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ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

DIVISION OF SUSTAINABLE WASTE MANAGEMENT

Notice of Administrative Changes and Corrections

Solid Waste Utility Regulations

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

Effective Date:

Take notice that the Department of Environmental Protection (Department) is changing the Solid Waste Utility rules, N.J.A.C. 7:26H, to update contact information and references, remove dates that are no longer relevant, and correct citations, and correct punctuation and language errors.

Full text of the changed rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL REQUIREMENTS

7:26H-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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“Director” means the Director of the Division of [Solid and Hazardous Waste]

Sustainable Waste Management or any person designated to act on the Director’s behalf.

...

“Division” means the Division of [Solid and Hazardous Waste] **Sustainable Waste Management** in the Department.

...

“Peak rate” means the highest solid waste disposal utility tariff rate on file with and approved by the Department for each type of ID waste [as of November 10, 1997]. When a solid waste disposal utility owner or operator petitions the Department for a rate above the existing peak rate, upon Departmental approval, the new rate becomes the peak rate for all solid waste disposal utilities for that particular waste.

...

“Reform Act” means the Solid Waste Collection [and] Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq.

...

7:26H-1.5 Offices and hours

(a) All inquiries and correspondence relative to this chapter should be directed to the following address:

New Jersey Department of Environmental Protection

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Division of [Solid and Hazardous Waste] **Sustainable Waste Management**

Mail Code: 401-02C

401 E. State Street

P.O. Box 420

Trenton, New Jersey 08625-0420

Telephone: (609) 984-4250

(b) (No change.)

7:26H-1.6 Certificate of public convenience and necessity

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

(f) A rail carrier as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility are being conducted by it or on its behalf as part of its rail transportation services and that is engaged in the business of solid waste disposal or transportation by rail, but does not engage in the business of solid waste collection (as defined by N.J.S.A. [13:13E-3] **13:1E-3**) by other means of transportation within the State of New Jersey, is not subject to the provisions of this chapter.

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7:26H-1.14 Service requirements; failure to render service

(a) - (d) (No change.)

(e) Where service to a customer is interrupted and it appears that the interruption will continue for more than one day or one [pick up] **pickup**, a report shall be made to the Department forthwith giving a full account and statement of the reasons for such interruption and the estimated duration.

SUBCHAPTER 2. RULES OF PRACTICE

7:26H-2.1 Scope

These rules shall govern practice and procedure before the Division of [Solid and Hazardous Waste] **Sustainable Waste Management** of the Department of Environmental Protection.

SUBCHAPTER 3. TRANSACTIONAL FILINGS

7:26H-3.2 Petitions for the approval of the sale or lease of property

(a) - (c) (No change.)

(d) The Department has 30 days from the date of receipt to review the Notice of Intent. For the purposes of this section, receipt means arrival at and date stamped by the Division of [Solid and Hazardous Waste] **Sustainable Waste Management**.

(e) (No change.)

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7:26H-3.6 Petitions for approval of management agreements

(a) (No change.)

(b) The solid waste collection or disposal utility shall file for Department authorization of a management agreement described in (a) above at least 30 days prior to the completion of the transaction. Notwithstanding the notice provisions of this subsection, the Department may waive the [30 day] **30-day** notice requirement where extraordinary circumstance can be shown.

Extraordinary circumstances may include, but are not limited to, the death, disabling disease or injury of an owner or key employee. In no event will the agreement take effect without Department approval.

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

SUBCHAPTER 4. SOLID WASTE TARIFFS

7:26H-4.2 General

(a) (No change.)

(b) All of the highest solid waste utility disposal facility tariff rates on file with and approved by the Department [as of November 10, 1997], shall constitute the peak rates for each solid waste type, Statewide, except that the peak rates for privately owned sanitary landfill facilities shall be adjusted in accordance with N.J.A.C. 7:26H-8.3.

7:26H-4.4 Solid waste collection tariff terms and conditions

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(a) The following shall apply to all solid waste collection companies:

1. (No change.)

2. Collection service shall be provided according to a schedule contained in [a] the collector's tariff.

3. - 6. (No change.)

7. Should the collector fail to pick up solid waste on a regularly scheduled day, and such failure is not caused by any act or omission of the customer, the collector shall make the [pick up] **pickup** as soon as possible, but in no event shall it be later than the next regularly scheduled collection day.

8. In the event of inclement weather when operation of a solid waste collection vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collector, [pick-ups] **pickups** shall be made no later than the next regularly scheduled day. In those cases where collection is scheduled on a one collection per week basis, that collection shall be made as soon as possible.

