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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM

COMPLIANCE AND ENFORCEMENT

DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT

Recycling Rules; Solid Waste Management Rules

Readoption with Amendments: N.J.A.C. 7:26A

Adopted Amendments: N.J.A.C. 7:26-1.4 and 5.4

Adopted Recodification: N.J.A.C. 7:26A-4.3 as N.J.A.C. 7:26A-1.7

Adopted New Rules: N.J.A.C. 7:26A-1.7, 8.3, 8.4, 9, 10, 11, and 12

Proposed: January 7. 2008 at 40 N.J.R. 7(a)

Adopted: _________________, 2009 by Mark N. Mauriello, Acting Commissioner, Department of Environmental Protection

Filed: ______________, 2009 as R.2009 d. ____ with **substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1E-9, 13:1D-125 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11 and 58:10A-1 et seq.

DEP Docket Number: 28-07-11/588

Effective Date: ___________________, 2009.

Operative Date: ___________________, 2009.

Expiration Date: ____________________

The Department of Environmental Protection (Department) hereby readopts with amendments and new rules the Recycling Rules, N.J.A.C. 7:26A. The Recycling Rules regulate the operation of recycling centers in New Jersey. The adopted amendments revise references to "mercury containing devices" and "thermostats" to make the Recycling Rules consistent with the Federal Universal Waste Rules, incorporated in the Recycling Rules by reference; exclude from the Recycling Rules or otherwise exempt from the requirement to obtain as Class C recycling center general approval certain composting activities (including those activities that occur on farms) and the receipt and storage of architectural salvage items at a commercial enterprise; include a fee schedule for recycling centers that process multiple classes of materials; combine the requirements for recycling of yard trimmings with the requirements for recycling Class C recyclable materials, since yard trimmings are a subset of Class C recyclable material; clarify the standards for the management of used oil, and allow the repackaging of Class D oil-based finishes by large quantity handlers of universal wastes as long as this repackaging is conducted as provided in the rule; and exempt certain shipments from the transporter registration requirements, while strengthening the requirements governing vehicle maintenance.

The Department is also recodifying those portions of the penalty provisions of the Solid Waste Rules that pertain to the Recycling Rules to a new subchapter in the Recycling rules. It is also adopting a new subchapter codifying standards for generators of source separated recyclable materials, a new subchapter codifying the requirements pertaining to municipal governing bodies and other entities that are involved in municipal recycling, and a new subchapter codifying recycling standards that must be followed by the State's twenty two solid waste management districts (21 counties and the New Jersey Meadowlands Commission, which manages the Hackensack Meadowlands District).

In consideration of comments received, the Department has determined to not adopt the proposed amendments concerning "clean fill" and the definition of "uncontaminated" while it continues to review the issues raised by commenters. See the response to comments 103 to 116, below.

The Department published the proposed amendments in the New Jersey Register on January 7, 2008. The comment period closed on March 7, 2008.

Summary of Hearing Officer Recommendations and Agency Response:

A public hearing was held on February 4, 2008 in the Public Hearing Room at the Department's Trenton headquarters, to which approximately eight people attended, none of whom testified. Frank Coolick, former Administrator, Solid and Hazardous Waste Management Program, served as the hearing officer. After receiving no testimony at the public hearing, former Administrator Coolick recommended that the Department adopt the rules as proposed with the changes described in the Summary of Public Comments and Agency Responses below. A record of the public hearing is available in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attn.: DEP Docket No. 28-07-11/588
401 East State Street, P.O. Box 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The following is a list of the commenters, with their affiliations, if any, who made timely written comments on the proposal:

1. John R. Baron, Cape May County Municipal Utilities Authority
2. Robert Briant, Jr., Utility and Transportation Contractors Association of New Jersey

3. Susan E. Craft, Department of Agriculture
4. Dominick D'Altilio, Association of New Jersey Recyclers
5. David K. Dech, Warren County Planning Department
6. Richard J. Hills, County of Middlesex, Department of Planning, Division of Solid Waste Management
7. Kathleen Hourihan, Morris County Municipal Utilities Authority
8. Ernest Kuhlwein, Jr., Ocean County Solid Waste Management
9. William F. Layton, New Jersey Concrete and Aggregate Association
10. Dominick J. Mazza, Mazza & Sons, Inc.
11. Donald M. McCloskey, PSE&G
12. Valerie Montecalvo, Bayshore Recycling Corp.
13. Donato Nieman, Township of Montgomery
14. Mark Quiring, Gerdau Ameristeel
15. Anthony Russo, Chemistry Council of New Jersey
16. William Simmons, Monmouth County Health Department
17. John F. Spinello, Jr., K&L Gates, on behalf of Tilcon New York, Inc.
18. Edward Wengrowski, The Pinelands Commission
19. Buffy Wilson, Conocophillips
20. Audrey Winzinger, Robert T. Winzinger Inc.

