by the number of hours required in providing the fee-funded service. The number of hours is determined by an analysis of the application size and complexity (i.e. sampling result review, material going to out-of-state location). The number of hours to perform the activity and the fees are as follows:

- In-State Beneficial Use (no sampling results) requires 3 hours – fee is $275.
- In-State Beneficial Use (sampling results) requires 7 hours – fee is $642.
- Out-of-State Beneficial Use requires 2 hours – fee is $183.

These fees are proposed at N.J.A.C. 7:26-4.3(i).

In a related amendment, the Department is proposing to delete the reference to beneficial use reviews at N.J.A.C. 7:26-4.3(e) since it will no longer be necessary.
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to calculate these fees using the hourly rate listed at that provision. However, for very complex beneficial use applications which require additional Department activities such as pre-application meetings and site visits, the Department is proposing a provision at N.J.A.C. 7:26-4.3(i)2 which will allow the Department to charge an additional fee for these additional activities.

Amendments to the Penalties Section (N.J.A.C. 7:26-5.4(g)2 and 5.4(g)5)

Amendments to the penalty sections at N.J.A.C. 7:26-5.4(g)2 and 5.4(g)5 are necessary due to the recodification of transporter and facility O & D requirements. At N.J.A.C. 7:26-5.3(g)2, the penalty for the failure of a transporter to complete and sign the O & D form prior to disposal is removed and the citation for the failure of a facility operator to verify the O & D form is proposed for amendment to reflect a recodification from N.J.A.C. 7:26-2.13(c)3 to 2.13(c)1. N.J.A.C. 7:26-5.4(g)5 is proposed to be amended to include the failure of a transporter to complete and sign the O & D form prior to disposal, which is proposed to be moved to from N.J.A.C. 7:26-2.13(c)2 to N.J.A.C. 7:26-3.5(g)2.
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The Purpose of Subchapter 6 (N.J.A.C. 7:26-6.2)

Currently, the Purpose section at N.J.A.C. 7:26-6.2 gives the impression that based on the Department's review of 22 solid waste district plans, a determination was made that district based planning is necessary. Solid waste planning at the district level is mandated by the Solid Waste Management Act. The Department cannot on its own decide to remove solid waste planning from the district level. This mandate is not properly reflected in the current provision. The Department is proposing a newly written Purpose that reflects the mandate of the Solid Waste Management Act and the role of the Department in solid waste planning.

Clarification of Inclusion in District Solid Waste Plan Through Full Plan Amendments (N.J.A.C. 7:26-6.10(b)7)

N.J.A.C. 7:26-6.10(b) provides a list of facilities or situations, which shall be included in the district solid waste plan through a full plan amendment. As currently written, it appears that all new recycling centers for Class B recyclable materials, all new recycling centers for Class C recyclable materials, and all new regulated medical waste collection facilities are subject to full plan amendment requirements.
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This is not the case.

For example, recycling centers for Class B recyclable materials, which will be operating for a short period of time (i.e. 6 months or less) pursuant to a Department issued limited approval, are not required to be included in the district solid waste management plan. See N.J.A.C. 7:26A-4.2. Therefore, these Class B facilities cannot be subject to plan amendment requirements.

Inclusion in the district solid waste management plan occurs either through a full plan amendment or through an administrative action. Questions are raised by the fact that it appears all new recycling centers for Class C recyclable materials have to be included in the plan through a plan amendment, while N.J.A.C. 7:26-6.11(b)3 appears to require all new recycling centers for Class C recyclable materials to be included in the plan through an administrative action. The regulated community cannot on its own distinguish when a full plan amendment is warranted and when an administrative action will suffice. The Department is proposing to amend the rule to clarify that the appropriate method for inclusion in the district plan is determined by meeting the criteria set forth at N.J.A.C. 7:26-1.4(a). A recycling center meeting the criteria at N.J.A.C. 7:26A-1.4(a) is not subject to the approval requirements at
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N.J.A.C. 7:26A-3 and is not subject to plan amendment requirements, but rather is subject to administrative action requirements. Recycling centers requiring a general approval from the Department to operate must be included in the appropriate district solid waste management plan through a full plan amendment. Therefore, the Department is proposing to amend N.J.A.C. 7:26-6.10(b)7 to indicate that Class B facilities operating pursuant to a limited approval and Class C facilities as described at N.J.A.C. 7:26A-1.4(a)14 are not subject to plan amendment requirements.

The reference to “new regulated medical waste collection facilities” at N.J.A.C. 7:26-6.10(b)7 also requires clarification. There are two types of medical waste collection facilities, specifically commercial and non-commercial. Since the reference to medical waste collection facilities is a general one, it is assumed that the requirement applies to both commercial and non-commercial facilities. However, for new commercial medical waste collection facilities, inclusion in the district solid waste management plan has historically been through an administrative action rather than a full plan amendment. See the section below entitled “Clarification of the Administrative Action Requirements” below for a detailed explanation. Therefore, an amendment to N.J.A.C. 7:26-6.10(b) to remove new commercial medical waste
collection facilities from full plan amendment requirements is needed. However, historically the Department has not required non-commercial medical waste collection facilities to be included in a district solid waste management plan and does not intend to in the future. Therefore, the Department is proposing to completely remove the reference to medical waste collection facilities at N.J.A.C. 7:26-6.10(b)7. This amendment would not affect the planning requirements for regulated medical waste treatment, processing, and disposal facilities which shall still be included in the solid waste plans through full plan amendments.

Also the Department is proposing to remove the phrase “and compost facilities” which appears at the end of N.J.A.C. 7:26-6.10(b)7. Compost facilities are either solid waste facilities or recycling centers depending on the type of secondary material accepted. If the secondary material is a solid waste, then the composting facility is a solid waste facility. However, if the secondary material is a Class C recyclable material, the compost facility is a recycling center. Both types of composting facilities are already reference earlier in the requirement, making the above mentioned phrase redundant.
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Clarification of the Review Process for Plan Amendments (N.J.A.C. 7:26-6.10(h))

The Department is also proposing amendments to N.J.A.C. 7:26-6.10(h) for clarification. This citation contains a reference to recommendations received pursuant to N.J.A.C. 7:26-6.10(f). N.J.A.C. 7:26-6.10(f) addresses the Department’s review of a plan amendment for completeness and does not mention recommendations. The correct cross-reference addressing recommendations is at N.J.A.C. 7:26-6.10(g). Therefore the cross-reference is proposed for correction.

In addition N.J.A.C. 7:26-6.10(h) sets a 150 day time frame for Department action. It is unclear whether the deadline is 150 business days or 150 calendar days. The Department is proposing for clarity that it must act within 150 calendar days to approve, modify or reject the plan amendment after review of the plan amendment and receipt of recommendations.

Clarification of Requirement to Reaffirm Existing Solid Waste Plan

(N.J.A.C. 7:26-6.11(b))

Solid waste districts wishing to reaffirm their existing solid waste disposal strategy shall hold a public hearing regarding the reaffirmation. See N.J.A.C. 7:26-
6.11(b)9. Notice of the hearing is to be published 10 days prior to the hearing date. There is no indication in the regulation whether this is 10 calendar days or 10 business days. The publication shall occur 10 calendar days prior to the hearing. For clarity, the Department is proposing to amend N.J.A.C. 7:26-6.11(b)9 accordingly.

Additionally, N.J.A.C. 7:26-6.11(b)9 contains a cross-reference to “information set forth in (c)2 above.” The exact citation being cross-referenced is unclear. The Department is proposing to clarify that the notice must contain the information outlined at N.J.A.C. 7:26-6.10(c)2.

Clarification of the Administrative Action Requirements

(N.J.A.C. 7:26-6.11(b)10 through 6.11(b)13)

As mentioned in Clarification of Inclusion in District Solid Waste Plan Through Full Plan Amendment above, questions have arisen as to when a new recycling center for Class C recyclable materials is subject to the plan amendment requirements at N.J.A.C. 7:26-6.10 and when the recycling center for Class C recyclable materials can be included in the district plan through an administrative action. This
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determination is based on the recycling center meeting the criteria set forth at N.J.A.C. 7:26A-1.4(a)14. Just as N.J.A.C. 7:26-6.10(b)7 is proposed to exclude those recycling centers meeting the criteria set forth at N.J.A.C. 7:26A-1.4(a)14, N.J.A.C. 7:26-6.11(b) must be limited to those centers described at N.J.A.C. 7:26A-1.4(a)14.

In addition, the removal of the obsolete phrase “letter of consistency” at N.J.A.C. 7:26-3.6(b)7 and 3A.39(d)6 and the clarification of the phrase “consistent with the district solid waste management plan” at N.J.A.C. 7:26-1.7(f)4, 1.4(f)5x, and 2.9(g)2 result in corresponding changes at N.J.A.C. 7:26-6.11(b), which is a comprehensive list of all possible administrative actions. See sections entitled Removal of the Term “Letter of Consistency” and Clarification of Phrase “consistent with the district Solid Waste Management Plan” above. This list would not be complete if it did not include the situations addressed at N.J.A.C. 7:26-1.7(f), 3.6, and 3A.39, specifically applications to operate a RD&D project, a solid waste intermodal container facility and a commercial medical waste collection facility. For organizational reasons, the current language at N.J.A.C. 7:26-6.11(b)10 is proposed to be replaced by a reference to intermodal container facility, a new provision at
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N.J.A.C. 7:26-6.11(b)11 is proposed to address commercial medical waste collection facility, and a new provision at N.J.A.C. 7:26-6.11(b)12 is proposed to address the operation of a RD&D project. The current language at N.J.A.C. 7:26-6.11(b)10 is proposed to be recodified without change at N.J.A.C. 7:26-6.11(b)13.

Correction to Cross-Reference of Department Address for Administrative Actions

(N.J.A.C. 7:26-6.11(d)1)

The process of amending the district solid waste management plan through an administrative action requires the affected district to submit a letter to the Department describing the administrative action. See N.J.A.C. 7:26-6.11(d)1. This letter is to be submitted to the address listed at N.J.A.C. 7:26-6.10(e)6. However, N.J.A.C. 7:26-6.10(e)6 does not exist. The correct cross-reference for the Department address is N.J.A.C. 7:26-6.10(e). The Department is proposing to amend N.J.A.C. 7:26-6.11(d)1 accordingly.

Clarification of the Review Process for Administrative Actions (N.J.A.C. 7:26-6.11(f))

N.J.A.C. 7:26-6.11(f) outlines the Department's review process for
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administrative actions. The current language suggests that the only outcome from a Department review is an approval of the administrative action. This is not the case. At the end of the 30 day period, the Department may approve, modify or reject the administrative action. The Department is proposing to amend N.J.A.C. 7:26-6.11(f) to more accurately reflect all the possible results of a Department review.

Time frame for Solid Waste Collection Contracts to be Renegotiated

(N.J.A.C. 7:26-6.12(a)1)

In accordance with N.J.A.C. 7:26-6.12(a) any contract for the collection of solid waste must be consistent with the applicable district solid waste management plan and any amendments to the plan. Should a solid waste management plan amendment result in an existing contract becoming no longer consistent with the amended plan, the contract must be renegotiated within 90 days of the effective date of the amendment unless the Department grants an extension. It is unclear whether the 90 day limit is 90 calendar days or 90 business days. The Department is proposing to clarify at N.J.A.C. 7:26-6.12(a)1 that it is 90 calendar days.
Address correction for Recycling Grant and Loan Applications

(N.J.A.C. 7:26-15.5(b), 15.6(c), and 15.7(b))

Subchapter 15 of the Solid Waste Rule contains requirements for various recycling grants and loans, including an address to which an application for a grant or loan shall be sent. Corrections to address listed at N.J.A.C. 7:26-15.5(b), 15.6(c), and 15.7(b) are needed to clarify that the applications are to be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
Bureau of Recycling and Planning
P.O. Box 414
Trenton, NJ 08625-0414

Amendments to N.J.A.C. 7:26A

Definition of “Recycling Center” (N.J.A.C. 7:26A-1.3)

As discussed in Definition of “Recycling Center” section of Amendments to N.J.A.C. 7:26, the Department is proposing amendments to the definitions of “recycling center” in the Solid Waste and Recycling Rules to create a single
regulatory definition. Since the Recycling Rule definition of this term is used as a foundation for the single definition of “recycling center”, only minor amendments are needed to mirror corresponding amendments to the Solid Waste Rule. In recognition of the comprehensive description of recyclable materials already developed in the definitions of the various classes of recyclable materials, the Department is proposing to reference these classes of recyclable materials in the definition of “recycling center.” In addition, a second sentence will clarify that manufacturers and recycling depots are excluded from the definition of recycling center. These amendments will not alter the original meaning of “recycling center” but serve to clarify the definition.

Clarification of Regulatory Status of Scrap Processing Facilities (N.J.A.C. 7:26A-1.3)

According to the current definition of “recycling center” in the Solid Waste Management Act, scrap processing facilities, as defined at N.J.S.A. 13:1E-99.12, are not considered to be recycling centers. Neither definitions of “recycling center” in the Solid Waste Rules or Recycling Rules specifically exclude scrap processing facilities from being considered recycling centers. These definitions should mirror this
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statutory exclusion. The Department is proposing to amend both definitions of “recycling center” to specifically exclude scrap processing facilities. In addition the Department is proposing to include, at N.J.A.C. 7:26A-1.3, a definition for “scrap processing facility” as established in the Solid Waste Management Act at N.J.S.A. 13:1E-99.12. A cross-reference to this proposed definition of scrap processing facility is proposed in the definition of “recycling center” at N.J.A.C. 7:26-1.4.

Definition of New Terms (N.J.A.C. 7:26A-1.3)

Although the current rules define the terms “recycling center” and “recycling center for Class D recyclable materials”, the Department did not include terms such as “recycling center for Class A recyclable materials”, “recycling center for Class B recyclable materials”, and “recycling center for Class C recyclable materials.” The Department is proposing to define these terms at N.J.A.C. 7:26A-1.3. In addition, recycling centers for these recyclable materials are known by more common terms: “Class A recycling center”, “Class B recycling center”, and “Class C recycling center” respectively. These more common terms have been included as newly defined terms.
Clarification of Solid Waste Management Planning Requirements for Exemptions at N.J.A.C. 7:26A-1.4(a)

N.J.A.C. 7:26A-1.4(a) identifies activities or centers that are exempted from the requirements for a general or limited approval at N.J.A.C. 7:26A-3. As currently written, this exemption is from N.J.A.C. 7:26A-3 and does not extend to the solid waste planning requirements referenced at N.J.A.C. 7:26A-4.2. The Department has reviewed these regulations and determined that the exemption at N.J.A.C. 7:26A-1.4(a) must be expanded, unless otherwise specified, to include solid waste planning requirements at N.J.A.C. 7:26-6.10 and 6.11. In general, the exemption extends to the planning requirements except for Class C composting facilities that meet the provisions at N.J.A.C. 7:26A-1.4(a)14. These facilities are subject to solid waste planning requirements at N.J.A.C. 7:26-6.11 regarding administrative actions. This proposed amendment accurately reflects the Department's current solid waste planning practices.
Standards for Temporary Storage of Specific Class B Materials

(N.J.A.C. 7:26A-1.4(a)8iii)

Individuals who temporarily store Class B materials (not including scrap tires, leaves, non-container plastic materials and petroleum contaminated soil) and are not operating a recycling center, shall ensure that the material is stored in a manner which prevents run-off, leakage or seepage from the storage area. See N.J.A.C. 7:26A-1.4(a)8iii(1). Specifically the run-off, leakage, or seepage is not to enter “into, on or around the soil of the storage area...” The Department finds this phrase should be clarified. This standard was added in response to comments raised during the public comment period of the original proposal of the Recycling Rules (October 1, 1990; 22 N.J.R. 3088). In the discussion of this standard, the Department stated: “The performance standards require that materials be stored in a manner which prevents run-off, leakage or seepage from the storage areas into or onto the soil around the storage area...” See November 18, 1991; 23 N.J.R. 3459. The Department believes this description of where the run-off, leakage or seepage shall not enter is clearer and is proposing to replace the phrase “on or around the... of the storage area” with “or onto the... around the storage area.”
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Currently, the specific ground surface referenced is soil. In truth, the Department is concerned with any run-off, leakage, or seepage from the storage area to surrounding areas, regardless of the type of ground surface in those areas. Therefore, the Department is proposing to clarify this concern by replacing the reference of “soil” with a generic reference of “ground surface.” In addition to soil, the term “ground surface” includes, but is not limited to, materials such as asphalt, concrete, and gravel.