9. A collector may discontinue service to a customer provided it gives the customer at least 10 [days] **days'** written notice of its intention to discontinue. A collector may discontinue service for nonpayment of bills provided it gives the customer at least 10 [days] **days'** written notice of its intention to discontinue. At least 10 days [time] for payment shall be allowed after sending a bill. The notice of discontinuance shall not be served until the expiration of the said 10-day period given for payment of the bill. However, in the case of fraud, illegal use, or when it is

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clearly indicated that the customer is preparing to leave, immediate payment of accounts may be required.

i. - ii. (No change.)

10. - 11. (No change.)

12. The collector shall have the right to refuse [pick-up] **pickup** of waste for any of the following reasons:

i. (No change.)

ii. Waste is not placed at designated [pick-up] **pickup** location;

iii. - iv. (No change.)

v. Passage on the street or into the property is obstructed in any way by the operations to pave the street, by the digging of water or sewer lines or other type of construction. [Pick up] **Pickup** shall be provided on the next regularly scheduled collection day;

vi. - x. (No change.)

13. (No change.)

(b) The following provisions shall apply to all solid waste collection utilities regarding billings and payments for services.

1. (No change.)

2. If the collector does not utilize advanced billing, residential, commercial and industrial solid waste collection billings are to be made with payment due in 30 days. At least 10

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days' time for payment shall be allowed after sending a bill. If payment has not been received after 10 days past the date the bill was payable, then the collector may discontinue service to the customer upon providing 10 [days] **days'** written notice in accordance with (a)9 above.

3. All bills for collection shall include and list separately the following information:

i. - vi. (No change.)

vii. A separate line item showing the surcharge applied, if any, [pursuant to P.L. 1981, c.438,] to fund county health department enforcement activities, N.J.S.A.

13:1E-9.1;

viii. - ix. (No change.)

x. Separate line items showing the Sanitary Landfill Closure and Contingency Fund [Tax] **Act tax**, 13:1E-100 et seq.; and

xi. (No change.)

4. - 7. (No change.)

7:26H-4.7 Solid waste disposal tariff provisions

(a) (No change.)

(b) Billing requirements for all solid waste disposal facilities are as follows:

1. (No change.)

2. All bills and invoices shall be sent out on a monthly or bimonthly basis, with payment due in 30 days. All payments shall be received no later than 10 days from the due date

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specified in the bill or invoice. Upon seven days written notice, the facility may refuse admittance to a customer who fails to submit payment. All bills and invoices for disposal shall include the following information and shall list each as a separate line item:

i. - v. (No change.)

vi. A separate line item showing the surcharge applied, if any, [pursuant to P.L. 1981, c.438,] to fund county health department enforcement activities, N.J.S.A. 13:1E-9.1;

vii. - ix. (No change.)

3. - 4. (No change.)

(c) General payment requirements for all solid waste disposal facilities are as follows:

1. The disposal facility may require its customers to establish and maintain advance payment accounts in accordance with the following:

i. (No change.)

ii. An [interest bearing] **interest-bearing** security escrow account established by the facility at a local bank where customers can deposit an amount of money sufficient to cover the projected costs of disposal for the billing cycle. The facility shall debit the customer's escrow account for waste actually delivered to the facility. The customer shall ensure that the funds are sufficient to cover the anticipated disposal costs during the billing period. When a customer's escrow account drops below the minimum required by the facility, the facility shall notify the customer who will make an additional deposit sufficient to raise the escrow account to the full amount. In the event that the accumulated disposal charges exceed the amount of the

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escrow account, the customer may be required to pay cash or be denied entry into the facility until the account balance is sufficiently reduced, or the amount contained in the escrow account is satisfactorily replenished. The facility shall provide the customer with an invoice containing the information specified at (b)2 above and listing all debits to the customer's account. The bank shall issue interest checks in the customer's name on a yearly basis;

iii. - v. (No change.)

2. - 4. (No change.)

SUBCHAPTER 5. SOLID WASTE COLLECTION EFFECTIVE COMPETITION MONITORING

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.

“Acts” means P.L. 1970, c. 40, known as the Solid Waste Utility Control Act, P.L. 1991, c 381, known as the Solid Waste Collection Regulatory Reform Act, and P.L. 2003, c. 169, known as the Commercial Landfill Regulatory Reform Act.

. . .