The timely submitted comments and the Department's responses follow. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General Comments

1. COMMENT: The commenter supports the control of recycling centers by the State rather than by local entities. This prevents a "not in my backyard" mentality in citing recycling operations. (20)

2. COMMENT: These newly proposed recycling rules will provide a clear and logical means to enforce the provisions of New Jersey's recycling laws. The addition of generator, municipal and county requirements will certainly go a long way towards reminding the public that recycling is not an option, it is the law. Making these mandates regulatory requirements will allow counties to have the ability to implement an enforcement program in an effective manner. This is one of the better regulatory proposals that we have ever reviewed. (8)

3. COMMENT: The Department mentions that it finds that the general public supports recycling, but is unsure how it should be achieved. We agree with this statement and, frequently see a public outcry that a recycling center not be located in "their back yard." However, when those same people are asked about their support of recycling they applaud the concept. It is because of this very situation that long ago the Department took the approval, regulation and monitoring of recycling centers out of the local domain. The Department created a system where public comment (to the Department) is requested and encouraged. Under that system, the Department takes the lead in addressing the substantive concerns as they do their technical review. We embrace keeping that format, especially since a municipality that would undertake the application review process would have to bear the burden of hiring and paying for the professionals to review the technical application. The professionals such as licensed planners, attorneys and engineers would all perform their review at the municipality's cost. (4, 20)

RESPONSE to COMMENTS 1 THROUGH 3: The Department appreciates the commenters' support of the Recycling Rules and this rulemaking initiative. Note, however, that the new subchapters relate to compliance with the requirements of N.J.S.A. 13:1E-99.11, and do not go to the issue of state preemption over local zoning/planning regulations. Accordingly, these new rules will not provide any new state preemption safeguards. Those "safeguards" have been in place since the first recycling center approval regulations were adopted in 1991.

4. COMMENT: The commenter supports the Department's proposal to remove ambiguity from the universal waste rule by changing the term "mercury containing devices" to "mercury-containing equipment," and deleting the word "thermostat," which is now covered in the broad category of "mercury-containing equipment." However, the Department should also acknowledge that facilities may elect to collect and recycle mercury containing equipment as fully regulated D009 mercury hazardous waste subject to 40 CFR 260 through 268. Part 268 - Land Disposal Restrictions treatment standards for D009 hazardous wastes, is a technology standard requiring recycling of mercury. Use of 40 CFR 273 is not mandatory when compliance under 40 CFR 260-268 is elected by a facility. (15)

RESPONSE: The Department acknowledges that mercury-containing equipment, which is hazardous waste, may be handled either as fully regulated hazardous waste or as universal waste. This is clearly stated in the current rules at N.J.A.C. 7:26A-7.1(e).

5. COMMENT: The fact that the Department retained language at N.J.A.C. 7:26A-1.4(b)2, N.J.A.C. 7:26A-3.2(a)9.iv, N.J.A.C. 7:26A-3.18(a)9, and N.J.A.C. 7:26A-4.1(a)1.iii.9 that specifically recognizes the authority of the Pinelands Commission to regulate recycling operations within the Pinelands Area is supported. However, it is noted that the existing rules refer to the "Pinelands" in a variety of ways; as "the Pinelands" at N.J.A.C. 7:26A-1.4(b)2, as the "New Jersey Pinelands" at N.J.A.C. 7:26A-3.2(a)9.iv, as the "Pinelands area" at N.J.A.C. 7:26A-3.18(a)9, and as the "Pinelands Protection Area" at N.J.A.C. 7:26A-4.1(a)1.iii.9. The existing rule language should be amended to uniformly refer to the "Pinelands Area" in each of these rule sections. (18)

RESPONSE: The Department agrees with the need to consistently refer to the Pinelands Area and has modified N.J.A.C. 7:26A-1.4(b)2 to add "Area" after "Pinelands," N.J.A.C. 7:26A-3.2(a)9iv to delete "New Jersey Pinelands and add "Pinelands Areas," N.J.A.C. 7:26A-3.18(a)9 to capitalize "Area," and N.J.A.C. 7:26A-4.1(a)9 to delete "Protection."

Impact Statements

6. COMMENT: The commenter was disappointed to find no language in the impact statements or the summary that mentioned the proposal's likelihood of increasing the recycling rate in New Jersey. The likelihood of increasing the rate that trash is recycled should have been discussed in the impact statements as a positive impact. (4)

7. COMMENT: The commenter agrees that the proposed readoption with amendments of N.J.A.C. 7:26A does successfully reflect current recycling technologies and increases administrative flexibility. In many aspects, the proposal also ensures consistency, although not as it applies to the Department's apparent departure from its policy of bundling local concerns

into the ultimate permit approval language. We were disappointed to find no language throughout the impact statements or the text that mentioned the proposal's likelihood of increasing the recycling rate in New Jersey. Increasing the recycling rate is of the utmost importance to us. (20)

RESPONSE to COMMENTS 6 and 7: The Department agrees that the readoption of the Recycling Rules will aid the State in achieving its goal of 60 percent diversion of the total waste stream and 50 percent diversion of the municipal solid waste stream to recycling within the next five years. Additionally, on January 13, 2008, the Recycling Enhancement Act, N.J.S.A. 13:1E-96.2, et seq., was enacted to provide financial support for municipal and county recycling programs. Under this new statute, as of April 1, 2008, owners or operators of solid waste facilities (with certain enumerated exceptions) are required to pay a recycling tax of $3.00 per ton on all solid waste accepted for disposal or transfer at the solid waste facility. The revenues generated are to be distributed by the Department in the form of grants to municipalities to enhance their recycling programs. The Department hopes to encourage greater levels of recycling by providing generators with rules that specify their responsibilities under the Act and municipal ordinances, and by providing municipalities and counties with minimum standards for the adoption of ordinances, record keeping and other elements of local recycling efforts.

8. COMMENT: In the impact statements, the Department noted that the recycling industry in New Jersey employs approximately 27,000 people; however, those data are outdated and the numbers are now much larger. The commenter also disagrees with the Department's statement that the proposed rules will encourage the development of new facilities for the recycling of solid waste to meet the established goals, which could result in new employment opportunities. Class B recycling accounts for an enormous amount of recycled tons in New Jersey, and this proposal, with its proposed new "clean fill" and "uncontaminated" provisions, may in fact severely decrease the recycling in New Jersey. (4, 20)

RESPONSE: The Department agrees that the estimate of the number of people employed in recycling in New Jersey is outdated; the Department based its estimates on a joint study by the

United States Environmental Protection Agency and the North East Recycling Council, completed in 2000. The Department lacks the means to update the estimate. However, anecdotally, the Department is aware that while jobs in paper recycling may have been lost, jobs in Class B facilities have probably increased, and overall numbers have probably risen. Note that, as mentioned above, the Department has determined not to adopt the proposed amendments concerning clean fill.