Clarification of Regulatory Status of Centers Engaging in Exempted Activities

(N.J.A.C. 7:26-1.4(b)7)

The exemption of activities listed at N.J.A.C. 7:26A-1.4 from the requirements to obtain a general or limited approval at N.J.A.C. 7:26A-3 is intended for individuals engaging only in those activities. The Department never intended for owners or operators of approved recycling centers wishing to engage in these listed activities to be exempted from approval or solid waste planning requirements for these activities. In fact, the Department has been requiring these owner or operators of approved recycling centers to comply with modification requirements at N.J.A.C.
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7:26A-3.10 and the solid waste planning requirements at N.J.A.C. 7:26-6.11.

The Department is proposing an amendment at N.J.A.C. 7:26A-1.4(b)7 to clarify this point.

Exemption for Class A Recycling Center from Approval Requirements

(N.J.A.C. 7:26A-1.4(c))

According to the statutory provision of N.J.S.A. 13:1E-99.34(b), recycling centers, which receive, store, process or transfer source separated recyclable materials that the Department has defined as Class A recyclable material at N.J.A.C. 7:26A-1.3, are not required to obtain prior approval from the Department. Currently there is a reference to this statutory exemption in the definition of “Class A recyclable material” at N.J.A.C. 7:26A-1.3. In general, it is uncommon to define a term through applicable requirements or exemptions. It is more logical to find such an exemption in the section of the Recycling Rules entitled “Exemptions.” However, a corresponding regulatory exemption does not exist. Unless the reader is aware of the exemption in the definition of Class A recyclable material, he is left to deduce that such an exemption exists since N.J.A.C. 7:26A-3.1(a) indicates that the
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Approval procedures in Subchapter 3 apply only to recycling centers handling any Class B, Class C or Class D recyclable material. The Department should have a specific regulatory exemption addressing this issue. Therefore, the Department is proposing to put such an exemption at N.J.A.C. 7:26A-1.4(c) for clarity and ease of reference. The proposed language would make it clear that although a recycling center handling solely Class A recyclable material is not subject to the approval requirements of Subchapter 3, it is subject to the operational standards outlined in Subchapter 4.

Correction of Scale for Maps in Recycling Center General Approval Application

(N.J.A.C. 7:26A-3.2(a)9i)

Applications for a general approval of a recycling center must include a site plan map. This map shall be drawn to a particular scale, which must be large enough to give the plan drawn to the designated scale meaning. Currently the scale is no larger than one inch equals 100 feet. With the current language, a plan drawn to a scale smaller than one inch equals 100 feet, such as one inch equals 1000 feet, would be legally acceptable. However, such a scale would not be meaningful. In
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order to ensure that site plan maps submitted are of a reasonable scale, the Department has determined the scale at N.J.A.C. 7:26A-3.2(a)9 should be the minimum scale rather than the maximum. Accordingly, the word “larger” is proposed for replacement with the word “smaller.”

Certification in Application to Operate a Recycling Center (N.J.A.C. 7:26A-3.2(b)1)

N.J.A.C. 7:26A-3.2(b) contains a certification, which must accompany an application for a recycling center general approval and is requested by the Department to accompany an application for a Class B limited approval. This certification states that “submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration” which the applicant is seeking. There is no mention of approvals for recycling centers. A facility permit is a different type of authorization than a recycling center approval. Since the certification must accompany approvals for recycling centers, it is reasonable to expect a reference to recycling centers approvals (general or limited) in the certification. It is also reasonable to believe that an applicant for a recycling center approval would expect that the Department may deny the approval
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of a proposed recycling center or revoke/terminate the approval of an already approved recycling center should the Department discover at any time that the application contains false information. Therefore, the Department is amending the certification to include a reference to recycling center approvals (general or limited).

Clarification of Administratively Complete Application for Recycling Center General Approval (N.J.A.C. 7:26A-3.5(a))

At N.J.A.C. 7:26A-3.5(a), the Department outlines when the general approval application for a recycling center is considered administratively complete. Currently there are cross-references to N.J.A.C. 7:26A-3.2(a), 3.4, 3.8, 3.18, and 3.19. The Department believes listing all these cross-references is confusing since N.J.A.C. 7:26A-3.8, 3.18, and 3.19 apply to specific recycling centers based on the particular class of recyclable material these centers receive. The Department is proposing to remove all currently listed cross-references and simply cross-reference N.J.A.C. 7:26A-3.2, which directs the operators of specific recycling centers to comply with these other sections.
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Requirements for a Limited Approval for a Class B Recycling Center

(N.J.A.C. 7:26A-3.7(a)1 and 3.7(a)4)

Based on a review of requirements for a limited approval for a Class B recycling facility, the Department is proposing to amend the requirements at N.J.A.C.7:26A-3.7(a)1 to more accurately reflect the Department's concerns. An application for a limited approval must still include the items described at N.J.A.C. 7:26A-3.2(a)1-8. However, the current requirement regarding a site plan map is proposed for amendment. As described at N.J.A.C. 7:26A-3.2(a)9 a site plan map is to be prepared, signed, and sealed by a licensed professional engineer or surveyor; must be drawn to a specific scale; indicate the routing of vehicles; delineate the floodplain; delineate wetlands, Pinelands, prime agricultural lands, historic site, and environmentally sensitive areas; identify the direction of water runoff; indicate topographic contours; indicate the location and dimensions of unprocessed and processed materials stockpile areas; indicate the total cubic yard storage capacity of unprocessed and processed stockpile areas; and site access controls. These site map requirements are designed for a general approval application, which if granted can be issued for a period of five years, and are not all necessary for a limited
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approval, which if granted is limited to a period of six months. As proposed for amendment, a site plan map for a limited approval application will not need to be drawn to a specific scale or to be prepared, signed, and sealed by a licensed professional engineer or surveyor. It must still identify the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials; indicate the routing of vehicles; identify the direction of water runoff; indicate the location and dimensions of unprocessed and processed materials stockpile areas; indicate the total cubic yard storage capacity of unprocessed and processed stockpile areas; and indicate the site access controls.

The requirements for the limited approval application are expanded to include the following: a copy of a lease or deed for the property to establish ownership of the property where the recycling operations will occur; a design capacity plan specifying the maximum number of vehicles that will be entering the facility per day to determine the facility’s effect on the surrounding roadways; documentation that an air pollution control permit application for the processing equipment has been submitted to the Department’s Air Quality Program; a written narrative of facility
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operations; identify the hours of operations to establish compliance with local noise codes and the effect of the facility on neighboring properties. As with all application submittals, the Department is proposing a requirement at N.J.A.C. 7:26A-3.7(a)4 that the application for a limited approval contain the certification at N.J.A.C. 7:26A-3.2(b)1 signed by the appropriate person as described at N.J.A.C. 7:26A-3.2(b)2. With regard to the above-mentioned items not currently included at N.J.A.C. 7:26A-3.7(a)1, the Department has been requiring them pursuant to N.J.A.C. 7:26A-3.7(d); a provision enabling the Department to request any additional information it deems necessary to address environmental and public safety concerns. The Department acknowledges that it has been requiring this information for all applicants of limited Class B approvals. For clarity the Department is amending N.J.A.C. 7:26A-3.7(a)1 to create a more comprehensive list of all the items that must be included in the application. N.J.A.C. 7:26A-3.7(d) will only be used in instances where unusual circumstances require additional information.
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Correction of Cross-Reference of Class C Recycling Center Design Plans

(N.J.A.C. 7:26A-3.18(a)1)

As part of the application to operate a Class C recycling center, the owner or operator of the center must include a facility design plan. See N.J.A.C. 7:26A-3.18(a)1. This regulation states that the facility design plan is to be prepared in accordance with N.J.A.C. 7:26A-3.18(a)4. This citation cross-reference is to a listing of materials to be managed at the center rather than information regarding the center or the site. The correct cross-reference is N.J.A.C. 7:26A-3.18(a)9 which includes information on the buildings, equipment, areas where the materials will be managed, traffic flow, and the site. The Department is proposing to correct the citation cross-reference at N.J.A.C. 7:26A-3.18(a)1 accordingly.

Clarification of Facility Design Plan Requirements for Class C Recycling Center

(N.J.A.C. 7:26A-3.18(b)1)

As part of the facility design plan for a Class C recycling center, the applicant must include a flow diagram of the processing steps and a total mass balance on the materials processed at the center. Currently, the flow diagram of
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processing steps is for food waste materials only. The limited scope of the flow diagram does not accurately reflect the Department’s concern. The Department is interested in the processing steps for all materials to be processed at the center not just food waste material. The Department is proposing to clarify this point by removing the reference to “food waste material” at N.J.A.C. 7:26A-3.18(b)1 and replacing it with a reference to “all material received.”

Recycling Center Tonnage Reporting Requirements (N.J.A.C. 7:26A-4.4(a))

All operators of recycling centers are required at N.J.A.C. 7:26A-4.4(a) to provide all municipalities of origin an annual tonnage report. The Department is proposing amendments to this requirement so that these reports fulfill their intended purpose – to inform each municipality how much separated recyclable material generated in their area is sent for in-state recycling. The requirement, as currently written, will not meet this goal in the instance where a recycling center accepts source separated materials from more than one municipality. The center is not required to identify what portion of each type of recyclable material came from each municipality, resulting in inaccurate data and possible double counting.
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Therefore, to ensure the accuracy of the data, the Department is proposing to require that the information also be sorted by municipality.

The units of measurements is expanded to include gallons. These reporting requirements also apply to Class D recycling centers managing used oil. Unlike other source separated materials such as bottles, concrete, petroleum contaminated soil, and yard trimmings, used oil is measured in gallons not tons or cubic yards. Adding gallons to the units of measure will accommodate the recycling centers of used oil.

The Department is giving the counties of origin of the recyclable material the opportunity to receive these annual tonnage reports if they desire. The Department recognizes that counties do have an interest of the processing of recyclable materials as a part of solid waste planning; this is the reason all recycling centers operating under a general approval must be in the county plan where it is located. It is logical to believe that the county of origin of the recyclable materials may have an interest in knowing the amount and type of recyclable materials generated within its area and the in-state recycling center processing the material.

The Department is also adding a requirement that Class A recycling centers submit a copy of this annual report to the Department in addition to the municipalities
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of origin and county of origin (if requested). Class A recycling centers do not require Department approval to operate and are, therefore, not required to submit an annual report to the Department as set forth at N.J.A.C. 7:26A-3.17. By receiving these reports from the Class A recycling centers the Department will more easily be able to assess New Jersey's recycling rate and New Jersey's ability to meet the recycling levels agreed upon by the Department and the United States Environmental Protection Agency.

Transporter Tonnage Reporting Requirements (N.J.A.C. 7:26A-4.4(b), 4.4(c) and 8.1)

N.J.A.C. 7:26A-6, which establishes operational standards for recycling centers, contains a tonnage reporting requirement for transporters. See N.J.A.C. 7:26A-4.4(b). The Department is proposing to move this requirement to a new Subchapter 8 entitled “Requirements for Transporters of Source Separated Materials.” This move will enable transporters to more easily locate these requirements. Due to the lack of any other transporter reporting requirements, this requirement proposed at N.J.A.C. 7:26A-8.1 will be the only requirement appearing in this new section. Also, the Department is proposing to recodify
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N.J.A.C.7:26A-4.4(c) as 4.4(b) with no change in text.

The Department is clarifying the language of the transporter tonnage reporting requirement. In reading the current regulation at N.J.A.C. 7:26A-4.4(b), the reader is initially lead to believe that all transporters of recyclable materials must file these reports. Only after reading what must be reported (instances where source separated materials are transported to manufacturers and recycling centers outside of New Jersey) does the reader understand exactly who must file a report. A transporter who transports recyclable materials which are not source separated or who transports source separated materials to New Jersey facilities will not have any instances to report and therefore does not have to file an annual tonnage report pursuant to the current regulation at N.J.A.C.7:26A-4.4(b). The Department is modifying the text to clearly indicate that only transporters who deliver source separated materials to out-of-state manufacturers or recycling centers must file annual tonnage reports. This proposed amendment is merely a clarification and does not deviate from the intent of the current rule.

Some details such as the deadline for filing of these reports and specifying the type of recyclable materials and the amount of material sent to each out-of-state
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manufacturer or recycling center remain unchanged. The Department is proposing to amend the contents of the report by requiring the manufacturer or recycling center be identified both by name and location. The current language implies that the manufacturer or recycling center is identified at least by name since the report must indicate the amount of material sent to each manufacturer or recycling center. Therefore, specifically requiring the name of the receiving facility does not constitute an additional reporting requirement. The location of the manufacturer or recycling center further identifies the receiving facility, especially if the name of the facility is not unique. This additional information regarding the receiving facility will allow the recipients of the report to know to which state, town, and facilities, New Jersey's recyclable materials are sent.

The Department is also proposing an amendment which will allow the report to fulfill its intended purpose - to inform each municipality how much source separated recyclable material generated in their area is sent out-of-state for recycling. The regulation, as currently written, will not meet this goal in the instance where a transporter consolidates recyclable materials from more than one municipality in a single shipment to be sent to an out-of-state manufacturer or recycling center.
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Currently, the transporter hauling such a load is not obligated to identify what portion of the shipment was collected from which municipality, resulting in inaccurate data and possible double counting. Therefore, to further ensure the accuracy of the data, the Department is proposing to require that the information also be sorted by municipality.

The Department is also proposing to amend the units of measurement to include gallons. These reporting requirements also apply to transporters transporting used oil to out-of-state manufacturers or recycling centers. Unlike other source separated materials such as bottles, concrete, petroleum contaminated soil, and yard trimmings, used oil is measured in gallons not tons or cubic yards. Adding gallons to the units of measure will accommodate the transporters of used oil.

The Department is also proposing to require these transporter reports be sent, in addition to the municipalities of origin, to the county of origin (if requested). Copies of the report shall always be sent to the municipality of origin. However, a copy of the report shall only be submitted to the county at the county's request. For the purposes of solid waste planning, the county may have an interest in the amount of recyclable material leaving the State which was generated in their district.
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Correction to Cross-reference of Testing Procedures for Class C Recycling Centers

(N.J.A.C. 7:26A-4.5(a)15viii)

Recycling centers composting Class C recyclable material must test the finished compost, at a minimum annually. In accordance with N.J.A.C. 7:26A-4.5(a)15viii, the laboratory used to perform the analysis shall be certified for certain testing procedures. This citation contains an obvious error since it cross-references itself rather than the correct citation for these testing procedures. The correct cross-reference is N.J.A.C. 7:26A-4.5(a)15vi. The Department is proposing to correct N.J.A.C. 7:26A-4.5(a)15viii accordingly.

Quality Standards for Compost Produced at Class C Recycling Centers

(N.J.A.C. 7:26A-4.5(c)2)

The current standards for compost produced at Class C recycling centers to be given away or sold include the requirements at 40 C.F.R. 503.13(b)3, Class A pathogen requirements at 40 C.F.R. 503.32(A), and one of the vector attraction requirements in 40 C.F.R. 503.33(b)1-8. See N.J.A.C. 7:26A-4.5(c)2. This is incorrect since it does not take into account the properties of the ingredients.
producing the compost. The two general categories of Class C recyclable materials are yard trimmings and food waste. Yard trimmings do not contain pathogens and do not create a vector attraction. Therefore, compost produced solely from yard trimmings would not contain pathogens or create a vector attraction. However, food waste can contain pathogens and will attract vectors if not properly composted. Therefore, compost produced from food waste (either solely or in addition to yard trimmings) would be subject to the Class A pathogen requirements and the vector attraction reduction requirements of 40 C.F.R. Part 503, in addition to the requirement at 40 C.F.R. 503.13(b)3. Compost produced solely from yard trimmings would be only be subject to the standard at 40 C.F.R. 503.13(b)3. The Department is proposing to amend N.J.A.C. 7:26A-4.5(c) accordingly.

Clarification of Cross-References to Air Permit Requirements

(N.J.A.C. 7:26A-6.2(b) and 6.3(c))

Currently N.J.A.C. 7:26A-6.2(b) and 6.3(c) state that prior to burning used oil a “Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment” shall be obtained. The cross-
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reference in these provisions to the air permit requirements is N.J.A.C. 7:27-22. This cross-reference requires clarification. Permits for burners are issued either in accordance with N.J.A.C. 7:27-8 or 22, depending whether or not the facility is considered a “Major facility” as defined at N.J.A.C. 7:27-8.1 or 22.1. A facility which is not a major facility may obtain the above referenced permit and certificate for a single device in accordance with N.J.A.C. 7:27-8. For major facilities, a permit to operate is issued for the entire facility and covers a number of devices. Such a permit is issued in accordance with N.J.A.C. 7:27-22. This distinction must be reflected in the cross-references at N.J.A.C. 7:26A-6.2(b), 6.3(c), and any new provisions cross-referencing air permit requirements. The Department is proposing to amend N.J.A.C. 7:26A-6.2(b) and 6.3(c) accordingly.