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"Solid waste collector" means a person engaged in the collection of solid waste and holding a certificate of public convenience and necessity pursuant to [sections 7 and 10 of P.L. 1970, c.40 (] N.J.S.A. 48:13A-6 and 48:13A-9[)].

...

"Solid waste facility" means and includes the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person pursuant to the provisions of [P.L. 1970, c.39 (] N.J.S.A. 13:1E-1 et seq.[)] or any other act, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

7:26H-5.9 Monitoring effective competition; records

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

(c) Every utility engaged in solid waste collection shall file and maintain customer lists in accordance with the following:

1. - 3. (No change.)

4. Pursuant to [N.J.S.A. 47:1A-2 of the Right to Know Law] **the Open Public Records Act**, N.J.S.A. 47:1A-1 et seq., all customer lists required to be filed with the

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Department pursuant to this section shall not be deemed to be public records and the public, including solid waste or other utilities, shall not have the right to inspect, copy or obtain a copy of same. Upon receipt of customer lists and customer list updates, the Department shall keep the lists in a secured storage facility and take appropriate measures to maintain the lists in confidence. Access to such lists 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] **26:3A2-1 et seq.**, or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste. All such governmental agencies shall be subject to the confidentiality requirements contained in this paragraph. In order to obtain a customer list, 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. The Department in its discretion may deny a request for a release of a customer list if the Department determines for any reason that granting the request would not be in the public interest.

5. (No change.)

(d) (No change.)

7:26H-5.11 Procedures for Department review; supervision of solid waste collection industry

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(a) The following pertain to transactions requiring Department approval pursuant to the provisions of N.J.S.A. 48:3-7:

1. - 2. (No change.)

3. Upon receipt of a notice of intent, the Department shall review the notice to determine whether the notice and the supporting documentation are complete. After reviewing the notice of intent, the Department shall, within 30 days of receipt of the notice, notify the applicant, in writing, whether the notice is complete or incomplete. For the purposes of this section, receipt means arrival at and date stamped by the Bureau of Planning and Licensing, Division of [Solid and Hazardous Waste] **Sustainable Waste Management**.

i. - iii. (No change.)

4. - 5. (No change.)

(b) - (c) (No change.)

7:26H-5.12 Customer bill of rights

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

(c) The customer bill of rights shall set forth the following information:

1. - 3. (No change.)

4. A statement that the solid waste collector's tariff showing terms and conditions is available for review at the Department and that a complete list of solid waste collectors registered

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to provide service in their service territory is available from the [Bureau of Solid and Hazardous Waste Regulation] **Division of Sustainable Waste Management**;

5. The solid waste collector shall handle customer complaints in a prompt, courteous, and efficient manner and that in the event a solid waste collector fails to pick up solid waste on a regularly scheduled day and such failure is not caused by an act or omission of the customer, the collector shall make the [pick up] **pickup** as soon as possible, but in no event shall it be later than the next regularly scheduled collection day. Should a collector fail to pick up solid waste from a commercial, industrial or institutional customer on two consecutive collection days, and such failure is not caused by an omission or act of the customer, the customer may cancel any service agreement or contract with the collector.

6. - 13. (No change.)

14. In the event of inclement weather when operation of a solid waste vehicle would pose a threat to the safety of the public and/or the equipment and personnel of the collection company, [pick up] **pickup** shall be made no later than the next regularly scheduled day. In those cases where collection is made on a once per week basis, [pick up] **pickup** shall be made as soon as weather permits;

15. (No change.)

16. Solid waste services contracts or agreements shall not include any clause which calls for an automatic renewal of the contract or agreement[. The automatic renewal clause of any existing contract shall be considered void upon November 4, 2002]; and

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17. (No change.)

(d) (No change.)

7:26H-5.22 Vehicles used to transport food not to be used to transport solid waste; exceptions and penalties

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

(c) The provisions of this section shall not apply to any vehicles utilized for the transportation of source separated recyclable materials as defined in [section 2 of P.L. 1987, c. 102 (] N.J.S.A. 13:1E- 99.12[)].

(d) - (g) (No change.)

(h) All conveyances used or intended for use in the unlawful transportation of solid waste in violation of the provisions of N.J.S.A. 48:13A-12.1 are subject to forfeiture to the State pursuant to the provisions of [P.L. 1981, c. 387 (] N.J.S.A. 13:1K-1 et seq.[)].

(i) (No change.)

SUBCHAPTER 6. UNIFORM BID SPECIFICATIONS FOR MUNICIPAL SOLID WASTE COLLECTION CONTRACTS

7:26H-6.5 Bidding requirements

(a) - (c) (No change.)