Architectural Salvage Items

9. COMMENT: The Department's proposal to exclude architectural salvage items from the definition of a solid waste is strongly supported. The description includes any component removed from a building that is scheduled for or is undergoing demolition or renovation for the purpose of reinstallation in any building. The Department should consider expanding the definition beyond "the purpose of reinstallation in any building" to also include "or sale of architectural salvageable items into the marketplace." (15)

10. COMMENT: The definition of architectural salvage items should specify that the items may be removed, not only for reinstallation, but for sale as well, and should clarify whether the person receiving and storing architectural salvage items needs to be the person selling or refurbishing the items, and whether the items, which may be large, may be stored outside, given the possible existence of local ordinances to the contrary. Additionally, the definition of architectural salvage items should apply to outdoor elements such as trim, as well as indoor items, through the addition of the phrase "or on." (4, 15, 20)

11. COMMENT: The Department should expand the definition of architectural salvage items to include items such as decorative outside trim and decorative fascia stone by adding the word "on" the building instead of just "in" the building. We suggest that the definition for architectural salvage item be slightly modified to read, "… any component removed from a building that is scheduled for or is undergoing demolition or renovation for the purpose of reinstallation in or on any building. Architectural salvage items are not solid waste." (4)

12. COMMENT: The commenter supports the exemption at N.J.A.C. 7:26A-1.4(a)24 of the receipt and storage of architectural salvage items at a commercial enterprise but recommends that the parameters of this exemption be more thoroughly explained. For instance, does the commercial enterprise have to be in the business of selling or rehabilitating the architectural salvage pieces? Can the storage be outside (and considering the size of these pieces it would often have to be outside) with the Department's exemption pre-empting local outside storage laws? (4)

RESPONSE to COMMENTS 9 through 12: The Department intends that those materials such as wooden trim and roof slates which are installed on the outside of buildings should fall under the definition of architectural salvage items. The Department recognizes that some architectural salvage items may be kept as freestanding novelties rather than being reattached to a building, and that too is permissible. The person storing the items need not be the salvager, or the contractor who reinstalls, or the person selling the items. Architectural salvage items are excluded from the definition of solid waste; accordingly, they are not regulated by the Department. Therefore, items that meet the definition of architectural salvage items may be stored just as any other goods might be stored, but that storage must be consistent with local zoning ordinances. Architectural salvage handlers would be subject to local planning and zoning ordinances as are hardware store managers and nurseries and other purveyors of large outdoor items. The Department agrees that the definition of "architectural salvage item" could be clarified by adding "or on" and is amending the definition to include "or on" upon adoption.

Beneficial Use

13. COMMENT: The Department should consider establishing a new category, "Class E Recyclable Material," for those materials approved for beneficial use pursuant to the Solid Waste rules at N.J.A.C. 7:26-1.7(g). These materials are generally homogeneous in nature, source separated at the point of generation, and are used as a product. The Department already provides recycling tonnage grant monies to several municipalities who report beneficially reused materials

on their annual tonnage grant reports, and accounting for these materials under a separate category would increase (and more accurately reflect) the State's annual recycling percentage. (11)

RESPONSE: The Department does not believe a new class of recyclable material is needed or appropriate for beneficial use materials at this time. This is because beneficially used or reused materials constitute a unique regulatory category that is neither defined as solid waste nor as recyclable materials. Therefore, an additional category of recyclable materials/facility is not warranted. Moreover, beneficial use approvals are typically conditioned upon environmentally safe and responsible transportation and use, while recyclable materials are considered appropriate for use as products.

14. COMMENT: If a generator demonstrates programmatic recycling or beneficial use of a material deposited on the lands of the State, regardless of the six month time period prescribed at N.J.A.C. 7:26A-1.1(d), this material should not be regulated as solid waste. This is consistent with EPA's universal waste regulations (40 CFR 273), as well as historical Certificates of Authority to Operate (CAOs) issued by the Department with time limits of up to two years. The Department should amend N.J.A.C. 7:26A-1.1(d)) to read as follows:

"(d) Unprocessed recyclable materials, post-consumer materials, and used or abandoned materials that are or will be deposited on or in the lands of the State for any period exceeding six months, including by stockpiling, staging or storing, are solid waste that shall be managed in accordance with the Solid Waste rules, N.J.A.C. 7:26, unless:

1. - 4. (No Change.)