Clarification of Air Permit Requirements (N.J.A.C. 7:26A-6.2(b) and 6.4(e)4)

Since the adoption of the used oil management standards, questions have arisen as to whether an air permit is required in all cases involving used oil. The regulation at N.J.A.C. 7:26A-6.4(e) notes the conditions under which a generator may burn used oil in a space heater. The absence of a requirement to obtain an air permit prior to the
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operation of the space heater may lead to the belief that a permit is not necessary provided the operator complies with the existing outlined conditions. However, N.J.A.C. 7:26A-6.2(b) allows on-specification used oil to be directly burned in any device provided that a permit is obtained for the device prior to burning in accordance with the Air Pollution Control Rules at N.J.A.C. 7:27. The Department considers space heaters to be within the scope of “any device” and requires a permit be obtained prior to burning.

As stated previously, the Department has always required the operators of burners to obtain authorization in the form of a permit prior to burning used oil. This position is reaffirmed in the Used Oil Combustion Rule in which the Department created a new section in the Air Rules (N.J.A.C. 7:27) to address air standards for the combustion of used oil and outline the process to obtain Department authorization to burn used oil. Additionally, through the provisions as established in the Combustion Rule at N.J.A.C. 7:27-20, the Department now allows for another type of authorization other than an air permit. Certain operators of space heaters may register their space heaters for burning on-specification used oil in lieu of obtaining an air permit. This registration serves as the authorization to operate for these qualifying space heater operators. Non-qualifying operators will continue to be
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subject to permitting requirements at N.J.A.C. 7:27-8 or 22.

For clarity and consistency with the Used Oil Combustion Rule, the Department proposes at N.J.A.C. 7:26A-6.2(b) to add the phrase “or other required authorization” and expand the cross-reference to the Air Rules to include N.J.A.C. 7:27-20. These amendments will serve to acknowledge that an authorization other than a permit may be issued for the burning of on-specification used oil. Likewise, the Department is also proposing new language at N.J.A.C. 7:26A-6.4(e)4 requiring a generator to obtain an air permit or other authorization in accordance with N.J.A.C. 7:27-8, 20, or 22 prior to operating the space heater.

Prohibition of Burning of Off-Specification Used Oil in Space Heaters

(N.J.A.C. 7:26A-6.3(e), 6.3(f), 6.4(b)3 and 6.4(e))

Questions have arisen concerning the Department’s position regarding the burning of off-specification used oil in space heaters. Currently four recycling regulations address this issue: N.J.A.C. 7:26A-6.3(c), 6.3(e), 6.4(b)3, and 6.4(e). The language at N.J.A.C. 7:26A-6.3(c) appears to prohibit the burning of off-specification used oil in a space heater, while the other provisions appear to allow such burning.
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N.J.A.C. 7:26A-6.3(c) lists devices which may be used to burn off-specification used oil. Space heaters are not included in that list, leading to the belief that the Department does not allow the burning of off-specification used oil in a space heater. Meanwhile N.J.A.C. 7:26A-6.4(b)3 requires all generators who burn off-specification used oil to comply with the requirements at N.J.A.C. 7:26A-6.8, except for those generators who comply with the space heater provisions at N.J.A.C. 7:26A-6.4(e). This second provision appears to allow off-specification used oil to be burned in a space heater.

N.J.A.C. 7:26A-6.3(e) and N.J.A.C. 7:26A-6.4(e) allow burning used oil in space heaters provided that certain conditions are met. While N.J.A.C. 7:26A-6.3(c) and 6.4(b)3 are specific to off-specification used oil, the reference to used oil in N.J.A.C. 7:26A-6.3(e) and 6.4(e) is a general one. This fact leads to an interpretation of N.J.A.C. 7:26A-6.3(e) and 6.4(e) that allows certain generators to burn off-specification used oil in a space heater.

The Department, through its Air Quality Permitting Program, has historically required burners to obtain prior authorization in the form of a permit to combust any type of used oil but has not granted permits for space heaters to burn off-specification used oil. This position has been codified in the recent adoption of the
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Used Oil Combustion Rule (December 6, 1999; 31 N J R 4016) by prohibiting the burning of off-specification used oil in space heaters but allowing the burning of such used oil in other devices (i.e. industrial furnaces, industrial boilers, utility boilers and hazardous waste incinerators). See N J A.C. 7:27-20.7(a) .

Consistent with the Used Oil Combustion Rule, amendments will be made to the Recycling Rule to prohibit the burning of off-specification used oil in a space heater. The Department proposes to limit the reference to used oil at N J A.C. 7:26A-6.3(e) and 6.4(e) to indicate that only on-specification used oil can be burned in an oil-fired space heater.

In addition, the phrase “except under the on-site space heater provisions of N J A.C. 7:26A-6.4(e)” at N J A.C. 7:26A-6.4(b)3 is proposed to be deleted. As proposed, the amended N J A.C. 7:26A-6.4(b)3 is a statement that generators who burn off-specification used oil are subject to the used oil burner requirements at N J A.C. 7:26A-6.8. With no indication as to which devices may be used to burn off-specification used oil in this particular regulation, the regulated community may conclude that the Department will allow off-specification used oil to be burned in a space heater provided there is compliance with N J A.C. 7:26A-6.8. In order to avert such an interpretation and to further clarify its position, the Department is
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proposing, at N.J.A.C. 7:26A-6.3(f), to specifically prohibit the burning of off-specification used oil in a space heater in accordance with the rule at N.J.A.C. 7:27-20.7(a).

Correction of Cross-References of Used Oil Self-Transport Provisions

(N.J.A.C. 7:26A-6.4(b)1, 6.5(b)1, 6.6(a)1ii and 6.6(a)1iii)

A generator, who meets the provisions outlined at N.J.A.C. 7:26A-6.4(f)1 or 2, may transport his own used oil without an EPA Identification Number. These provisions are commonly referred to as “the self-transport provisions” and are intended to be cross-referenced at N.J.A.C. 7:26A-6.4(b)1, 6.5(b)1, 6.6(a)1ii, and 6.6(a)1iii. These citations currently cross-reference N.J.A.C. 7:26A-6.4(e)1 and 2, which address conditions under which a generator may burn used oil in a space heater. These cross-references are incorrect. Therefore, the Department is correcting the cross-references at these citations accordingly.

Clarification of Used Oil Transporter Requirements (N.J.A.C. 7:26A-6.6(a)5)

The Solid Waste Transporter requirements at N.J.A.C. 7:26-3.1 contain a reference to used oil and require a transporter of used oil to comply with the
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requirements of Subchapter 3, including the registration statement and vehicle registration requirements. Since the adoption of this provision and the Used Oil Management Standards at N.J.A.C. 7:26A-6, a question has arisen as to whether transporters of used oil must obtain an approved registration statement and register their vehicles prior to transporting used oil. The registration statement and vehicle registration requirements are in the Solid Waste Rule (N.J.A.C. 7:26) while the used oil management standards are in the Recycling Rule (N.J.A.C. 7:26A) with no cross-reference to the Solid Waste Rule. Additionally, transporters of recyclable materials have traditionally been exempted from the registration statement and vehicle registration requirements. However, due to the inherent hazards of used oil, the Department decided to require transporters of this particular recyclable material to comply with these solid waste requirements. The Department is proposing a cross-reference to N.J.A.C. 7:26-3 in a new paragraph at N.J.A.C. 7:26A-6.6(a)5.

The proposed amendment also reflects that transporters of used oil who are exempted at N.J.A.C. 7:26A-6.6(a)1 from the used oil transporter requirements are not subject to the requirements at N.J.A.C. 7:26-3. This is consistent with the current approved registration statement and vehicle registration practices of the Department for the transportation of used oil.
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The Department is also mindful that the definition of “used oil transporter”, which mirrors the federal definition for this term, includes more activities than the collection and transport of used oil. The term is a reference to handlers of used oil while the material is “in-transit.” USEPA has always considered materials temporarily stored at a transfer facility to be “in-transit.” For this reason “used oil transporters” includes the operators of used oil transfer facilities where the used oil may be stored for 35 days or less before being shipped off-site. These operators may or may not engage in the pick-up and/or transport of used oil. The Department does not require individuals who are considered used oil transporters solely because they operate a used oil transfer facility to obtain an approved registration statement. Clearly because these individuals do not transport used oil, there are no vehicles to register. Therefore, the proposed amendment at N.J.A.C. 7:26A-6.6(a)5 will not include operators of used oil transfer facilities unless they engage in other transportation activities.

This proposed amendment will not change the Department’s registration statement and vehicle registration practices for used oil transporters, but will ensure that transporters of used oil are completely aware of their regulatory obligations. The Department does not require transporters, who are in compliance with the approved
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registration statement and vehicle registration requirements because they already transport solid or hazardous waste, to apply for another approved registration statement or to reregister their vehicles.

Correction of Cross-reference of Analysis Plan Requirement for Used Oil Processors and Refiners (N.J.A.C. 7:26A-6.7(h)1i)

N.J.A.C. 7:26A-6.7(f) outlines analysis plan standards for used oil processors and re-refiners. Currently, N.J.A.C. 7:26A-6.7(h)1i contains an incorrect cross-reference to these standards, specifically N.J.A.C. 7:26A-6.9(f). The Department is proposing to amend the incorrect cross-reference of N.J.A.C. 7:26A-6.9(f) to the correct cross-reference of N.J.A.C. 7:26A-6.7(f).

Amendments to N.J.A.C. 7:26G

References to Waste Flow (N.J.A.C. 7:26G-1.1(c))

At N.J.A.C. 7:26G-1.1 there is a reference to district solid waste planning and waste flow requirements. The reference to waste flow requirements is now inappropriate. In a rulemaking (29 N.J.R. 4170 and 29 N.J.R. 5084) responding to the decision by the United States Court of Appeals for the Third Circuit in Atlantic
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Coast Demolition and Recycling Incorporated v. Board of Chosen Freeholder of Atlantic County, the Department repealed its solid waste rules mandating solid waste flow control. However, the Court decision did not remove a solid waste district’s ability to control the flow of solid waste through solid waste planning, provided that there is no discrimination against out-of-state solid waste facilities. Therefore, the reference to solid waste planning is appropriately retained while the reference to waste flow requirements is proposed for deletion. Additionally, the title for Subchapter 6 of the Solid Waste rules has been amended and is no longer “Interdistrict and Intradistrict Solid Waste Flow.” The Department is proposing to correct the reference to the title of Subchapter 6.

Generator Biennial Reporting Fees (N.J.A.C. 7:26G-3.3(a))

Generator biennial reporting fees are established at N.J.A.C. 7:26G-3.3(a) and are currently based on the manifested quantities from the preceding year. The manifested range at N.J.A.C. 7:26G-3.3(a)2 contains an error; specifically the lower limit of the range (13.2 tons) is greater than the upper limit (10 tons). Additionally, the current language at N.J.A.C. 7:26-3.3(a) does not clearly indicate who is assessed a fee and how a generator determines what fee he owes.
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The error in the range at N.J.A.C. 7:26-3.3(a)2 is the result of a Department oversight in 1996. During the drafting of the hazardous waste proposal, which repealed New Jersey's hazardous waste rules and incorporated the July 1, 1993 federal hazardous waste rules by reference, the Department considered changing the ranges associated with generator reporting fees. Prior to the filing of the rule proposal, the Department made a decision not to amend the range limits from the historic numbers at that time. All numbers establishing the ranges were to be historic values. However, due to a Department oversight "13.2 "appears in N.J.A.C. 7:26G-3.3(a)1 and (a)2 instead of 1.33. For this reason, the Department has determined that it is 13.2 which must be corrected.

To correct the error involving 13.2 tons, the Department has two options: correct the current limit to the historic value of 1.33 tons or calculate a new limit based on the federal hazardous waste quantity limit used to define a hazardous waste generator. Given that the Department has now promulgated an ongoing process for incorporation by reference of the federal hazardous waste rules, including the hazardous waste quantity limit defining a hazardous waste generator, it is more logical to base this number on the federal hazardous waste generator limit than revert to the historic number. There are three federal limits used to define hazardous waste
generators who are required to submit a biennial report: 1 kg for acute hazardous waste; 1000 kg (1.1 tons) for non-acute hazardous waste; and 100 kg hazardous waste from spill cleanup of a listed acute hazardous waste. The limit for non-acute hazardous waste is used as the lower limit because there are more generators of this type of waste than of acute hazardous waste or of hazardous waste from spill cleanups of acute hazardous waste. Therefore, the Department spends more time and resources processing these reports than those received from other generators. The correction of the lower limit at N.J.A.C. 7:26-3.3(a)2 will necessitate a corresponding change of the 13.2 ton number at N.J.A.C. 7:26G-3.3(a)1. Therefore, the Department is proposing to replace the number of 13.2 tons with 1.1 tons at N.J.A.C. 7:26G-3.3(a)1 and 3.3(a)2 instead of correcting to the historic 1.33 tons.

The federal limit is based on the amount of hazardous waste generated and not the amount manifested. In using the federal generator limit, the Department should shift its focus to the amount generated rather than the amount manifested. For this reason, the Department is proposing to remove the references to “manifesting” or “manifesting information” in this section. Instead, the basis of the fee will be the amount of hazardous waste generated.

**Not all generators of hazardous waste owe a fee** since the fee is associated
with the receipt and processing of the biennial report. The following generators are required to file a biennial report: 1. A generator who generates 1000 kg (1.1 tons) or more of non-acute hazardous waste in a calendar month; 2. A generator who generates greater than 1 kg (2.2 pounds) of acute hazardous waste; 3. A generator who generates greater than 100 kg (220 pounds) of spill clean-up of a listed acute hazardous waste in a calendar month; and 4. A generator who accumulates at any time greater than 1 kg (2.2 pounds) of acute hazardous waste or 100 kg (220 pounds) of spill clean up of a listed acute hazardous waste. See 40 C.F.R. 261.5(e), 261.5(f), 262.41, and 262.44, as incorporated by reference at N.J.A.C. 7:26G-5 and 6. Thus, these generators owe the Department a fee. The biennial report is due in March in each even number year and is based on quantities generated during the preceding odd numbered year. For example, the biennial report due March 1, 2000 reflects 1999 hazardous waste quantities generated. If during an odd number year a generator generates or accumulates hazardous waste in quantities less than those above-mentioned federal limits and is not required to file a biennial report, no fee is owed the Department. To clarify this point the Department is proposing to amend the language of the section from “biennial reporting fees” to “fees for generators filing an biennial report.” The proposed amendments also clarify that the
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"Quantities of hazardous waste generated during the odd numbered calendar year preceding the even numbered reporting year" will determine the fee owed.

In addition, the Department is proposing to remove the phrase "per year" from N.J.A.C. 7:26G-3.3(a)1-5. The Department believes this phrase might cause confusion by suggesting that the amount of waste generated must be averaged over several years to determine the applicable range. As discussed above, the amount of waste generated during the previous calendar year as reported in the biennial report is used to determine the fee owed.

Consolidation of Hazardous Waste at Transfer Facilities

(N.J.A.C. 7:26G-4.2, 7.4(d) and 7.4(h) through 7.4(k))

It has been brought to the Department's attention that certain transfers of hazardous waste involving multi-compartment vehicles (a vehicle with more than one separate and distinct compartment) hauling liquid hazardous waste did not appear to have been considered during the finalization of the rules at N.J.A.C. 7:26G-7.4. Because these compartments are separate and distinct, these vehicles may transport in each compartment a different liquid hazardous waste provided that the segregation regulations at 49 C.F.R. 177.848 or 174.81 and the guidance on incompatible
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hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265 are followed. The transfer of hazardous waste by an operator of a multi-compartment vehicle, not currently addressed in the rules at N.J.A.C. 7:26G-7.4, is a transfer involving liquid hazardous waste from one compartment into an empty compartment. This transfer would require the opening of the compartment containing the liquid waste. In essence, liquid hazardous waste is being transferred from one container to an empty container meeting the requirements at 40 C.F.R. 261.7 (as incorporated by reference at N.J.A.C. 7:26G-5). Empty containers meeting these conditions are commonly referred to as “RCRA empty” containers. This transfer would not constitute “commingling” as defined at N.J.A.C. 7:26G-4.2 because there is no mixing of hazardous waste. However, the current definition of “consolidation” specifically states that the containers are not opened during the transfer.