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(d) The contracting unit shall not consider a bid proposal unless it contains each of the following items:

1. A[photo copy] **photocopy** of bidder's certificate of public convenience and necessity and a [photo copy] **photocopy** of a document evidencing the bidder's authorization to operate a solid waste business issued pursuant to N.J.S.A. 13:1E-126;

2. - 6. (No change.)

(e) - (h) (No change.)

7:26H-6.9 Performance bonds

(a) For a [one year] **one-year** collection contract, the successful bidder shall submit a performance bond in accordance with the following:

1. The successful bidder shall provide, at the time and place specified by the contracting unit, a [one year] **one-year** performance bond issued by a surety in an amount equal to no more than 100 percent of the award price; provided, however, that the time set for delivery of the performance bond is prior to or concurrent with the time set for the delivery of the executed contract; and

2. (No change.)

(b) For a multi-year collection contract, the successful bidder shall submit performance bonds in conformance with the following:

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1. The successful bidder shall provide, at the time and place specified by the contracting unit, a performance bond issued by a Surety in an amount equal to no more than 100 percent of the annual value of the contract; provided, however, that the time set for delivery of the performance bond shall be prior to or concurrent with the time set for the delivery of the executed contract. The "annual value of the contract" shall be included in the notice of award to the bidder and shall be equal to the total bid price for each year of the contract. The contractor shall provide a [one year] **one-year** performance bond for each succeeding year of the contract in an amount equal to no more than 100 percent of the annual value of the contract for each succeeding year. The performance bond for each succeeding year shall be delivered to the contracting unit with proof of full payment of the premium 120 days prior to the expiration of the current bond;

2. - 3. (No change.)

7:26H-6.12 Work specifications

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

(c) All specifications for the performance of residential waste collection from single and multi-family homes shall include the following information:

1. The number of residences requiring service or the actual number of [pick-ups] **pickups**;

2. - 5. (No change.)

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(d) All specifications for the performance of residential waste collection from apartment and/or condominium complexes shall include the following information:

1. The name and address or location of each [pick-up] **pickup** location;
2. - 6. (No change.)

(e) All specifications for the performance of commercial waste collection from wholesale, retail or service establishments and/or the performance of institutional waste collection from hospitals, research institutions and public buildings shall include the following information:

1. The name and address or location of each [pick-up] **pickup** location;
2. - 6. (No change.)

(f) Where collection services other than those listed and described above are to be included in the contract, the contracting unit shall provide the following information in the work specifications:

1. (No change.)
2. The name and address or location of each [pick-up] **pickup** location;
3. - 9. (No change.)

(g) All bid specifications shall include the following information describing the service area:

1. - 2. (No change.)
3. If any residential waste will be collected under the contract, the amount by weight in pounds or tons of residential waste generated, collected and disposed of in the service area in each [12 month] **12-month** period for the last three years;

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4. If any commercial waste will be collected under the contract, the amount by weight in pounds or tons of commercial waste generated, collected and disposed of in the service area in each [12 month] **12-month** period for the last three years;

5. If any institutional waste will be collected under the contract, the amount by weight in pounds or tons of institutional waste generated, collected and disposed of in the service area in each [12 month] **12-month** period for the last three years;

6. The amount by weight in pounds or tons and waste type of any other type of waste to be collected under the contract in each [12 month] **12-month** period for the last three years; and

7. (No change.)

7:26H-6.13 Conditions for curbside and rear yard collection

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

(g) The contracting unit shall notify all customers within the service area(s) of the conditions in through (f) above and the consequences for failing to comply with those conditions. If the contractor is unable to [pick-up] **pick up** waste in accordance with the collection schedule due to customer violation of any of the conditions in (a) through (f) above, the contracting unit shall not hold the contractor responsible. The contractor shall make the [pick-up] **pickup** as soon as possible once the problem that prevented [pick-up] **pickup** is rectified.

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SUBCHAPTER 8. PRIVATELY-OWNED SANITARY LANDFILLS

7:26H-8.4 Annual Fee

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

(c) Each privately-owned sanitary landfill facility shall remit payment for any annual fee assessed by the Department pursuant to (b) above as follows:

1. (No change.)

2. Checks shall be made payable to “Treasurer, State of New Jersey” and mailed to the following address:

New Jersey Department of Environmental Protection

[Bureau of Solid and Hazardous Waste Regulation] **Division of Sustainable Waste**

Management

P.O. Box [422] **420**

Trenton, New Jersey 08625

(d) (No change.)