5. The material is a product that has been produced by an approved or exempt recycling facility; [or]

6. The material is approved for beneficial use [as clean fill] under N.J.A.C. 7:26-1.7(g)[.]**;**

7. The generator demonstrates a history of recycling or beneficial use for the material; or

8. Such activity is solely for the purpose of accumulation of such quantities as necessary to facilitate proper recycling or beneficial use. However, the generator bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of the material as necessary to facilitate proper recycling or beneficial use." (11)

RESPONSE: The Department recognizes that some facilities must store materials for periods longer than 6 months. In such instances, the facility must operate in accordance with the conditions for site operations per N.J.A.C. 7:26A or an approval issued under the Solid Waste rules, N.J.A.C. 7:26, such as a Certificate of Authority to Operate Beneficial Use Project per N.J.A.C. 7:26-1.7(g). Certificates of Authority to Operate Beneficial Use Projects are granted pursuant to N.J.A.C. 7:26-1.7(g) for periods longer than 2 years when appropriate. When considering the duration of a beneficial use period, the Department evaluates variables such as the length of time required to use the material and the environmental impact of such storage activities. The Department agrees that N.J.A.C. 7:26A-1.1(d)6 might be clearer if it were amended as suggested by the commenter, because N.J.A.C. 7:26-1.7(g) concerns beneficial use approvals for a variety of materials, and is not limited to only materials approved for beneficial use as clean fill. As proposed, N.J.A.C. 7:26A-1.1(d)6 is limited to materials approved for beneficial use under N.J.A.C. 7:26-1.7(g) as clean fill. Note that on adoption, the Department is deleting "as clean fill" such that this provision will apply to all materials that are approved for use under N.J.A.C. 7:26-1.7(g).

The Department declines to amend the rules to incorporate the commenter's proposed amendments to N.J.A.C. 7:26A-1.1(d)7 and 8. In the past, many wastes produced by industries have been stockpiled at the generation sites, resulting in the creation of unauthorized landfills.

One of the goals of the instant rulemaking is to prevent unauthorized storage and dumping that could result in the creation of unauthorized landfills.

Also, generators may make a claim pursuant to the Solid Waste rules at N.J.A.C. 7:26-1.1(a) that a material qualifies as a raw material used to produce a product or is itself a product that poses no threat to the environment. If such a claim is approved by the Department, the material is exempt from regulation pursuant to N.J.A.C. 7:26-1.1(a). Accordingly, the commenter's proposed amendments to N.J.A.C. 7:26A-1.1(d)8, whereby the generator would bear the burden of proving that such activity is solely for the purpose of accumulation of such quantities of the material as necessary to facilitate proper recycling, sale of the material for use as a product or beneficial use, would be redundant.

If a generator needs to accumulate solid waste not considered exempt from solid waste regulation for periods longer than 6 months, the generator will need to obtain approval to store the material. For example, storage of solid waste destined for potential recycling or reuse could be approved through a Class B General Approval for storage and transfer of the material if existing end markets are identified for the material as required by N.J.A.C. 7:26A. The Department notes that these are not new requirements; rather, the Department is clarifying in this readoption that solid waste accumulation must be only in accordance with the appropriate permitting and approval requirements specified at N.J.A.C. 7:26 and N.J.A.C. 7:26A. Note that N.J.A.C. 7:26A-1.1(d)6 excepts management of unprocessed recyclable materials, post-consumer materials and used or abandoned materials from the six month stockpiling limitation if " . . .the Department authorizes, in writing, a time period longer than six months . . . ."

15. COMMENT: Proposed new N.J.A.C. 7:26A-1.1(d) should include one additional exemption at N.J.A.C. 7:26A-1.1(d)7. The additional exemption should read as follows:

"7. The material has received, or is in the process of receiving, a beneficial use determination ("BUD") from the Department." (14)

RESPONSE: Materials that have received a beneficial use determination, where that determination allows storage for a period in excess of six months, are excepted from the six month storage limit pursuant to N.J.A.C. 7:26A-1.1(d)6 as amended on adoption. The Department disagrees that materials that are in the process of receiving a BUD determination should also be excepted from the six month time limit because, until the environmental impacts of the storage of such materials are reviewed by the Department, it is not possible to make a determination that these materials are not solid waste.

Storage

16. COMMENT: As currently drafted, the proposed rule indicates that certain materials that are stored, stockpiled or staged for a period of longer than six months are solid wastes and must be managed in accordance with the Solid Waste Rules. Although we agree with the overall intent of the Department, we strongly believe that this is far too broad and may be easily misconstrued to include storing, stockpiling and staging of raw materials for steel manufacturing, intermediate steel manufacturing by-products that are ultimately recycled as part of a multi-stage steel manufacturing process, and/or steel manufacturing by-products that are sold to third parties for use as raw materials in other manufacturing processes. Storage of such materials for longer than six months is not currently subject to written approval from the Department and it should not be subject to future requirements for approval when, in fact, there has been no abandonment or intent to discard the materials. (14)

17. COMMENT: If manufacturers are not permitted to store shredded automobiles, scrap metal, used appliances, boiler parts, pipes, “ladle skulls” or “B-Scrap,” all of which are used as raw materials in the manufacture of steel billets, on site for greater than six months without the materials being subject to regulation as solid waste, they will suffer undue economic hardship because these manufacturers will be subject to a Constitutionally impermissible taking of property (raw materials) without compensation. Moreover, the environment will suffer undue harm because shredded automobiles, scrap metal, used appliances, boilers parts, and pipes that could otherwise be recycled as steel billets will be required to be disposed in landfills. (14)

18. COMMENT: Although we are in agreement with the overall intent of the Department, we feel the scope of the proposal is far too sweeping and may be easily misconstrued to include storing, stockpiling and staging of critical process equipment as solid wastes, if not used or reused within 6 months. Valuable vessels, reactors, heat exchangers, replacement parts, expensive metal alloys, motors, pumps, electrical equipment, both new and used, may need to be kept for an indefinite period of time. Specially coated new or used piping and ancillary fittings for underground utility line replacement may reside in equipment lay down areas for an extended period of time, awaiting the next emergency or planned underground utility repair. Spare parts, new and used, for fire main repairs may be staged in a lay-down yard for years, along with essential steam line maintenance piping, plant air and nitrogen system lines and parts, and new and used railroad ties plates and switches. Concrete barricades that are used in support of site security efforts may reside in staging areas until needed. Such storage is not currently, and should not be in the future, subject to Departmental authorizations in writing to store essential used equipment longer than six months, or to automatically become subject to State solid waste regulations when there has been no abandonment or intent to discard.