The Department acknowledges that there are other situations (not involving multi-compartment vehicles) where this same rationale is applicable. For example, the transfer of liquid hazardous waste from one drum to a “RCRA empty” drum. The Department does not wish to preclude any transfer of liquid hazardous waste from one container to one “RCRA empty” container or even the transfer from one container to more than one “RCRA empty” container at authorized hazardous waste transfer
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facilities or limit such transfers to only emergency situations. In order to clearly allow this activity in non-emergency situations at hazardous waste transfer facilities, the Department is proposing an amendment to expand the definition of “consolidation” at N.J.A.C. 7:26G-4.2. “Consolidation” will include the act of transferring liquid hazardous waste from one container to one or more empty containers meeting the conditions at 40 C.F.R. 261.7(b) (as incorporated by reference at N.J.A.C. 7:26G-5). A newly proposed N.J.A.C. 7:26G-7.4(h) sets the standards for this type of transfer.

The transfer is limited to off-loading one single container of liquid hazardous waste and involves “RCRA empty” containers. The Department is not allowing the simultaneous off-loading of more than one container during a transfer. See proposed N.J.A.C. 7:26G-7.4(h)4. Also, containers receiving the waste is limited to “RCRA empty” containers. A transfer of hazardous waste into a container that does not meet the requirements at 40 C.F.R. 261.7 is considered commingling as defined at N.J.A.C. 7:26G-4.2 and may occur provided the requirements regarding commingling at N.J.A.C. 7:26G-7.4(g) are met. Therefore, a transporter who has already transferred the contents of Container A into Container B and is now transferring the contents of Container C into Container B, is not consolidating hazardous waste but is commingling hazardous waste. Container B is not considered “RCRA empty” once hazardous
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waste is transferred from Container A. Therefore, the transfer of hazardous waste from Container C to Container B did not involve a “RCRA empty” container and is subject to the requirements at N.J.A.C. 7:26G-7.4(g) for commingling.

Transporters consolidating liquid hazardous waste from one container to one or more “RCRA empty” containers are subject to standards common to transporters conducting other transfer activities pursuant to N.J.A.C. 7:26G-7.4. The transporter conducting the transfer must be a New Jersey licensed hazardous waste transporter. The transfer facility cannot be located at the facility indicated as the designated hazardous waste facility on the hazardous waste manifest. The newly consolidated waste load shall be removed from the transfer facility at or prior to reaching the 10 day limit as determined by the component of the waste load that has been at the transfer facility the longest. The containers must remain closed except during the transfer of hazardous waste. The storage of the consolidated waste is subject to the segregation criteria at 49 C.F.R. 177.848 or 174.81 and the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. 265. The consolidation of hazardous waste by transferring liquid hazardous waste from one container to one or more “RCRA empty” containers in a non-emergency situation shall only occur at authorized hazardous waste transfer facilities. See N.J.A.C. 7:26G-
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7.4(b). In addition, the cumulative capacity of the “RCRA empty” containers intended to receive the waste shall be sufficient to containerize the amount of hazardous waste involved in the transfer. Also, language proposed at N.J.A.C. 7:26G-7.4(h)3 serves to clarify that this transfer is limited to liquid hazardous waste.

The addition of a new N.J.A.C. 7:26G-7.4(h) has resulted in a proposed cross-reference correction at N.J.A.C. 7:26G-7.4(d), indicating that the log maintained at the transfer facility must document compliance with all the proposed standards concerning transfer of hazardous waste from one container into one or more RCRA empty containers. Also, the current N.J.A.C. 7:26G-7.4(h) and (i) are recodified as N.J.A.C. 7:26G-7.4(i) and (j) and the regulation currently at N.J.A.C. 7:26G-7.4(j) is proposed to be recodified as N.J.A.C. 7:26G-7.4(k). These proposed recodifications at N.J.A.C. 7:26G-7.4(i) and (j) must be appropriately reflected in the cross-reference to these sections at N.J.A.C. 7:26G-7.4(k).

Definition of “generator inspection” (N.J.A.C. 7:26G-4.2)

The current definition of “generator inspection” at N.J.A.C. 7:26G-4.2 contains parameters which are used to define a small quantity generator in accordance with the federal definition of small quantity generator at 40 C.F.R. 260.10 and the
small quantity generator waste generation and accumulation limits set forth at 40 C.F.R. 261.5(e), 261.5(g), and 262.34(d). Therefore, the Department is proposing to change the term “generator inspection” to “small quantity generator inspection.”

The Department has reviewed all federal hazardous waste regulations to ensure that all federal criteria used to define a small quantity generator are accurately reflected in the Department’s proposed definition of “small quantity generator inspection.” Currently missing are the small quantity generator accumulation limits for acute hazardous waste and the spill clean-up of acute hazardous waste. See 40 C.F.R. 261.5(f). Also 40 C.F.R. 262.34(f) sets a 6,000 kilogram limit for non-acute hazardous waste that may be accumulated on-site by small quantity generators without a hazardous waste facility permit. The existing federal cross-references in this section must be expanded to more completely reflect all federal citations used to define small quantity generators. As mentioned above, in addition to 40 C.F.R. 260.10, the following federal citations are used to define a small quantity generator: 40 C.F.R. 261.5(e), 261.5(f), 261.5(g), 262.34(d), and 262.34(f).

Each of these federal citations is used to define an aspect of the universe of small quantity generators. To incorporate each of these six federal citations into a single state definition written in paragraph form is difficult and might prove confusing.
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to the regulated community. It is much easier and clearer if the definition is written as a listing rather than in paragraph form. Therefore, the Department is proposing a definition which will identify a small quantity generator through a list of conditions, which are supported by the above noted federal citations.

The conditions fall into two categories; those related to acute hazardous waste and those related to non-acute hazardous waste. A generator will not be considered a small quantity generator if the limits of either acute and non-acute hazardous waste are exceeded. Exceeding of the small quantity generator limits of either acute or non-acute hazardous waste will remove the generator from the small quantity generator category. In regards to acute hazardous waste, there is only one condition to be met. However, there are two small quantity generator conditions related to non-acute hazardous waste. A generator need only meet one of the two conditions related non-acute hazardous waste. These facts must be clearly reflected in the text.

For this reason, the Department is presenting the conditions in the following format: The condition related to acute hazardous waste is listed first, followed by the listing of the two conditions related to non-acute hazardous waste. The word “and” separates the two categories of conditions indicating the generator must be considered a small quantity generator of both acute and non-acute hazardous waste.
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The word “or” separates the two conditions related to non-acute hazardous waste indicating that a generator may meet either condition related to non-acute hazardous waste.

Generator Use of a Licensed and Registered Transporter (N.J.A.C. 7:26G-6.1(c)4)

One area in which New Jersey's hazardous waste regulations differs from the federal rules is the licensing of hazardous waste transporters and the registering of hazardous waste vehicles. As explained in the April 1, 1996 hazardous rule proposal, the basis for the licensing and registration requirements affecting hazardous waste transporters is statutory. See 28 NJR 1705. In order to preserve the monitoring of hazardous waste collection as mandated by the Solid Waste Management Act, it is essential to require that generators use a transporter who is properly licensed and registered and who displays a current Department registration number. This was a notice at N.J.A.C. 7:26-7.4(e)2 prior to the October 21, 1996 adoption, which repealed the New Jersey hazardous waste rules and incorporated by reference the July 1, 1993 federal hazardous waste regulations. Due to a Department oversight this notice was not included in the April 1, 1996 proposal or October 21, 1996 adoption. The Department is proposing to reinstate this notice as language added to
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its incorporation by reference of the federal requirement at 40 C.F.R. 262.12(c) in N.J.A.C. 7:26G-6. As the result of the reorganization of N.J.A.C. 7:26G-6.1(c) as discussed below, this notice is proposed as N.J.A.C. 7:26G-6.1(c)4.

Reorganization of the Listings at N.J.A.C. 7:26G-6.1(c) and 7.1(c)

N.J.A.C. 7:26G-6.1(c) and 7.1(c) outline provisions of 40 C.F.R. 262 and 273 (respectively) that are incorporated by reference with changes. These federal citations are to be listed in ascending numerical order. Upon review of N.J.A.C. 7:26G-6.1(c) and 7.1(c), the Department determined that not all the listings are in the correct numerical order. N.J.A.C. 7:26G-6.1(c)16 should be listed as N.J.A.C. 7:26G-6.1(c)1, while N.J.A.C. 7:26G-7.1(c)3 should be listed as N.J.A.C. 7:26G-7.1(c)2. The Department is proposing to move these two provisions, with no change in text, accordingly. Relocating these provisions will result in corresponding shifts in other listings at N.J.A.C. 7:26G-6.1(c) and 7.1(c). These additional shifts in other listings, with no change in text, are also proposed in this rulemaking.
Correction of the Department’s Environmental Hotline Number

(N.J.A.C. 7:26G-7.1(c)2 and 7.1(c)3)

The current citation of N.J.A.C. 7:26G-7.1(c)2 contains a reference to the Department’s Environmental Hotline number. This 24 hotline number has been changed to the following toll free number: 1-877-WARNDEP, which corresponds to 1-877-927-6337. Therefore, the proposed recodification of N.J.A.C. 7:26G-7.1(c)2 at N.J.A.C. 7:26G-7.1(c)3 will be amended to reference the Department’s new hotline number.

Transporter Registration Card (N.J.A.C. 7:26G-7.2(b)6iii)

Prior to transporting hazardous waste, the transporter must at a minimum register his hazardous waste vehicles with the Department. As part of its vehicle registration program, the Department issues decals and registration cards to the transporter. The instructions on the back of the registration card requires the card to be carried in the cab of the vehicle at all times. Currently, a regulation consistent with this instruction does not exist. The Department is proposing a rule at N.J.A.C. 7:26G-7.2(b)6iii requiring the registration card for the cab be kept in the cab of the vehicle at all times. In some instances more than one registration card may be involved. For example, in the case where the transport unit is detachable from the
cab, the Department will issue a registration card for the cab and a card for the transport unit. The registration card for the cab shall be kept in the cab. The Department is not regulating a specific area where the registration card for the transport unit be kept, but is requiring that it be available for immediate inspection upon request. The Department has observed that the current industry practice is to keep the registration card for the transport unit in a plastic bubble attached to the outside frame of the transport unit. This is an acceptable practice under this rule proposal.

Amendments to N.J.A.C. 7:26H

Removal of the Definition of “Rate Bands” (N.J.A.C. 7:26H-5.5)

The Department is proposing to remove the term “Rate Bands” from the definitions at N.J.A.C. 7:26H-5.5. This term is no longer used in the regulations at N.J.A.C. 7:26H and, therefore, no longer needs to be defined.

Social Impact

The amendments included in this rulemaking cover many aspects of the Solid Waste Rule, the Hazardous Waste Rule, and the Recycling Rule. Therefore, all segments of the regulatory community (i.e. generators, transporters, facility
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owner/operators, recycling center owners/operators, and solid waste districts) will be impacted. The Department anticipates these amendments will have a positive social impact. These amendments will correct errors, sources of confusion, organizational problems, and implementation problems in these rules. In part, the Department will clarify existing definitions, delete obsolete terms, add necessary definitions to provide a common frame of reference, codify applicable court decisions, provide consistency within Department regulations, clarify procedures to amend the district solid waste management plan through either an administrative action or full plan amendment, correct fee ranges, clarify the purpose of Subchapter 6 of the Solid Waste Rule, relocate requirements to more appropriate sections (ie. move transporter requirements from facility requirement section to a transporter requirement section), and remove obsolete solid waste types. By addressing these issues, the Department will provide clear and consistent regulations and the regulated community will be better able to understand their regulatory obligations.

**Economic Impact**

Most of the amendments included in this proposal will have no economic impact since they are clarifications of existing rules and do not impose any additional requirements. However, there are fee related amendments proposed that the
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The Department believes will have an economic impact; specifically the adjustment of the ranges using the federal hazardous waste limit for generator biennial reporting and the creation of the new fees (in-state beneficial use with sampling, in-state beneficial use without sampling, out-of-state beneficial use, and compost modification fee).

Using the 1997 biennial reporting data, the Department is able to estimate the number of generators affected by amending the lower two biennial reporting fee ranges using the federal hazardous waste limit of 1.1 tons rather than the historic number of 1.33 tons. A total of 129 generators filing a biennial report would no longer fall in the bottom range but into the second range. The result is that an estimated 129 generators would pay an additional $67.00 and the Department would collect an additional $8,643.00 in biennial reporting fees. This estimated additional money collected in biennial report fees constitutes a very small percentage of the overall budget for the biennial report program (2.66 percent) and will be carried over into the next year for future use. The shift in focus from the amount of hazardous waste manifested to the amount of hazardous waste generated will mean that the Department will no longer have direct documentation (i.e. the hazardous waste manifest) of the waste amounts used to calculate the fee owed by each generator. Therefore, the Department anticipates spending more manhours verifying these numbers. Changes to the biennial reporting fees are beyond the scope of this
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rulemaking, which is limited to minor corrections of existing rules. However, fee adjustments will be an issue addressed in a future rulemaking, specifically the readoption of the Hazardous Waste Rules.

To assess the economic impact of establishing specific beneficial use fees, the Department reviewed the number of beneficial use application reviews for which fees were collected. In the past year, a total of 17 out-of-state and 10 in-state beneficial use fees were assessed. For out-of-state applications, the Department has assessed a $140 fee. The proposed fee for the review of these applications is $183. Therefore, the Department anticipates that establishing a specific fee for the review of out-of-state beneficial use application will result in an estimated 17 applicants paying an additional $43 and the Department collecting an additional $731 in fees. The Department has assessed a fee of $250 for the review of each of the 10 in-state beneficial use applications; all 10 applications required the review of sampling results. Therefore, the Department anticipates that the economic impact from the specific fee for in-state beneficial review involving sampling results will result in an estimated 10 applicants paying an additional $402 and the Department collecting an additional $4,020 in fees.

The proposed fees for minor modifications of compost facilities are anticipated to have a minimal economic impact, which is determined by the number of reviews
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conducted yearly and the differences in fee amounts using current fiscal numbers and using 1996 fiscal numbers. Based on the number of minor modifications of compost facilities the Department has reviewed since the December 16, 1996 readoption of the Solid Waste Rules, the Department anticipates conducting only two such reviews a year. The largest fee change is $590. Therefore, the proposed fees may result in the owner/operators of two compost facilities paying an additional $590 and the Department collecting an additional $1,180 in fees for these reviews.

**Environmental Impact**

The Department anticipates that these amendments will have a positive environmental impact. As pointed out in the Social Impact Statement, the regulated community will have a better understanding of its regulatory obligations. This better understanding of the rules will help ensure compliance with the rules and assist in the implementation of the rules, leading to better protection of the environment.

**Federal Standards Statement**

In accordance with Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq., the Department has reviewed the standards and requirements of the proposed rules and compared them with the standards and requirements imposed by Federal law.
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The amendments to the Solid Waste Rules and the Solid Waste Utility Rules included in this rulemaking do not impact any regulation governing solid waste which has comparable federal standards. Therefore, no comparison with federal law is required for those amendments. However, this is not the case for all proposed amendments to the Hazardous Waste Rules and the Used Oil Management Standards.

Amendments to the Hazardous Waste Rules

In comparing the proposed amendments to New Jersey's Hazardous Waste Rules (as proposed in this rulemaking) with the applicable federal hazardous waste rules at 40 C.F.R. Parts 124, 260 - 266, 268, and 270, four amendments are of interest: the amendment to the ranges for the biennial reporting fee proposed at N.J.A.C. 7:26G-3.3(a); the proposed amendment at N.J.A.C. 7:26-6.1(c)3 adds language to 40 C.F.R. 262.12(e) as incorporated by reference, requiring hazardous waste generators to use only transporters who are registered with the Department and display current registration numbers on their vehicles; the proposed amendment at N.J.A.C. 7:26G-7.2(b)6iii requiring hazardous waste transporters to carry the registration card in the cab at all times; and the amendment to N.J.A.C. 7:26G-7.4 allowing for the hazardous waste transfer involving RCRA empty containers at hazardous waste transfer facilities. The first three listed amendments do not have
comparable federal standards, while the last amendment regarding hazardous waste transfers at hazardous waste transfer stations is more stringent than its comparable federal standards.

The first three listed amendments have their basis in provisions of the Solid Waste Management Act and do not have comparable federal standards. For example, the Solid Waste Management Act empowers the Department to assess fees for the services it performs and requires at N.J.S.A. 13:1E-18 that the fees reasonably reflect the duration or complexity of the services rendered. Currently, the federal hazardous waste program does not assess fees. Therefore, the amended ranges for the biennial report fees does not have a comparable federal standard.

The next two listed amendments involve the registration (or licensing) of hazardous waste transporters and the registration of their vehicles. The federal hazardous waste regulations do not address the licensing of hazardous waste transporters and registration of their vehicles. However, the Solid Waste Management Act empowers the Department to supervise solid waste collection and mandates that the Department shall, “require the registration of new and existing solid waste collection and disposal facilities and operations ...”(N.J.S.A. 13:1E-4)(emphasis supplied.) Further, N.J.S.A 13:1E-5a states that “Unless exempted by the Department, no person shall hereinafter engage or continue to engage in the
collection or disposal of solid waste ... without filing a registration statement and obtaining approval from the department.” By definition, solid waste collection is an “activity related to the pick-up and transportation of solid waste from its source or location to a transfer station or other authorized solid waste facility.” (N.J.S.A. 13:1E-3(b)) Meanwhile, solid waste facilities “mean and include the plants, structures and other real and personal property ... including... all vehicles ... and appurtenances necessary or useful and convenient for the collection or disposal of solid waste ...” (N.J.S.A. 13:1E-3h) (emphasis supplied). Therefore, the Department has been mandated by the Solid Waste Management Act to “register” (or license or permit) hazardous waste transporters and vehicles. In fact, pursuant to N.J.S.A. 13:1E-9(g), (h), and (i), it is a crime to transport without authorization from the Department. Accordingly, the Department has established a procedure for registering hazardous waste transporters and their vehicles at N.J.A.C. 7:26G-7.2. In order to ensure fulfillment of this statutory mandate, the Department is clarifying a hazardous waste generator’s regulatory obligation to ensure the transporter who collects the hazardous waste has properly registered with the Department and is using properly registered vehicles. Likewise, the Department is requiring the registration card be kept in the cab at all times as documentation that the vehicle is properly registered with the Department.
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The last above-mentioned amendment involves a consolidation activity at hazardous waste transfer facilities. These transfer facilities are comparable to the federal temporary 10 day storage facilities as referenced at 40 C.F.R. 263.12.

USEPA does not place any limitations upon hazardous waste transfer activities while in-transit except that transporters who mix hazardous waste of different US DOT shipping descriptions are subject to generator standards at 40 C.F.R. Part 262. (See 40 C.F.R. 263.10(c)2.) When incorporating by reference the transporters requirements at 40 C.F.R. Part 263 in the April 1, 1996 proposal and October 21, 1996 adoption, the Department incorporated 40 C.F.R. 263.10(c)2 with changes and did not incorporate the exclusion at 40 C.F.R. 263.12 by reference. Instead, the Department proposed its own more stringent rules at N.J.A.C. 7:26G-7.4, addressing the temporary in-transit storage for 10 days or less and the transfer activities that occur while in-transit. The areas that New Jersey's transfer facility requirements are more stringent include the following: location of the transfer facilities, notification of the location of the transfer facilities, maintenance of operating logs, manifest amendments, standards for transfer activities (including which transporters may conduct those transfer activities and where these in-transit transfer activities may occur in non-emergency situations), and prohibition of commingling of certain hazardous wastes. A detailed comparison and cost analysis was included in the April
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1, 1996 proposal (28 NJ R 1693). In this proposal, the Department is not amending any of these more stringent provisions and is only clarifying that the transfer activity referred to as consolidation that licensed transporters may engage includes moving liquid hazardous waste from one container to one or more “RCRA empty” containers. Since USEPA does not place any restrictions on transfer activities that the Department refers to as consolidation, this amendment will result in a New Jersey hazardous waste provision that is more similar to the federal standards.

Amendments to the Used Oil Management Standards

Amendments to the Used Oil Management Standards at N.J.A.C. 7:26A-6 which will differ from comparable Federal Used Oil Management Standards at 40 C.F.R. Part 279 involve the prohibition of burning off-specification used oil in space heaters and a requirement for generators, who burn on-specification used oil generated on-site or by do-it-yourselfers in space heaters, to obtain air permits or other appropriate authorization from the Department’s Air Quality Permitting Program. These provisions are more stringent than comparable federal used oil standards.

The Department is proposing to add a provision at N.J.A.C. 7:26A-6.3(f) stating that the burning of off-specification used oil in a space heater is prohibited. This prohibition is consistent with the Air Pollution regulation at N.J.A.C. 7:27-20.7(a) adopted on December 6, 1999 (31 NJ R 4016). However, it is more stringent than
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The federal used oil management standards, which specifically allows the burning of this used oil in space heaters by including these units in the list of devices that may be used to burn off-specification used oil. See 40 C.F.R. 279.12(c)2iii. Off-specification used oil contains higher concentration levels of contaminants than on-specification used oil. The Department has conducted a health risk assessment which indicated these higher concentration of contaminants lead to significant health risks when burned. In addition, the industry standards for the manufacture and operation of used oil space heaters only reference the burning of used motor oil (an used oil that has been reasonably demonstrated to meet the on-specification criteria). See Underwriter Laboratories, Incorporated Standard for Safety UL 296A “Waste Oil-Burning Air Heating Appliances” and the Canadian Standards Association FBL Notice “72-Requirements for Appliances Burning Used Oil in an Atomizing Burner.” These standards imply that the used oil space heaters are not designed to burn off-specification used oil and cannot control the air contaminant emission levels resulting from the burning of this used oil. For these reasons, the Department has decided to prohibit the burning of off-specification used oil in space heaters, while allowing the burning of used motor oil in these same units. See the Department’s Federal Standards Analysis included in the adoption of the Used Oil Combustion Rule (31 NJR
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In this rulemaking, the Department is also proposing to clarify that all burning of used oil requires an air permit or other authorization from the Department’s Air Quality Permitting Program, including the instance where a generator burns in a space heater on- specification used oil that is either self generated or generated by do-it-yourselfers. See N.J.A.C 7:26A-6.4(e) as proposed. In lieu of the air permitting process, the Department (as of December 6, 1999) provides a streamlined registration process for operators of space heaters who burn only on-specification used oil and who meet the established requirements at N.J.A.C. 7:27-20.3. However, the requirement to obtain this streamlined authorization is still more stringent than the comparable federal used oil management standards at 40 C.F.R. 279.23, which does not require the operator of the burner to obtain a permit or other authorization prior to burning used oil. The Department Air Quality Permitting Program has examined the health risk from the use of used oil space heaters and has outlined the results of this study in a May 7, 1996 Memorandum entitled “Determination of Possible Health Risks from Used Oil Combustion Space Heaters limited to 500,000 British Thermal Units per Hour.” The Department found that the health risk warranted establishing design and operational standards to ensure minimal health risks from emissions. These standards address achieving high combustion
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Efficiency, controlling air contaminant emissions effectively, and preventing the use of home-made units or units with antiquated technology. Authorization from the Air Quality Permitting Program (such as an air permit or registration) is an approval that indicates that the space heater meets certain design standards and outlines the operating parameters to ensure compliance with air contaminant emission standards. For a more detailed explanation, see the Department's Federal Standards Analysis included in the adoption of the Used Oil Combustion Rule (31 NJR 4031).

**Jobs Impact**

Pursuant to the Administrative Procedure Act, amended by P.L. 1995, c. 166, this proposal must be accompanied by a Jobs Impact Statement that assesses the number of jobs to be generated or lost if the rule takes effect. Because these amendments are corrections to existing solid waste, hazardous waste and recycling regulations and do not impose new requirements, the Department does not anticipate that these proposed amendments will eliminate or create jobs.

**Agriculture Industry Impact Statement**

Pursuant to P.L. 1998, c. 48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of the proposed rule's
impact on the agricultural industry. These amendments correct existing solid waste, hazardous waste and recycling regulations, do not remove existing exemptions or exclusions, and do not impose new regulatory burdens. Therefore, the Department does not anticipate that these proposed amendments will negatively impact the agricultural industry.

**Regulatory Flexibility Analysis**

New Jersey law seeks to protect small businesses from the disproportionate impact that regulations may have on them, especially when those regulations are more suitable for large operations. The businesses of concern are resident in the state, independently owned and operated and not dominant in their field, and which employ fewer than 100 full-time employees.

In general these amendments do not impose new recordkeeping, accounting, consultation, or other compliance requirements on small businesses. However, there is a new reporting requirement for owners/ operators of Class A recycling centers to file an annual tonnage report with the Department. The Department believes that these Class A recycling centers are small businesses. The regulatory burden of filing an annual tonnage report would be minimal. In accordance with the existing regulations, the owner or operators of Class A recycling centers must already compile
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this annual tonnage report and submit it to the municipalities of origin. Therefore, the cost of compliance to submit this same report to the Department would be limited to copying costs and postage and handling costs. The Department does not anticipate that these centers will have to hire additional employees to comply with this additional reporting requirement.

By receiving this annual tonnage information from Class A recycling centers, the Department will have a complete overview of New Jersey's recycling efforts down to the municipal level and will be able to assess the State's ability to meet the recycling goals agreed to by the Department and the United States Environmental Protection Agency. Should the information provided on the annual tonnage report indicate that the State is not meeting the projected recycling goals, the Department can take the appropriate action necessary to address any recycling problems. Through the encouragement of recycling, the Department works to preserve New Jersey's valuable natural resources.

In balancing the minimal burden the additional reporting requirement places on small businesses and the value and role the information on the recycling tonnage reports plays in environmental protection, the Department will not provide an exemption for certain Class A recycling centers based on size.
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**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in bracket [thus]).

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 – 8. (No change.)

(b) – (c) (No change.)

7:26-1.4 Definitions

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

...
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Expansion” means the process of increasing the design and/or permitted capacity, [aerial] areal or structural dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing [and] or transferring source separated [, nonputrescible or source separated commingled nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard, or other recyclable materials approved by the Department] recyclable material (Class A, Class B, Class C, and/or Class D recyclable material as defined at N.J.A.C. 7:26A-1.3). Recycling centers shall not include recycling depot, manufacturers, or scrap processing facility as defined at N.J.A.C. 7:26A-1.3.

“Sanitary landfill” means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste [pursuant to this chapter]. Sanitary landfills shall be further classified into one of the following classes:

1. “Class I sanitary landfill” means a solid waste facility which may accept all types of nonhazardous solid waste including ID 10, 13, 23, 25, [27, 72] 27, 27A, and 27I.
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2. - 3. (No change.)

... 

7:26-1.7 Exemption from SWF permitting

(a) - (e) (No change.)

(f) This subsection sets forth the specific criteria for exempting research, development and demonstration (RD&D) projects.

1. - 3. (No change.)

4. The RD&D project shall be [determined to be consistent with] **included by Administrative Action** within the district solid waste management plan for the county or district within which the project is located or the Statewide Solid Waste Management Plan.

5. The owner and/or operator of a proposed RD&D project shall submit an application to the Department that includes:

i.- ix. (No change.)

x. A copy of the written approval issued by the designated plan implementation agency which indicates [consistency with] **that the project is included by Administrative Action within** the district solid waste management plan for the county/district within which the project is located or as determined by the Department to be consistent with the Statewide Solid Waste Management Plan.
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6.-10. (No change.)

(g) (No change.)

7:26-1.12 Public access to information and requirements for Department determination of confidentiality

(a) 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.

(b) Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the reports submitted to the Department by transporters of regulated medical wastes pursuant to N.J.A.C. 7:26-3A.35(a) below shall not be deemed to be public records and the public shall not have the right to inspect, copy, or obtain a copy of the same. Upon receipt of these reports, the Department shall keep these reports in a secure storage facility and take the appropriate measures to maintain these reports in confidence. Access to such reports shall be limited to agents, employees and attorneys of the Department, and, in the discretion of the Department, other governmental enforcement agencies with a legitimate need to know, to local health agencies certified by the Department pursuant to N.J.S.A.
26:3A-2, or local boards of health responsible for enforcement of laws related to
the collection and disposal of solid waste.

1. In order to obtain access to these reports, a certified local health
agency or local board of health shall submit a written request to the
Department setting forth the information requested and the reasons for
the request.

2. The Department in its discretion may deny a request for a release of a
report if the Department determines for any reason that granting the
request would not be in the public interest.

7:26-2.4 Application procedures for a solid waste facility permit
(a) - (b) (No change.)
(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. (No change.)
2. For a small-scale materials recovery facility or transfer station:
   i. - iii. (No change.)
iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5.

v. - vi. (No change.)

(d) - (f) (No change.)

(g) The procedures for Department review and tentative approval or denial of a SWF permit application shall be in accordance with the following:

1. - 12. (No change.)

13. Not later than 45 days after the granting of a tentative approval of an application for a SWF permit, the Department shall conduct a public hearing on the proposed facility and operator in accordance with the procedures set forth in N.J.A.C. 7:26-2.5. In the case of an application for a solid waste facility described in N.J.A.C. 7:26-2.4(c), an application to modify permit conditions or to revoke and reissue a permit pursuant to N.J.A.C. 7:26-2.6, an application for a permit renewal pursuant to N.J.A.C. 7:26-2.7(b), an application to transfer a permit pursuant to [N.J.A.C. 7:26-2.7(d)] N.J.A.C. 7:26-2.7(e), the Department shall provide public notice, in accordance with (g)15 below, of the opportunity for a public hearing on the proposed agency action. Upon the written request of any interested party which, in the opinion of the Department, raises significant issues of fact relevant to the proposed agency action within 30 days of the newspaper publication of a
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notice of opportunity for a hearing, a public hearing on the proposed agency action shall be held in accordance with N.J.A.C. 7:26-2.5.

14 - 25. (No change.)

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) (No change.)

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. - 7. (No change.)

8. The final agency decision on the SWF permit renewal application shall be based on the administrative record as defined in [N.J.A.C. 7:26-2.4(a)19].

7:26-2.4(g)19.

(c) - (e) (No change.)

7:26-2.9 Environmental and Health Impact Statement requirements

(a) - (f) (No change.)

(g) The following are the procedures for preliminary EHIS review and approval and the effect of the preliminary EHIS approval:

1. (No change.)
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2. The preliminary EHIS shall contain all information require pursuant to (f) above and such other information as the Department deems necessary during a pre-application conference for preliminary EHIS review;

   i. The applicant shall provide the Department with documentation demonstrating that the proposed facility is [consistent with the adopted and approved objectives and strategies set forth in] included within the applicable district solid waste management plan, and that the proposed facility can be acquired, constructed or operated pursuant to the standards set forth in this chapter.

3.- 8. (No change.)

7:26-2.10 General engineering design submission requirements

(a) (No change.)

(b) The general requirements for the preparation and submittal of engineering designs for all proposed solid waste facilities are as follows:

1. All maps of the proposed facility shall be prepared in a manner and format consistent with [N.J.A.C. 7:1E, Appendix C] N.J.A.C. 7:1, Appendix A. The applicant shall submit a minimum of three complete sets of the application for small-scale facilities and five complete sets of the application for all other
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... types of proposed solid waste facilities. Additional complete sets may be required based upon the type, scale, location, and potential environmental impacts of the proposed facility;

2–4. (No change.)

5. A vicinity map prepared in accordance with (b)2 above shall be prepared and submitted as part of the engineering design. The vicinity map shall have a minimum scale of one inch equals 400 feet (1"= 400') with contour intervals shown at 20 foot intervals. The vicinity map shall delineate an area of one mile from the perimeter of the property line of the proposed facility. Contour elevations and vertical and horizontal locations shall be based on the North American Vertical Datum of 1988 whenever possible rather than the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the [New Jersey Plan Coordinated Datum 1927] North American Datum of 1983. One or more vicinity maps may be utilized to ensure clarity of the information submitted. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photographic. The vicinity map shall depict the following:

i. – vi. (No change.)

6. A site plan map, delineating the existing and final as-built contours of the
site of the proposed facility, shall be prepared in accordance with (b)2 above and be submitted as part of the engineering design. The site plan map shall be prepared in accordance with the “Classification Standards of Accuracy and General Specification of Geodetic Control Survey” published by the U.S. Department of Commerce, 1980 and the New Jersey Map Filing Law, N.J.S.A. 46:23-9, at a minimum scale of one inch equals 200 feet (1"=200') with contour intervals shown at two foot intervals.

Contour elevations and vertical and horizontal locations shall be based on the North American Vertical Datum of 1988 whenever possible rather than the National Geodetic Vertical Datum of 1929 (Mean Sea Level Datum 1929) and keyed into the North American Datum of 1983. The site plan map shall depict the following:

i. - iv. (No change.)

7.– 8. (No change.)