Once the materials are no longer needed, the owner becomes the "generator" of a recyclable material or a solid waste, at which time the six month period set forth in amended N.J.A.C. 7:26A-1.1(d) and/or the solid waste regulations are applied. The inclusion of terms such as "used materials" in the phrase "... used or abandoned materials that are or will be deposited on or in the lands of the State for any period exceeding six months, including by stockpiling, staging or storing, are solid wastes that shall be managed in accordance with the Solid Waste rules ..." seemingly brings into regulation virtually any material that has been used in any manner, and is stored for further use. The Department needs to balance its desire to capture materials that are abandoned or clearly intended for recycling and remain unprocessed for long periods of time with the ongoing operational needs of a facility to often store both new and used materials for longer than six months. We do not believe "used" equipment should be subject to any six month limitations unless clearly abandoned or discarded. The manner in which the rule is written equates "use" with "abandonment" by way of a six month time limit, the point

at which the Department asserts "used" materials become abandoned. The rule reflects no cost estimates of the burden that will be imposed upon facilities seeking authorization, by way of a letter or other lengthy approval mechanism, to store general plant equipment, neither abandoned nor discarded, for more than six months. The rule also runs counter to the resource conservation intent of RCRA, whereby facilities discard useful materials within six months due to enforcement concerns.

The Department also sets up a potential over breadth of regulation wherein the phrase "... are or will be deposited on or in the lands of the State for any period exceeding six months" is seemingly limited to storage, staging or stockpiling on land. There is a high likelihood that this will be misconstrued by inspectors to include used and unused equipment stored in warehouses and buildings at a facility. We do not want a misunderstanding whereby an inspector enters an equipment warehouse and arbitrarily suggests that all used equipment present for more than six months is a solid waste.

The commenter strongly urges the Department to remove this language from the rule to avoid unnecessary penalties and violations. (15, 19)

19. COMMENT: There is a decided lack of defined terms in the rule. While it is true that the term “recyclable materials” is defined in the existing Recycling Rules at N.J.A.C. 7:26A-1.3, the terms “unprocessed recyclable materials,” “post-consumer materials,” and “used or abandoned materials” are not defined in either the existing Recycling Rules or the proposed rules. We believe this has been unintentionally stretched too far and the terms “unprocessed recyclable materials,” “post-consumer materials,” and “used or abandoned materials” must be defined in such a manner that permits manufacturers to qualify for the exemptions at N.J.A.C. 7:26A-1.1(d)1 and N.J.A.C. 7:26A-1.4(a)1. (14)

20. COMMENT: The lack of defined terms within proposed N.J.A.C. 7:26A-1.1(d) presents another concern that relates to the production of intermediate steel manufacturing by-products that are ultimately recycled as part of a multi-stage steel manufacturing process. Do “ladle

skulls" or "B-Scrap" (intermediate steel manufacturing by-products that are ultimately recycled as part of a multi-stage steel manufacturing process) qualify as either "unprocessed recyclable materials," "post-consumer materials," or "used or abandoned materials" that fit within the meaning of the similarly undefined category of "source separated recyclable materials," such that some manufacturers can qualify for the exemptions at N.J.A.C. 7:26A-1.1(d)1 and N.J.A.C. 7:26A-1.4(a)1 and be afforded relief from the requirement to obtain a general or limited approval from the Department to store such raw materials on site for greater than six months? (14)

21. COMMENT: Will steel slag, mill scale, or non-ferrous metal that is reclaimed from automobile or appliance shredder residue (a/k/a "fluff"), which is associated with the production of steel billets and later sold to third parties for use as raw materials in other manufacturing processes, be classified as "unprocessed recyclable material" or "used material" that is subject to the six month storage requirement of proposed N.J.A.C. 7:26A-1.1(d)? If the answer to this question is "yes," the scope of proposed N.J.A.C. 7:26A-1.1(d) has been unintentionally stretched too far and the terms "unprocessed recyclable materials" and "used or abandoned materials" must be defined in such a manner that permits some manufacturers to store unfinished commercial goods (third party raw materials) on site for greater than six months without being subject to the requirements of Proposed N.J.A.C. 7:26A-1.1(d). (14)

RESPONSE to COMMENTS 16 through 21: The Department does not intend to regulate raw materials for steel manufacturing, or other industrial processes. By-products are defined as solid waste at N.J.A.C. 7:26-1.6 and therefore are already regulated as solid waste. The Department intends to closely scrutinize stockpiled materials and wastes to determine whether those materials are being or are capable of being used. By-products that are actually used in the manufacture of a product are considered exempt from regulation as solid waste per N.J.A.C. 7:26-1.1(a)1. Materials or wastes other than the raw materials identified by the commenters including "ladle skulls," "B-scrap," steel slag, mill scale and non-ferrous metal reclaimed from auto or appliance shredder residue, that is stored longer than 6 months are subject to Departmental evaluation as to whether they are solid waste. N.J.A.C. 7:26-1.13 sets forth the

mechanism for determining if abandonment or intent to discard materials has occurred. Under that rule provision, the generator of the material bears the burden of proving that the activity of storing material is solely for the purpose of accumulation of such quantities of the material as is necessary to facilitate use, recycling or beneficial use in accordance with the solid waste regulatory requirements. In the example provided by the commenter, if by-products such as "ladle skulls" and "B-Scrap" are routinely used in manufacturing process, then those materials are not considered solid waste. However, if those materials are rarely used in manufacturing, are accumulated with no real use, or are accumulated speculatively, such as while waiting for higher market prices for the material, then the materials are solid waste that are subject to regulation per the requirements at N.J.A.C. 7:26 and 26A.

22. COMMENT: The commenter notes that the existing definition of Class C recyclable material at N.J.A.C. 7:26A-1.3 includes source separated biodegradable plastic and the proposed amendments to the Class C recyclables definition would add biodegradable paper bags containing yard trimmings, biomass and lakeweed generated form cleaning of aquatic flora from freshwater lakes. The Pinelands Commission commends the Department for broadening the list of recyclable materials that qualify for the Class C recyclable materials category and wishes to note the Commission's intention to amend the CMP definition of vegetative waste accordingly. (18)

RESPONSE: The Department appreciates the commenter's support for the expanded definition of Class C recyclable material.

23. COMMENT: The definition of "total municipal solid waste stream" should be amended as follows: "Total municipal solid waste stream" means "the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus total number of tons of municipal

solid waste recycled" to clarify that the total recycled tonnage includes only municipal waste. (4, 7)

RESPONSE: The Department agrees that the suggested amendment clarifies that the recycling tonnage that should be used in the calculation of total municipal solid waste should include only those materials diverted from the municipal solid waste stream, and not, for example, industrial waste. Industrial solid waste should only be counted in the calculation of the "total solid waste stream." Accordingly, the Department has modified the definition on adoption by adding "of material separated from municipal solid waste and" before the word "recycled" in this definition.

Storage in the Pinelands

24. COMMENT: Proposed N.J.A.C. 7:26A-1.1(d) would require that unprocessed recyclable materials, post consumer materials, and used or abandoned materials that are stored, stockpiled or staged for a period longer than six months be classified as solid waste, and managed pursuant to the Solid Waste Rules (N.J.A.C. 7:26) unless: (1) the storage activity is exempt from the requirement to obtain a general or limited approval, and the materials are managed in accordance with N.JA.C. 7:26A-1.4(b); (2) a general or limited approval to operate specifies a period that is longer than six months; (3) a specific storage time limit is set forth in a limited or general approval; (4) the Department has authorized, in writing, a time period longer than six months; (5) the material is a product that has been produced by an approved or exempt recycling facility; or (6) the material is approved for use as clean fill.

The Pinelands Comprehensive Management Plan (CMP) establishes three different maximum time periods for the storage of waste or recyclable material accepted at a facility depending on the type of material involved. The general maximum allowable storage period is 12 months pursuant to N.J.A.C. 7:50-6.74(a)3, except that petroleum wastes and household hazardous wastes may be stored at collection and transfer facilities for no more than six months (N.J.A.C. 7:50-6.76(b) & (c)) and post consumer electronics may be stored at the Fort Dix consumer electronics recycling center for no more than three months (N.J.A.C. 7:50-10.29(a)6).

The Department should amend the rule proposal to reflect the maximum storage standards specified in the CMP. Lastly, N.J.A.C. 7:50-6.76(e) permits the use of containers or the development of waste facilities intended solely for the collection and storage of waste generated from the lawful use of a parcel on which the containers or waste facilities are located. However, the rule further provides that no waste shall be stored in these instances for more than six months. Accordingly, the Department's rule proposal should clarify that a six month time limitation applies to the onsite storage of these waste materials on the parcel on which the materials were generated pursuant to N.J.A.C. 7:50-6.76(e). (18)

RESPONSE: The Department acknowledges that the Pinelands Comprehensive Management Plan rules currently establish three different maximum time periods for storage of recyclable materials. It also notes that these rules are subject to periodic review and potential revision; accordingly, it would not be appropriate for the Department to amend its rules to incorporate the Plan rules' time limits into the Department's rules because the Department would then be obliged to revise its rules whenever the Plan rules changed.

However, as the commenter points out, N.J.A.C. 7:26A-1.1(d) requires that unprocessed recyclable materials, post consumer materials, and used or abandoned materials that are stored, stockpiled or staged for a period longer than six months be classified as solid waste, and managed pursuant to the Solid Waste Rules (N.J.A.C. 7:26) unless the Department has authorized, in writing, a time period longer than six months. Where a recycler wishes to establish a facility within the Pinelands, he/she may avail itself of the exception to the storage time limitation set forth at N.J.A.C. 7:26A-1.1(d) by seeking Departmental approval in writing. The Department does not anticipate denying a request for an exemption if that request is based on the provisions of the Pinelands Comprehensive Management Plan rules and the recycler abides by the time limits set forth in those rules.

Farm-related amendments

25. COMMENT: The list of feedstocks at N.J.A.C. 7:26A-1.1(e)2 and 1.4(a)23 should be amended to also include other common farm-based "vegetative wastes." Farmers often include crop and other plant residues in their compost mixes. This is recognized in the Natural Resource, Agriculture, and Engineering Service's "Field Guide to On-Farm Composting," NRAES-114, which is incorporated by reference in the State Agriculture Development Committee's (SADC's) promulgated "Agricultural Management Practice (AMP) for On-Farm Compost Operations on Commercial Farms," N.J.A.C. 2:76-2A.8. (Chapter 2, Raw Materials and Recipe Making.)

N.J.A.C. 7:26A-1.1(e)2 and 1.4(a)23 recognize the use of vegetative waste in the compost mix by including leaves, cornstalks, hay, and silage in the list of acceptable site-generated feedstocks. However, the wording in these paragraphs limit the feedstock list, in terms of the vegetative items allowed, to "only" these specific items. Amending the list to include other, typical "vegetative wastes" is necessary to prevent this feedstock list from being unduly limiting.