9. An operations and maintenance (O and M) manual shall be prepared and submitted as part of the engineering design. The O and M manual shall include the following:

i. (No change.)
ii. An [n] facility inspection plan, which shall include a schedule for inspecting all applicable major aspects of facility operation necessary to ensure compliance with the requirements of this subchapter and N.J.A.C. 7:26-2A or 2B, as applicable. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. Areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs, shall be inspected daily, when in use. The plan shall include a schedule for inspecting, monitoring, safety and emergency equipment, security devices and process operating and structural equipment. The plan shall identify the types of problems which are to be looked for during the inspection and the frequency of inspection:

[(1) The inspection plan shall include a program for detecting and preventing the disposal of regulated hazardous wastes. This program shall include, at a minimum, but not be limited to, the following:

(A) Random inspection of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous waste or PCB hazardous waste;

(B) Records of any inspections;

(C) Training of facility personnel to recognize regulated hazardous waste; and

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(D) Notification procedures to report to the Department any discovery of regulated hazardous waste at the facility.

iii. – vi. (No change.)

vii. A waste inspection plan, which shall include a program for detecting and preventing the disposal of all unauthorized waste types, including regulated hazardous wastes. This program shall include, at a minimum, but not be limited to, the following:

(A) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain unauthorized waste types, including regulated hazardous waste or TSCA waste;

(B) Records of any inspections;
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(C) **Training of facility personnel to recognize any unauthorized waste types, including regulated hazardous waste; and**

(D) **Notification procedures to report to the Department any discovery of any unauthorized waste types, including regulated hazardous waste at the facility.**

10. The Department will review the O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a [final] **revised** O and M manual. The [final] **revised** O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but at least 60 days prior to initiating full-scale operations. Full-scale facility operations shall not be initiated before formal Department approval of the [final] **revised** O and M manual.

11. - 12. (No change.)

7:26-2.11 General operating requirements

(a) (No change.)
(b) The general operational requirements for all solid waste disposal facilities are as follows:

1. - 4. (No change).

5. The operation of the facility shall not result in the emission of air contaminants in violation of N.J.A.C. 7:27-5.2(a) [odors associated with solid waste being detected off-site in any area of human occupancy];

6.-12. (No change.)

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the Department. [Transfer stations and materials recovery facilities shall use the formula in N.J.A.C. 7:26-2B.]

14. - 18. (No change.)

7:26-2.13 Solid waste facility; records

(a) (No change.)

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of the same, or on systems acceptable to the
Department, shall be kept for five years, and shall be available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to [N.J.S.A. 26:3A-2] N.J.S.A. 26:3A2-1 et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/disposal (O and D) form (or duplication of the same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a designated district facility pursuant to N.J.A.C. 7:26-6, the waste remaining after processing shall be designated with the O and D form and daily record as the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility. [Further, at no time may ID 27 solid waste be subject to mechanized processing, such as grinding, shredding or baling, at transfer stations or materials recovery facilities, such that the physical appearance of the material is altered prior to disposal at a designated district facility.]
[1. An approved O and D form shall be provided by the Department to each registered transporter. The transporter shall thereafter duplicate the form for use with each load of solid waste.

2. Prior to disposing of the solid waste, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information provided; and]

2. – 5. (Recodified as 1. - 3. with no change in text.)

(d) (No change.)

(e) Monthly summaries of waste received shall be submitted by the owner/operator of each facility to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district [of destination] where the facility is located on forms provided by the Department (or duplication of the same), no later than 20 days after the last day of each month.

1. (No change.)

(f) Any certified county or local health agency certified by the Department pursuant to [N.J.S.A. 26-3A-2] N.J.S.A. 26:3A2-1 et seq. or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at [N.J.A.C. 14:3-10.15(b)4] N.J.A.C. 7:26H-5.9(c)5.
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(g)–(h) (No change.)

(i) The following waste type have been consolidated under other categories:

1. 11 Institutional (see 10, Municipal);
2. 14 Construction and demolition (see 13, Bulky Waste);
3. 15 Pesticides: (see 27, Dry industrial waste and N.J.A.C. 7:26-8);
4. 16 Hazardous waste containers (see N.J.A.C. 7:26G);
5. 17 Dry hazardous waste (see N.J.A.C. 7:26G);
6. 18 Dry nonhazardous chemical waste (see 27, Dry industrial waste);
7. 19 Junked autos (see 13, Bulky waste);
8. 20 Tires (see 13, Bulky waste)
9. 21 Dead animals (see 25, Animal and food processing waste);
10. 22 Leaves and chopped tree wastes (see 23, Vegetative waste);
11. 24 Tree stumps (see 13, Bulky waste);
12. 26 Oil spill cleanup wastes (see 27, Dry industrial waste and N.J.A.C. 7:26-8);
13. 28 Infectious waste (see N.J.A.C. 7:26-1.4 and the requirements established by the New Jersey Department of Health);
14. 70 Waste oil and sludges (see N.J.A.C. 7:26-8);
15. 71 Semisolid waste oils and sludges (see N.J.A.C. 7:26-8);
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16. 75 Pesticide liquids (see 72 Bulk liquid and semi liquids and N.J.A.C. 7:26G);

17. 76 Liquid hazardous waste (see N.J.A.C. 7:26G);

18. 77 liquid chemical waste (see N.J.A.C. 7:26G);

[j] Solid waste shall be identified at the point of generation. For waste received at a transfer station or materials recovery facility, the transfer station is not the point of generation. Solid waste which is received by a transfer station or materials recovery facility shall retain the ID type identified in the O and D form. The type of solid waste shall not change due to the removal of recyclable materials or the processing of solid waste.]

[(k) (i)] For all waste disposed of within or leaving the district for further transfer, materials recovery or disposal (either in-State or out-of-State), each waste district shall record at a minimum the following information: district of waste origin; the identity of the transfer facility (if applicable); the identity of the final destination facility; the tonnage or cubic yards of waste; the waste type; the tonnage or cubic yards of any material recycled. This information shall be compiled on forms provided by the Department (or duplication of the same) into monthly summaries, which shall be retained for a period of one year or longer in the event of an unresolved enforcement action. Each district shall compile the monthly summaries into an annual report on a form provided by
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the Department which is to be submitted to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning, no later than [February 1] **March 15** of the following year. If a district chooses to impose an in-district weighing requirement consistent with N.J.A.C. 7:26-6.10(b)2, to institute a mechanism to ensure the payment of outstanding debt and other financial obligations, the district may gather this information thorough in-district weighing, but only for the period set forth in N.J.A.C. 7:26-6.10(b)2. Districts which do not conduct in-district weighing shall develop an alternate recordkeeping method to ensure that accurate information is collected on a monthly basis as set forth above.

(l) Recodified as (j) with no change in text:

7:26-2A.5 Additional engineering design submittal requirements for sanitary landfills

(a) In addition to the requirements of N.J.A.C. 7:26-2.10, the engineering design submission requirements for sanitary landfills shall include the following:

1. (No change.)

2. A site plan map delineating the existing contours of the proposed sanitary landfill area prepared and submitted in accordance with N.J.A.C. 7:26-
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2.10(b)6 which shall include, but not be limited to, the following additional information:

   i. (No change.)

   ii. Delineation of the vertical and horizontal control monuments and property corner markers. [The elevations, in relation to the National Geodetic Vertical Datum of 1929 (Mean Sea Level 1929) of the control monuments, shall be indicated and keyed into the North American Datum of 1983] The North American Datum of 1983 is required for mapping in the horizontal plane. The North American Vertical Datum of 1988 should be used when possible rather than the National Geodetic Vertical Datum of 1929 (Mean Sea Level 1929) for elevations;

   iii. - iv. (No change.)

   3. - 8. (No change.)

7:26-2A.7 Sanitary landfill engineering design standards and construction requirements

(a) - (g) (No change.)

(h) The following are the design and construction requirements and standards for monitoring systems:
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1. - 5. (No change.)

6. A gas monitoring system shall be designed and constructed in accordance with the following:
   i. - ii. (No change.)
   iii. A period gas survey performed in accordance with N.J.A.C. 7:26-2A.10(a)5ix may be substituted for the design and construction of methane gas monitoring wells; and
   iv. (No change.)

7. - 9. (No change.)

(i) (No change.)

7:26-2A.8 Sanitary landfill operational and maintenance requirements

(a) (No change.)

(b) The sanitary landfill shall be operated in accordance with the following additional minimum requirements:
   1. - 29. (No change.)
   30. The sanitary landfill shall not cause any air contaminant detectable by the sense of smell, to be emitted [present in the
outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to
human health or welfare, animal or plant life or property, except for malodorous
emissions emanating from the sanitary landfill which result in odors in areas over which
the owner and/or operator has exclusive use or occupancy] in violation of
N.J.A.C. 7:27-5.2(a). [Malodorous emissions emanating from the sanitary landfill
shall not result in odors being detectable in an area of human use or occupancy
beyond the property boundary line. Malodorous emissions shall be controlled by the
use of daily cover. In the event that this is not satisfactory, a suitable deodorant shall
be used. Malodorous solid waste shall be covered immediately after unloading with a
minimum of six inches of cover material or approved alternative material.]

i. Malodorous emissions shall be controlled by the use of daily
cover. In the event that this is not satisfactory, a suitable
deo-dorant shall be used.

ii. Malodorous solid waste shall be covered immediately after
unloading with a minimum of six inches of cover material or
approved alternative material;

31.- 32. (No change.)

33. The sanitary landfill shall be operated in a manner which will protect all
monitoring devices and environmental systems from damage. Any
damage shall be immediately reported to the [Division of Enforcement
Field Operations] **Bureau of Solid Waste Compliance and Enforcement**
at
(609) 584-4180;

34.-44. (No change.)

45. The control monuments shall be tied into the national or state geodetic survey
network and keyed into the [New Jersey Plane Coordinate Datum 1927] **North American Datum of 1983**; and

46. (No change.)

(c) - (k) (No change.)

(l) Rules concerning the disposal of asbestos and asbestos-containing waste
material in sanitary landfills follow:

1. (No change.)

2. All asbestos and asbestos-containing waste materials accepted for
   disposal at a sanitary landfill shall be disposed of in the following manner:
   i. - v. (No change.)
   vi. No person may enter an asbestos disposal area at a landfill during the
       unloading and covering of asbestos and asbestos-containing waste materials without
       wearing a respirator approved for asbestos by the
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National Institute for Occupational Safety and Health and the Mine Safety and Health Administration. This equipment shall be provided and maintained in good working order by the landfill owner and/or operator for its employees. [Transporters of asbestos and asbestos containing waste materials shall be responsible for providing respirators, any mandatory training and fit testing for its drivers and passengers.]

7:26-2B.5 Additional engineering design submission requirements and design requirements for transfer stations and materials recovery facilities

(a) (No change.)

(b) All solid waste transfer stations and materials recovery facilities, except for those regulated pursuant to N.J.A.C. 7:26-2.4(c)2, shall be designed in accordance with the following:

1. (No change.)

2. **Facilities shall be designed with** [Facility facility] processing, tipping, sorting, **loading**, storage and compaction areas [shall be] located within the confines of an enclosed building.

3. - 6. (No change.)
7. Facilities shall be designed in a manner which will prevent the migration of odors and [mitigate the amount of] dust outside the confines of the enclosed building [in accordance with N.J.A.C. 7:27];

8. – 10. (No change.)

11. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling, and extinguishing [suppressing] any and all fires that may occur. All fire protection systems shall be designed to comply with N.J.A.C. 5:23-3.17 and the standards established by the National Fire Protection Association (NFPA);

12. The interior layout shall provide for system installations that maximize accessibility for repairs, maintenance, and cleaning, while affording employee safety. [The installation, maintenance, operation and repair of all systems identified within the interior layout of the facility shall comply with the requirements established by the Federal Occupational Health and Safety Administration and the New Jersey Worker and Community Right to Know Act];

13. – 15. (No change.)

(c) The site plan map shall include the following:

1.- 4. (No change.)
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[5. A utilities plan identifying, locating and describing all utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system and energy system. A descriptive statement of the carrying capacities of the existing systems and the remaining availability within the system for the facility's utility needs.]

(d) – (f) (No change.)

7:26-2B.8 Additional operational requirements for thermal destruction facilities

(a) – (i) (No change.)

(j) During periods when the facility is not processing wastes and during hours when waste is not being received, waste delivery tipping hall doors shall be kept closed to minimize potential migration of odors and dust to the exterior in accordance with N.J.A.C. 7:27.

(k) – (l) (No change.)

(m) Prior to disposal, the owner and/or operator shall perform a waste determination on all residual ask, in accordance with [N.J.A.C. 7:26-8.5]

N.J.A.C. 7:26G-6. Such determination shall be based on analyses of representative composite samples collected in the manner specified in the
facility's SWF permit. At a minimum the sampling shall include analyses for
toxicity characteristic and total TCDDs (all tetrachlorodibenzo-p-dioxins), and
shall be performed at the frequency specified in the facility's SWF permit.

(n) - (v)  (No change.)

7:26-2B.9  Additional operational requirements for transfer stations and materials
recovery facilities

(a)  At no time shall ID 27 solid waste be subject to mechanized processing,
such as grinding, shredding or baling, such that the physical appearance
of the material is altered prior to disposal at a designated district facility.

(b)  All facility processing, tipping, sorting, loading, storage and compaction of
materials shall occur within the confines of an enclosed building.

(c)  The installation, maintenance, operation, and repair of all systems identified
within the interior layout of the facility shall comply with the requirements
established by the Federal Occupational Health and Safety Administration
and the New Jersey Worker and Community Right to Know Act.

(d)  The queuing and staging of solid waste vehicles on any public roadway is
prohibited.
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(e) The queuing and staging of solid waste vehicles shall be conducted in accordance with the approved on-site queuing plan for the facility so as to prevent traffic backups and related traffic hazards on access roads servicing the facility.

7:26-3.1 Improper transportation prohibited

(a) Unless specifically exempted at N.J.A.C. 7:26-3.3(a) and N.J.A.C. 7:26A-6.6(a), the transportation of organic and/or combustible matter, including used oil as defined at N.J.A.C. 7:26A-1.3, or other forms of solid waste, on the roadways and highways in this State shall be made only through the use of:

1. - 2. (No change.)

7:26-3.3 Exemptions and conditions

(a) The provisions of this subchapter shall not be applicable to the following:

1. (No change.)

2. Persons transporting only their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds[; and],

   [3. A person transporting used oil from mobile field changing operations.]

(b) - (d) (No change.)
7:26-3.5 Transporter requirements (Specific)

(a) - (f) (No change.)

(g) O and D form requirements for transporters hauling solid waste to in-State solid waste facilities are as follows:

1. The Department shall provide the registered transporter with an approved O and D form. The transporter shall thereafter duplicate the form for use with each load of solid waste destined for an in-State solid waste facility.

2. Prior to disposing of the solid waste, the transporter shall complete the O and D form and sign it, thereby certifying the accuracy of the information.

3. The completed and signed O and D form shall be given to the facility operator in accordance with N.J.A.C. 7:26-2.13(c).

(h) Transporters of asbestos and asbestos containing waste materials shall be responsible for providing respirators, any mandatory training and fit testing for its drivers and passengers.

7:26-3.6 Intermodal container facility

(a) (No change.)
(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3, 16 and 16A to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified in (c) below, and at the same time one copy each to the host municipality and district solid waste plan implementation agency:

1. – 6. (No change.)

7. [A letter of consistency with the district solid waste management plan from] An administrative action issued by the district solid waste management plan implementing agency, established pursuant to N.J.S.A. 13:1E-21b(1), of the district where the facility is proposed to be located, which shall include any applicable comments from the host municipality. The Department may issue an authorization in the absence of a district [letter of plan consistency] administrative action should the Department determine, at its discretion, that the intermodal container facility is needed to help fulfill the objectives of the adopted and approved Statewide Solid Waste Management Plan or individual district solid waste management plans. In the event of such a determination, the Department shall notify the host district and municipality of it determination and reasons justifying facility authorization in writing prior to any approval of operations;

8. – 17. (No change.)

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(c) – (n)  (No change.)

7:26-3A.8 Registration and fees for regulated medical waste generators, transporters, and owners and operators of [transporters,] collection facilities, transfer stations, intermediate handlers and destination facilities.

(a) Any person that generated regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (e) below, and shall pay annual fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated into five categories as explained in the following table:

<table>
<thead>
<tr>
<th>Pounds Generated Per Year</th>
<th>Base Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 50</td>
<td>$85.00</td>
</tr>
<tr>
<td>50-200</td>
<td>$255.00</td>
</tr>
<tr>
<td>greater than 200-300</td>
<td>$425.00</td>
</tr>
<tr>
<td>greater than 300-1,000</td>
<td>$850.00</td>
</tr>
<tr>
<td>greater than 1,000</td>
<td>$2,950.00</td>
</tr>
</tbody>
</table>
On June 16, 2000 this proposal was filed with the Office of Administrative Law, who will edit it before publishing it in the New Jersey Register. Please refer to the July 17, 2000 New Jersey Register for the official text of the proposal.

i. (No change.)