The phrase "vegetative waste" is already defined in the Solid Waste Rules at N.J.A.C. 7:26-2.13(g)1.v. For reference, this definition is, "waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes." (3)

RESPONSE: The Department acknowledges that the Solid Waste rules at N.J.A.C. 7:26-2.13(g)1.v define vegetative waste as "waste materials from farms, plant nurseries, and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes." The Department also acknowledges that the list of wastes that may be composted on a farm under both N.J.A.C. 7:26A-1.1(e)2 and 1.4(a)23 overlaps considerably with this definition, with the notable exception of grass clippings, which are separately regulated as Class C materials.

Accordingly, to ensure consistency between the Recycling Rules and the Solid Waste rules as they apply to the handling of vegetative waste composting, the Department is modifying N.J.A.C. 7:26A-1.1(e)2 and 1.4(a)23 on adoption to add the phrase "other feedstocks, except grass clippings, that meet the definition of vegetative waste as set forth at N.J.A.C. 7:26-2.13(g)1v."

26. COMMENT: The list of permitted composting methods at N.J.A.C. 7:26A-1.1(e)4 and 1.4(a)23v should be amended to include high as well as low level technology. If farmers have the equipment or expertise to compost at a greater technology level, they should not be excluded from meeting the requirements of this section. (3)

RESPONSE: The Department acknowledges that to limit the technology that can be used in farm composting to only low level technology defeats the purpose of the proposed amendment. The purpose of the proposed amendment was to ensure that minimal technology NOT be used in composting; the purpose was not to limit the technology to ONLY low level technology. The four windrow composting methods are set forth in the Recycling Rules at N.J.A.C. 7:26A-4.5(a)7vi, to which the Department cross referenced on proposal. These methods include minimal technology methods, low level technology methods, intermediate technology methods, and high level technology methods. As demonstrated in the following table, the higher the level of technology, the more sophisticated and efficient the composting effort becomes, and the more protective the composting method is of the environment.

Level of Technology

Regulatory Requirement	Minimal	Low	Intermediate	High
Turning Equipment	N/A	N/A	Turning machinery, temperature and oxygen monitors	Forced aeration or mechanical agitation
Length of compost cycle	3 years	12 – 18 months	12 months	3 – 6 months
Minimum number of times	3	3 (at 2 months,	Once a week for 1st month,	N/A

windrows must be turned during compost cycle		4-6 months and 10 months)	and as deemed necessary based on oxygen and temp monitoring to keep temp $\leq$ 140° and O_2 at $\geq$ 5%	
Windrow location	Outdoors	Outdoors	Outdoors	Within enclosed facility with air flow controlled venting
Maximum height of new and turned windrows	12 feet	6 feet	Height corresponds to specific windrow turning equipment used.	N/A
Maximum windrow base width	24 feet	14 feet	Width corresponds to specific windrow turning equipment used.	N/A
Minimum separation between windrows	16 feet from pile base	16 feet from pile base	Distance corresponds to specific windrow turning equipment used.	N/A

When the Department proposed at N.J.A.C. 7:26A-1.1(e)4 and 1.4(a)23v that low level technology be used for on-farm composting, it was with the intention of specifying *at least* low level technology; that is, minimal technology could not be used. However, if a farmer has composting machinery or has invested in an enclosed composting facility that uses forced aeration or mechanical agitation, that farmer should not be prevented from using these more

advanced technologies, since they greatly speed up the composting process and have less of an impact on the environment. Accordingly, the Department is amending both N.J.A.C. 7:26A-1.1(e)4 and 1.4(a)23v to read that the composing method shall be *at least* low level technology as set forth in the cross-referenced provisions of N.J.A.C. 7:26A-4.5(a)7vi.

27. COMMENT: The Department should use the definition of a farm used in the Farmland Assessment Act of 1964. The Farmland Assessment Act further qualifies land for farmland assessment purposes. While the minimum income level under the Farmland Assessment Act is $500, the minimum size of the parcel required to eligible for farmland assessment is five acres. The current proposed definition has no minimum size. (5)

RESPONSE: New N.J.A.C. 7:26A-1.1(e) excludes from the Recycling Rules compositing certain site-generated farm feedstocks if the composting is performed at a "farm," as that term is defined in the rules. The Department did not choose to codify the definition of "farm" promulgated in the Farmland Assessment Act of 1964 because it believes that including an acreage limitation such as the 5 acres that this included in the Farmland Assessment Act's definition of farm would be too restrictive. Instead, in consultation with the Department of Agriculture, the Department chose to base the definition of "farm" on the income produced, and set that income at a minimum of $1,000, based on the United States Department of Agriculture definition of farm that has been in use since 1974. In that definition, a "farm" is "any place where $1,000 or more of agricultural products were produced and sold, or normally would have been sold."

28. COMMENT: The Department should change the buffer distance codified at N.J.A.C. 7:26A-1.4(a)23 from 200 to 50 feet. This distance of 50 feet (between composting activities and the property line) is consistent with the recommendations found in the "Field Guide to On-Farm Composting," NRAES-114, which is incorporated by reference in the State Agriculture Development Committee's (SADC) Agricultural Management Practice (AMP) For On-Farm Composting, N.J.A.C. 2:76-2A.8. (Ch. 4, Site Considerations, Environmental Management, and

Safety.) This distance is also consistent with the recommendations found in the SADC's proposed AMP for Equine Activities on Commercial Farms, N.J.A.C. 2:76-2A.10. (3)

RESPONSE: As indicated in the Agricultural Impact Statement in the proposal, the proposed farm-related exemptions are all designed to lessen the economic and other associated impacts on the agricultural industry. For example, the new exemption for composting of yard trimmings with on-site use of product at N.J.A.C. 7:26A-1.4(a)18 eliminates any artificial limits that may have prevented a farm from accepting the optimum amount of organic material needed to enrich the soil at the farm site. Similarly, the new exemption for composting farm feedstocks on farms at N.J.A.C. 7:26A-1.4(a)23 to which the commenter refers also helps farmers utilize these feedstocks in soil enrichment without the need for solid waste or recycling permits. The Department believes that as long as these operations follow the Department of Agriculture requirements and guidelines, impact to the environment will be minimized.