(b) – (m) (No change.)

7:26-3A.35 Transporter reporting

(a) – (e) (No change.)

(f) **In accordance with N.J.A.C. 7:26-1.12(b), the information contained in the transporter report as outlined in 3A.35(b) above, is not deemed to be public record and the public shall not have a right to inspect, copy, or obtain a copy of the same.**

7:26-3A.39 Collection facilities for medical Wastes

(a) – (c) (No change.)

(d) A person registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3, 16, and 16A to transport regulated medical waste in the State of New Jersey that seeks to operate a commercial collection facility for medical waste shall submit an application containing the information listed at (d) 1 through 15 below. All maps of the proposed facility shall be prepared in a manner and
format consistent with [N.J.A.C. 7:1E, Appendix C] **N.J.A.C. 7:1, Appendix A** Three copies of the application and all accompanying documents shall be submitted to the Department at the address specified in (e) below, and one copy each to the host municipality and district solid waste management plan implementation agency:

1. – 5. (No change.)

6. Documentation establishing that the facility has been included by administrative action in the applicable district solid waste management plan. The Department may issue an authorization in the absence of [a letter of consistency] **an administrative action** if it determines that the collection facility is needed to help fulfill the objectives of the adopted and approved Statewide Regulated Medical Waste Management Plan or any individual district regulated waste management plan. The Department shall notify the host county and municipality of such a determination and the reasons justifying facility authorization in writing prior to any approval of operations;

7. – 9. (No change.)

10. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer, surveyor or architect. The site plan shall:

i. (No change.)

ii. Be drawn to a scale no [greater] **smaller** than one inch equals 100 feet;
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iii. – viii. (No change.)

11. – 15. (No change.)

(e) – (q) (No change.)

7:26-4.3  Fee schedule for solid waste facilities

(a) – (c) (No change.)

(d) The following table sets forth fees (in dollars) for services for the classes of solid waste facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

<table>
<thead>
<tr>
<th>Class</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Administrative completeness</td>
<td>6,734</td>
<td>13,467</td>
</tr>
</tbody>
</table>

**Completeness Determination**

b. - g. (No change.)

2. Sanitary Landfill Facilities

<table>
<thead>
<tr>
<th>Class</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
</table>

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a. [Administrative completeness]

<table>
<thead>
<tr>
<th>Class</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. [Administrative] Completeness Determination</td>
<td>10,100</td>
<td>7,575</td>
<td>3,788</td>
</tr>
<tr>
<td>B. - g. (No change.)</td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Transfer Stations and Materials Recovery Facilities

<table>
<thead>
<tr>
<th>Class</th>
<th>A</th>
<th>B</th>
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</thead>
<tbody>
<tr>
<td>A. [Administrative] Completeness Determination</td>
<td>5,050</td>
<td>7,575</td>
</tr>
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<td>B. - g. (No change.)</td>
<td></td>
<td></td>
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</table>

4. Compost Facilities

<table>
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<th>Class</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. [Administrative] Completeness Determination</td>
<td>2,525</td>
<td>7,575</td>
<td>7,575</td>
</tr>
<tr>
<td>B. - d. (No change.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Minor modification to permit</td>
<td>1,515</td>
<td>3,535</td>
<td>7,575</td>
</tr>
</tbody>
</table>

(e - f recodified as f - g with no change in text)
5. Closure Plan

<table>
<thead>
<tr>
<th>Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>a. [Administrative] Completeness Determination</td>
</tr>
</tbody>
</table>

b. - f. (No change.)

6. (No change.)

(e) For submissions concerning disruption, methane venting systems, on-site disposal, cover material, [beneficial use reviews,] RD&D reviews, hearing officer’s report, construction facility inspection, contaminated soil reviews, or the solid waste facility performance partnership agreement, the applicant/permittee shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplies by an hourly rate of $84.17.

(f)– (h). (No change.)

(i) The following table sets forth fees (in dollars) for services in reviewing beneficial use applications and issuing certificates of authority to operate (CAO) a beneficial use project pursuant to N.J.A.C. 7:26-1.7(g). The Department may,
in its discretion, refrain from commencing work or suspend work at any
time until the applicant has paid the designated fee.

1. Beneficial Use Review

   a. In state (no sampling results) $275

   b. In state (sampling results) $642

   c. Out-of-State $183

2. For additional activities such as pre-application meetings and site
   visits or any other activity which the Department determines, in its
   discretion, is required to fully evaluate the applicant’s submission,
   the Department shall determine the fee for performing the additional
   services. Such fees shall be equal to the number of hours
   estimated by the Department to be required for the performance of
   such services, multiplied by an hourly rate of $91.70.

7:26-5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) – (f) (No change.)

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26
   and 7:26A, is provided for informational purposes only. In the
event that there is a conflict between the rule summary in this subsection and a provision in NJ A.C. 7:26 and 7:26A, then the provision in NJ A.C. 7:26 and 7:26A shall prevail.

1. (No change.)

2. The violations of NJ A.C. 7:26-2, Disposal, and the civil administrative penalty amount for each violation, are set forth in the following table.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Rule Summary</th>
<th>Base Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.J.A.C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>. . . . . .</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[7:26-2.13(c)2]</td>
<td>Failure of transporter to complete and sign O and D form prior to disposal</td>
<td>[$2,000]</td>
</tr>
<tr>
<td>7:26-2.13(c)[3][1]</td>
<td>Failure of facility operator to verify the O and D form</td>
<td>$2,000</td>
</tr>
<tr>
<td>. . . . . .</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.-4. (No change.)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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On June 16, 2000 this proposal was filed with the Office of Administrative Law, who will edit it before publishing it in the New Jersey Register. Please refer to the July 17, 2000 New Jersey Register for the official text of the proposal.

5. The violations of N.J.A.C. 7:26-3, Transportation, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Rule Summary</th>
<th>Base Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.J.A.C.</td>
<td>. . . . . . .</td>
<td>. . . . . . .</td>
</tr>
<tr>
<td>7:26-3.5(g)2</td>
<td>Failure of transporter to complete O and D form prior to disposal</td>
<td>$2,000</td>
</tr>
</tbody>
</table>

7:26-6.2  Purpose

[The New Jersey Department of Environmental Protection has reviewed and approved the adopted solid waste management plans for all 22 of the solid waste management districts in New Jersey. Based on these plans, it is evident that district-based waste planning is required to insure proper solid waste management.] Pursuant to the Solid Waste Management Act, the Department is charged with developing procedures to assure the orderly preparation of a solid waste management plan for every solid waste management district and the approval, modification, or rejection of such a solid waste management plan, and the certification of the determinations to the Board of Chosen Freeholders or the Hackensack Commission, as the case may be, which submitted such plan. This Subchapter sets forth the regulations to conduct these tasks.
7:26-6.10 Modifications to district solid waste management plans; plan amendments

(a) (No change.)

(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. – 6. (No change.)

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 (except those described at N.J.A.C. 7:26A-1.4a or 3.7a), Class C (except those identified at N.J.A.C. 7:26A-1.4(a)14) 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. – 10. (No change.)

(c) – (g) (No change.)

(h) Upon review of the plan amendment and upon receipt of recommendations provided pursuant to [(f)] (g) above, the Department shall approve, modify, or
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reject a plan amendment within 150 calendar 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 with 150 calendar days, the plan amendment shall be deemed approved.

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

(a) (No change.)

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

1. – 2. (No change.)

3. The inclusion of new recycling facilities for processing Class A or Class C recyclable materials (as identified at N.J.A.C. 7:26A-1.4(a)14), or replacement units at existing regulated medical waste facilities;

i. - ii. (No change.)

4.-8. (No change.)

9. The reaffirmation of an existing district solid waste disposal strategy subsequent to the final disposition of the Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, Civil
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Action No. 93-cv-02669 (D.N.J. May 1, 1997) case, provided that the plan implementation agency has held a public hearing on such reaffirmation for the purpose of receiving comments from persons interested in or affected by the amendment. Notice of such hearing shall be published in newspapers of general circulation in the district not less than 10 calendar days prior to the hearing and shall include the information set forth in N.J.A.C. 7:26-6.10(c)2 [above].

10. [Any other administrative action as may be identified by the Department.] The operation of a solid waste intermodal container facility;

11. The operation of a commercial collection facility for medical waste;

12. The operation a RD&D project pursuant to N.J.A.C. 7:26-1.7;

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

(c) (No change.)

(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] N.J.A.C. 7:26-6.10(e).
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(e) (No change.)

(f) The Department shall approve, modify or reject 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.

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
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violation of the Act and this chapter and of the district solid waste management plan if such renegotiation is not completed within 90 calendar 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) (No change.)

7:26-15.5 Application and award procedure for Recycling Tonnage Grants

(a) (No change.)

(b) Application for Recycling Tonnage Grants shall be accepted by the Department between January 1 and April 30 of each grant year. Applications shall be made on forms provided by the Department, or electronic means as approved by the Department and shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste

[Office] Bureau of Recycling and Planning

[CN 414] P.O. Box 414

Trenton, New Jersey 08625-0414
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(c) - (g) (No change.)

7:26-15.6 Application and award procedures for Recycling Business Loans
(a) - (b) (No change.)
(c) Applications may be made at such times as announced and on such forms as provided by the Department and shall be submitted in triplicate to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
Bureau of Recycling and Planning

[CN 414] P.O. Box 414
Trenton, New Jersey 08625-0414

(d) - (k) (No change.)

7:26-15.7 Application and award procedures for Planning and Programs Grants and Education Grants
(a) (No change.)
(b) Applications for Planning and Program Grants and Education Grants shall be made at such time as announced on such forms provided and in accordance
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with any guidelines issued by the Department. Applications shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid and Hazardous Waste
Bureau of [Licensing and Grants] Recycling and Planning

[CN 414] P.O. Box 414
Trenton, NJ 08625-0414

1.-2. (No change.)
(c)- (g) (No change.)

7:26A-1.3 Definitions
The following words and terms, when used in this chapter, shall have the meanings set forth below. All terms which are used in this chapter and which are not defined herein but which are defined in N.J.A.C. 7:26 shall have the same meanings as in that subchapter.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable materials (Class A, Class B, Class C, and/or Class D recyclable material)[, except that recycling center
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Recycling centers shall not include recycling depots, manufacturers, or scrap processing facilities.

“Recycling center for Class A recyclable materials” or “Class A Recycling Center” means a facility that receives, stores, processes, or transfers Class A recyclable materials as defined in this section.

“Recycling center for Class B recyclable materials” or “Class B Recycling Center” means a facility that receives, stores, processes, or transfers Class B recyclable materials as defined in this section.

“Recycling center for Class C recyclable materials” or “Class C Recycling Center” means a facility that receives, stores, processes, or transfers Class C recyclable materials as defined in this section.

“Scrap processing facility” means a commercial industrial facility designed, and operated for receiving, storing and transferring source separated, nonputrescible ferrous and nonferrous metal, which materials are purchased by the owner or
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operator thereof, and which are altered or reduced in volume or physical characteristics onsite by mechanical methods, including but not limited to baling, cutting, torching, crushing, or shredding, for the purposes of resale for remelting, refining, smelting or remanufacturing into raw materials or products.

... 

7:26A-14  Exemptions

(a) The activities listed below are exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and, unless otherwise specified, the solid waste planning requirements at N.J.A.C. 7:26-6.10 or 6.11. The specific criteria applicable to these activities are as follows:

1. -7. (No change.)

8. Any person, with the exception of a recycling center operating pursuant to a general or limited approval in accordance with N.J.A.C. 7:26A-3, which receives source separated Class B recyclable materials, with the exception of scrap tires, leaves, non-container plastic materials and petroleum contaminated soil for temporary storage and meets the criteria in (a)8iii below and either:

i. - ii. (No change.)
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iii. Such person shall also meet the following criteria:

   (1) Materials shall be stored in a manner which prevents run-off, leakage or seepage from the storage area into, on or around the soil of or onto the ground surface around the storage area, and shall be stored in accordance with all applicable county and municipal laws and regulations;

   (2) - (4) (No change.)

9.- 13. (No change.)

14. Composting facilities for Class C recyclable material which meet the following criteria:

   i. - iv. (No change.)

   v. The facility is included by administrative action pursuant to the requirements at N.J.A.C. 7:26-6.11 in [or consistent with] the solid waste management plan of the solid waste management district within which the facility is to be located;

   vi. - xvi. (No change.)

15. - 17. (No change.)

(b) The general requirements applicable to all exemptions set out in (a) above are as follows:
1.- 6. (No change.)

7. Operators of recycling centers, who have been issued a general or limited approval and now wish to engage in activities listed at N.J.A.C. 7:26A-1.4(a), are subject to the district solid waste management plan requirements identified at N.J.A.C. 7:26-6.11 and the approval modification requirements at N.J.A.C. 7:26A-3.10 for those additional activities.

(c) Recycling centers, which receive, store, process, or transfer only Class A recyclable materials, are not subject to the approval requirements in N.J.A.C. 7:26A-3 but are subject to the operational standards at N.J.A.C. 7:26A-4.

7:26A-3.2 Application procedure for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class B, Class C or Class D recyclable material

(a) Prior to the receipt, storage, processing or transfer of any Class B, Class C or Class D recyclable materials at a recycling center, the owner or operator of the recycling center shall submit to the Department the information set forth in this subsection. All maps of the proposed recycling center shall be prepared in the manner and format consistent with N.J.A.C. 7:1, Appendix A. The applicant
shall submit a minimum of three complete sets of the application. Additional complete sets may be required based upon the type, scale, location, and potential environmental impacts of the proposed recycling center. The owner or operator of a recycling center for Class C recyclable materials shall submit the additional information required pursuant to N.J.A.C. 7:26A-3.18. The owner or operator of a recycling center for Class D recyclable materials shall submit the additional information required pursuant to N.J.A.C. 7:26A-3.19 and 20.

1. - 8. (No change.)

9. A site plan map, prepared, signed and sealed in accordance with N.J.S.A. 45:8-35.1 et seq. by a licensed professional engineer or surveyor, which identifies (plots) the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials. This site plan shall also:

   i. Be drawn to a scale no [larger] smaller than one inch equals 100 feet;

      ii. - viii. (No change.)

10. - 16. (No change.)

(b) The information required pursuant to (a) above shall be accompanied by the written certification in (b)1 below.

1. ‘I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments
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and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit, recycling center approval (general or limited), or vehicle registration for which I may be seeking approval or now hold.”

2. (No change.)

(c) – (h) (No change.)

7:26A-3.5 General approval

(a) Within 30 days of receipt of an application for recycling center general approval submitted pursuant to N.J.A.C. 7:26A-3.2(a), the Department will determine whether the application is administratively complete. An application is administratively complete where it satisfies the information submission requirements of N.J.A.C. 7:26A-3.2[(a), 3.4, 3.8, 3.18, and 3.19] and where a fee has been submitted pursuant to N.J.A.C. 7:26A-2. The procedures for
Department review and approval of an application for a recycling center general approval are as set forth in (a)1 through 4 below and in (b) and (c) below:

1. – 4. (No change.)

(b) – (f) (No change.)

7:26A-3.7 Application procedure for limited approval to operate a recycling center for the receipt, storage, processing or transfer of Class B recyclable material

(a) A person may operate a recycling center for the receipt, storage, processing or transferring of Class B recyclable materials for a period of time not to exceed 180 days provided that prior approval of the Department has been obtained and a fee has been submitted in accordance with N.J.A.C. 7:26A-2 to the Department. The following information shall be submitted to the Department in order to obtain limited approval:

1. The information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 2, 3, 4, 5, 6, 7, 8, [and 9] 11, 12, 13, 14, and 16(i). The application shall include a site map that identifies the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials and meets the requirements of N.J.A.C. 7:26A-3.2(a)9ii, 9v, 9vii, and 9viii.

2. – 3. (No change.)
4. The application shall be certified with the certification described at N.J.A.C. 7:26A-3.2(b)1 signed by the appropriate person as described at N.J.A.C. 7:26A-3.2(b)2.

(b) – (n) (No change.)

7:26A-3.18 Additional application requirements for general approval to operate a recycling center for the receipt, storage, processing or transfer of Class C recyclable materials

(a) Prior to the receipt, storage, processing or transfer of any Class C recyclable material at a recycling center, the owner or operator shall submit to the Department, in addition to the information required pursuant to N.J.A.C. 7:26A-3.2, the following information:

1. A facility design plan prepared in accordance with [N.J.A.C. 7:26A-3.2(a)4] N.J.A.C. 7:26A-3.2(a)9, including the following:

   i. – viii. (No change.)

2. 4. (No change.)

(b) In addition to the requirements of N.J.A.C. 7:26A-3.2(a) above, the owner or operator of a recycling center receiving Class C recyclable materials other than
or in addition to yard trimmings shall submit a facility design plan, including the following:

1. A flow diagram of the proposed processing steps for [food waste material] all material received, along with a total mass balance;

2. – 3. (No change.)

7:26A-4.4  Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by February 1 or each year to the county of origin (if requested) and all municipalities from which recyclable material is received in the previous calendar year. For operators of Class A recycling centers this report must also be submitted to the Department. The report shall detail the amount of each source separated recyclable material, expressed in gallons, tons or cubic yards, accepted from each municipality. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

[(b) All transporters of recyclable materials shall be required to provide a recycling tonnage report by February 1 of each year to all municipalities from which source separated recyclable material is received in the previous calendar year for]
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those instances where source separated recyclable materials are transported to manufacturers and recycling centers located in states other than New Jersey. The report shall detail the amount of each source separated recyclable material, expressed in tons or cubic yards, brought to the manufacturer or recycling center. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons."

Recodify (c) as (b) with no change in text:

7:26A-4.5 Additional design and operational requirements for recycling centers which receive, store, and process Class C recyclable materials

(a) In addition to the requirements of NJA.C. 7:26A-4.1, the following operational and design criteria apply to recycling centers receiving Class C recyclable material consisting only of yard trimmings:

1. 14. (No change.)

15. Recycling center which provide composting of the Class C material shall operate in accordance with the following:

i. - vii. (No change.)

viii. The laboratory used to perform the analysis of the finished compost product shall be certified in accordance with NJA.C. 7:18 for
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the equipment and testing procedures required in [(a)15viii] (a)15vii above;

ix - x  (No change.)

16.- 20. (No change.)

(b)  (No change.)

(c) Compost produced by recycling centers which process Class C recyclable materials shall be subject to the following:

1.  (No change.)

2. Compost given away or offered for sale shall satisfy [the general requirements established at 40 C.F.R. Part 503, specifically 40 C.F.R. 503.13(b)(3), the Class A pathogen requirements in 40 C.F.R. 503.32(a), and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) through 503.33(b)8. ] the following requirements:

   i.  Compost derived from yard trimmings shall satisfy the requirements established at 40 C.F.R. 503.13(b)3;

   ii. Compost derived from other than or in addition to yard trimmings shall satisfy the requirements established at 40 C.F.R. 503.13(b)3, the Class A pathogen requirements at 40 C.F.R. 503.32(a), and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)1 through (b)8.

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7:26A-6.2 Used Oil Specifications

(a) (No change.)

(b) On-specification used oil may be directly burned for energy recovery in any device, furnace, or boiler, provided a “Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment” or other required authorization is obtained for the device in accordance with N.J.A.C. 7:27-8, 20, or 22 prior to burning.

7:26A-6.3 Prohibitions

(a) – (b) (No change.)

(c) Off-specification used oil fuel shall not be burned for energy recovery except in the devices specified below, and provided a “Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment” is obtained for such device in accordance with N.J.A.C. 7:27-22 prior to burning or other authorization is obtained for such device prior to burning in accordance with N.J.A.C. 7:27-8 or 22:

1. - 3. (No change.)

(d) (No change.)
(e) The burning of on-specification used oil in oil-fired space heaters is prohibited except if the used oil fired space heaters meets the requirements of N.J.A.C. 7:26A-6.4(e).

(f) The burning of off-specification used oil in a space heater is prohibited in accordance with N.J.A.C. 7:27-20.7(a).

7:26A-6.4 Standards for used oil generators, DIY generators and motor oil retailers

(a) (No change.)

(b) Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this subchapter as indicated in (b)1 through 5 below:

1. Generators who transport used oil, except under the self-transport provisions of [(e)1 and 2] (f)1 or 2 below, shall also comply with N.J.A.C. 7:26A-6.6.

2. (No change.)

3. Generators who burn off-specification used oil for energy recovery[, except under the on-site space heater provisions of N.J.A.C. 7:26A-6.4(e),] shall also comply with N.J.A.C. 7:26A-6.8.

4.- 5. (No change.)
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(c) (d) (No change.)

(e) Generators may burn on-specification used oil in used oil-fired space heaters provided that:

1. - 3. (No change.)

4. The generator obtains a “Permit to Construct, Install or Alter Control Apparatus or Equipment and Certificate to Operate Control Apparatus or Equipment” or other required authorization in accordance with N.J.A.C. 7:27-8, 20, or 22 prior to operating the space heater.

(f) (No change.)

7:26A-6.5 Standards for used oil collection and aggregation points

(a) (No change.)

(b) Used oil collection centers are subject to the following:

1. This subsection applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under the provisions of N.J.A.C. 7:26A-6.4(e)1. Used oil collection centers may also accept used oil from household do-it-yourselfers.

7:26A-6.4(f). Used oil collection centers may also accept used oil from household do-it-yourselfers.
7:26A-6.6 Standards for used oil transporters and transfer facilities

(a) The standards that apply to used oil transporters and transfer facilities are as follows:

1. Except as provided in (a)1i through iv below, this section applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities;

   i. (No change.)

   ii. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in [N.J.A.C. 7:26A-6.4(e)1] N.J.A.C. 7:26A-6.4(f)1;

   iii. This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owner or operated by the same generator as specified in [N.J.A.C. 7:26A-6.4(e)2] N.J.A.C. 7:26A-6.4(f)2; or
iv. (No change.)

2. - 4. (No change.)

5. A used oil transporter, who transports used oil or collects and transports used oil, and who is not exempted from this section as provided at (a)1 above, shall also comply with the standards concerning solid waste transportation at N.J.A.C. 7:26-3, including approved registration statement and vehicle registration requirements.

6. A person transporting used oil from mobile field changing operations shall not be subject to the standards concerning solid waste transportation at N.J.A.C. 7:26-3.

(b) - (h) (No change.)

N.J.A.C. 7:26A-6.7 Standards for used oil processors and refiners

(a) - (g) (No change.)

(h) The following are the operating record and reporting standards for used oil processors and re-refiners:

1. The owner or operator shall keep a written operating record at the facility. The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:
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i. Records and results of used oil analyses performed as described in the analysis plan required under [N.J.A.C. 7:26A-6.9(f)] N.J.A.C. 7:26A-6.7(f); and

ii. (No change.)

2. (No change.)

(i) - (j) (No change.)

Subchapter 8 Requirements for Transporters of Source Separated Materials

7:26A-8.1 Reporting requirements

All transporters of source separated recyclable materials transported to manufacturers and recycling centers located in states other than New Jersey shall provide the county(ies) of origin (if requested) and all municipalities of origin, by February 1 of each year, a recycling tonnage report covering all such source separated materials transported the previous calendar year. The report shall detail the municipality of origin, the name and location of the manufacturer or recycling center and the amount of each source separated recyclable material, expressed in gallons, tons or cubic yards, brought to each manufacturer or recycling center from each specific municipality of origin. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.
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7:26G-1.1 Scope of Rules

(a) – (b) (No change.)


(d) (No change.)

7:26G-3.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) [Hazardous waste generator biennial reporting fees are as follows. Biennial reporting fees]

Fees for generators filing a biennial report in accordance with 40 C.F.R. 261.5(e), 261.5(f), 262.41, and 262.44 (as incorporated by reference at N.J.A.C. 7:26G-5 and 6) shall be based on [manifest information for] quantities of hazardous waste generated during the odd numbered calendar year preceding the even numbered reporting year. [in which the bill is issued:] Hazardous waste generator biennial reporting fees are as follows:
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1. [Hazardous waste generators manifesting less] **Less** than [13.2] **1.1** tons of hazardous waste [per year] **generated**: $67.00.

2. [Hazardous waste generators manifesting equal] **Equal** to or greater than [13.2] **1.1** tons but less than 10 tons of hazardous waste [per year] **generated**: $134.00.

3. [Hazardous waste generators manifesting equal] **Equal** to or greater than 10 tons but less than 100 tons of hazardous waste [per year] **generated**: $248.00.

4. [Hazardous waste generators manifesting equal] **Equal** to or greater than 100 tons but less than 150 tons of hazardous waste [per year] **generated**: $501.00.

5. [Hazardous waste generators manifesting equal] **Equal** to or greater than 150 tons of hazardous waste [per year] **generated**: $801.00.

(b) – (g) (No change.)

7:26G-4.2 State definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:
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“Consolidation” means the movement of closed containers of hazardous waste from one hazardous waste transport unit or transport vehicle to another or the act of transferring liquid hazardous waste from one container to one or more empty containers meeting the conditions at 40 C.F.R. 261.7 (as incorporated by reference at N.J.A.C. 7:26G-5).

“Small quantity generator inspection” is an inspection of a generator as defined at 40 C.F.R. 260.10, 261.5(e), 261.5(f), 261.5(g), 262.34(d) and 262.34(f), who generates 100 kilograms or more, but less than 1,000 kilograms of non-toxic hazardous waste per month and less than one kilogram of acute hazardous waste per month; and those who generate less than 100 kilograms per month non-acutely toxic hazardous waste, less than one kilogram of acute hazardous waste, but accumulate greater than 1,000 kilograms and less than 6,000 kilograms of non-acutely toxic hazardous waste at any one period of time.] meets the following conditions: 1. generates (in a calendar month) and accumulates (at any time) 1 kilogram or less of acute hazardous waste or 100 kilograms or less of spill clean-up of acute hazardous waste; and 2. generates 100 kilograms or less of non-acute...
hazardous waste in a calendar month and accumulates greater than 1,000 kilograms but never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any time; or 3. generates more than 100 kilograms but less than 1,000 kilograms of non-acute hazardous waste in a calendar month and never exceeds 6,000 kilograms of accumulated non-acute hazardous waste at any time. A generator’s category will be based upon hazardous waste manifest history and the quantity of hazardous waste present at the facility at the time of inspection by enforcement personnel.

7:26G-6.1 Incorporation by Reference

(a) – (b) (No change.)

(c) The following provisions of 40 C.F.R. Part 262 are incorporated by reference with the specified changes:

1. 40 C.F.R. 262.10(d), replace “State requirements analogous to 40 C.F.R. 273.” with “N.J.A.C. 7:26A-7”;

   [1] 2. (No change in text)

   [2] B. (No change in text)
On June 16, 2000 this proposal was filed with the Office of Administrative Law, who will edit it before publishing it in the New Jersey Register. Please refer to the July 17, 2000 New Jersey Register for the official text of the proposal.

4. 40 C.F.R. 262.12(c), at the end of the paragraph add “It is considered a violation for a generator to utilize a transporter who is not properly licensed and registered with the Department in accordance with N.J.A.C. 7:26G-7.2 and/or who fails to display a current Department registration number in accordance with N.J.A.C. 7:26-7.2(b)6.”

[3] [5. (No change in text.)
[4] [6. (No change in text.)
[5] [7. (No change in text.)
[6] [8. (No change in text.)
[7] [9. (No change in text.)
[8] [10. (No change in text.)
[9] [11. (No change in text.)
[10] [12. (No change in text.)
[11] [13. (No change in text.)
[12] [14. (No change in text.)
[13] [15. (No change in text.)
[14] [16. 40 C.F.R. 262.54(e) [], [Delete] delete the last sentence of the
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paragrpah and replace with “For all export shipments, the primary exporter shall obtain the manifest from the Department;”;

[15][17. 40 C.F.R. 262.60(c) [.] Delete delete the last sentence of the paragraph and replace with “For all import shipments, the person who imports the waste shall obtain the manifest from the Department;”;

[16. 40 C.F.R. 262.10(d), replace “State requirements analogous to 40 C.F.R. 273.” with “N.J.A.C. 7:26A-7.”]

[17][18. (No change in text.)

[18.][19. (No change in text.)

(d) - (f) (No change.)

N.J.A.C. 7:26G-7.1 Incorporation by reference

(a) - (b) (No change.)

(c) The following provisions of 40 C.F.R. 263 are incorporated by reference with the specific changes:

1. (No change.)

[2. 40 C.F.R. 263.30(a), after “local authorities” add “including the Department at 6099-292-7172 (if this number is inoperable, notify the New Jersey State Police at 609-882-2000)”.

3. 40 C.F.R. 263.10(d), replace “State requirements analogous to 40 C.F.R. 273.” with “N.J.A.C. 7:26A-7.”]
On June 16, 2000 this proposal was filed with the Office of Administrative Law, who will edit it before publishing it in the New Jersey Register. Please refer to the July 17, 2000 New Jersey Register for the official text of the proposal.

2. 40 C.F.R. 263.10(d), replace “State requirements analogous to 40 C.F.R. Part 273” with “N.J.A.C. 7:26A-7”.

3. 40 C.F.R. 263.30(a), after “local authorities” add “[including the Department at 1-877-WARNDEP (if this number is inoperable, notify the New Jersey State Police at 609-882-2000)]”.

(d) - (f) (No change.)

7:26G-7.2 Registration statement and registration Requirements

(a) (No change.)

(b) Hazardous waste vehicle registration requirements are as follows:

1. - 5. (No change.)

6. All hazardous waste vehicles (the hazardous waste cab and transport unit individually if detachable) used in the transporting of hazardous waste shall properly and conspicuously display, on both sides of the vehicle, a current New Jersey hazardous waste decal and the New Jersey Department of Environmental Protection (NJ DEP) registration number. The NJ DEP registration number shall be in letters and numbers at least three inches in height. Current hazardous waste decals must be permanently affixed to each hazardous waste vehicle (the hazardous waste cab and transport unit if detachable) prior to use on a public roadway or highway and prior to
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the hazardous waste vehicle (the hazardous waste cab and transport individually if detachable) being placed into service or before receiving waste.

i. - ii. (No change.)

iii. The current vehicle registration card for a cab issued by the Department shall be carried in the cab of the vehicle at all times. If the cab and the transport unit are detachable, the registration card for the transport unit shall be immediately accessible for inspection upon request.

7:26G-7.4 Requirements for hazardous waste transfer facilities

(a) – (c) (No change).

(d) The owner or operator of the hazardous waste transfer facility shall maintain at the transfer facility a written operating log (or logs, as necessary) documenting the movement of hazardous waste into and out of the hazardous waste facility and any hazardous waste transfers occurring at the facility and documenting compliance with the conditions set forth at (f),(g) and [(g)] (h) below. At a minimum, the log(s) shall include the following information:

1. – 9. (No change.)

(e) – (g) (No change.)
A hazardous waste transporter, who consolidates by transferring hazardous waste from one container to one or more empty containers (meeting the conditions at 40 C.F.R. 261.7 as incorporated by reference at N.J.A.C. 7:26G-5) at a hazardous waste transfer facility for a period of 10 days or less, is not subject to regulations at N.J.A.C. 7:26G-8 through 12 except as noted herein, provided the following requirements are met:

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

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

3. The transfer involves liquid hazardous waste only;

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

5. Prior to and after consolidation, the hazardous waste is stored in closed containers, which meet the applicable US Department of Transportation packaging regulations specified in 49 C.F.R. Parts 171 through 180, as amended;
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6. The storage of the consolidated hazardous waste complies with the hazardous materials segregation criteria at 49 C.F.R. 177.848 or 174.81, and with the guidance on incompatible hazardous waste mixtures in Appendix V of 40 C.F.R. Part 265;

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

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

(h) - (i) recodified as (i) - (j) without change.

[(j)] (k) Repeated and/or multiple violations at a transfer facility may result in termination of eligibility for these transfer activities and require the cessation of such activities. Notwithstanding a hazardous waste transporter's compliance with all requirements of the hazardous waste transfer facility regulations at (c), (d), (e), (f), (g), (h), (i), and [(i)] (j) above, the Department may
terminate eligibility for these transfer activities and require the cessation of such activities any
time the Department determines that a particular hazardous waste transporter or hazardous
waste transfer facility poses a threat to the environment or that a transporter cannot be relied
upon to operate the transfer facility safely and in conformance with all applicable rules and
regulations. Owners or operators of such hazardous waste facilities for which the Department
has terminated eligibility for one or more activities or who have had to cease all operations,
shall have the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-
1 et seq.

7:26H-5.5 Definitions

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

. . .

[“Rate bands” means the minimum/maximum parameters established under N.J.A.C. 14:3-11.7(c) by
which a solid waste collector may adjust the service fee of their uniform tariff during the transition
period.]