The Department recognizes the importance of the State Agriculture Development Committee rule at N.J.A.C. 2:76-2A.8, and in fact, cross references this rule at N.J.A.C. 7:26A-1.4(a)18 (concerning composting of yard trimmings). N.J.A.C. 2:76-2A.8 incorporates the 50 foot buffer that is recommended in the "Field Guide to On-Farm Composting," NRAES-114. The Department believes that consistency should run throughout the farm-related amendments. To the extent that all of the farm-related amendments to the Recycling Rules are companion amendments, it would be inconsistent for the Department to specify a 200 foot buffer at N.J.A.C. 7:26A-1.4(a)23, when N.J.A.C. 2:76-2A.8 incorporates a 50 foot buffer. Accordingly, the Department will amend the buffer distance to 50 feet to be consistent with the rules and guidelines referenced by the commenter.

New Exemptions

29. COMMENT: N.J.A.C. 7:26A-1.4 proposes to exempt certain activities from the need to obtain a general or limited approval from the Department. The proposed rules should clarify that activities in the Pinelands Area that are exempt from the Department's approval requirements

must still file an application with the Pinelands Commission if the proposed activity meets the Commission's definition of development, unless specifically exempt from the application requirements of the CMP pursuant to N.J.A.C. 7:50-4.1. (18)

RESPONSE: The rules at N.J.A.C. 7:26A-1.4(b)2, which are applicable to all activities that are exempted from a general or limited recycling center approval, indicate that the exempted activity must be consistent with all applicable municipal, county, State and Federal law and regulations, including Pinelands area requirements. Accordingly, the Department declines to amend the rules as suggested.

30. COMMENT: There is no need for the exemption at N.J.A.C. 7:26A-1.4(a)1iii, since it is rare or never that one sees a functioning New Jersey concrete plant that utilizes recyclable concrete in its manufacturing process. The rule appears to exempt both concrete and aggregate manufacturing processes. A concrete recycling facility should not be exempt just because it is located next to a concrete manufacturing plant where there may be joint ownership of the two manufacturing processes. The potential for exploitation of the recycling regulations is too great if an exemption is granted. To properly protect the environment, it is necessary to limit recycling activities to properly licensed and managed Class B recycling facilities. (4)

31. COMMENT: Although we question the need for the exemption at N.J.A.C. 7:26A-1.4(a)1iii, since it is rare or never that one sees a functioning New Jersey concrete plant that currently utilizes recyclable concrete in its manufacturing process, we nevertheless applaud the Department being bold when new recycling technologies are in their infancy. But this exemption as written appears to include both the concrete manufacturing process as exempt and appears to exempt an aggregate manufacturing process that the concrete manufacturer may wish to do as well. The commenter objects to a concrete recycling facility being exempt just because it is located next to a concrete manufacturing plant and there may be joint ownership of the two manufacturing processes. (20)

RESPONSE to COMMENTS 30 and 31: In view of the comments received on this exemption provision, the Department is not adopting the proposed exemption. While the Department does not believe that the language in the proposed rule would create aggregate manufacturing processes, it agrees that the language in the proposal was not sufficiently clear. Note that the Solid Waste rules at N.J.A.C. 7:26-1.1(a) indicate that the solid waste rules do not apply to materials that can be directly used in a manufacturing process; accordingly, concrete that manufacturers introduce directly into the manufacturing processes is not subject to the solid waste rules.

32. COMMENT: The exemption at N.J.A.C7:26A-1.4(a)2 addresses the recycling of recyclables generated, processed and reused as a product at the point of generation. This is an exemption that the commenter supports. However, the exemption can only be applied when all applicable county and municipal approvals have been obtained. What county and municipal approvals would apply to the activities under this exemption? If no local approvals are required, then this language should be deleted from the exemption. (4)

33. COMMENT: The Department should clarify new N.J.A.C. 7.26A-4.1(a)11 by providing a list, by facility type, of the parameters that fall under the Department's jurisdiction versus the parameters that are within municipal or county control. For example, the county currently sets the operational hours for Class B facilities during the plan inclusion process. The Department then sets its own operational hours for the facility, which may provide for less (but not more) operating hours than provided for by the county. Does this new section mean that a municipality can decide to place even more stringent hours for that facility? If so, there is a potential for a municipality to set such stringent parameters for recycling facilities that the outcome is that no facility can feasibly operate within that municipality. Furthermore, in this time of municipal budgetary constraints, it seems burdensome for municipalities to bear the financial burden of hiring engineers, planners, attorneys and other professionals to review the recycling applications.

Allowing a recycler to incur the time and expense associated with obtaining an approval, only to be shut down by a change to local ordinance would be an injustice. The municipalities

should be allowed and encouraged to participate in the approval process but final and impartial jurisdiction must remain with the Department.

In N.J.A.C 7:26A-4.1(a)11 the Department proposes to add, "The operation and related activities of all classes of recycling centers shall be in conformance with municipal ordinances, including, but not limited to ordinances concerning ingress and egress, traffic patterns, parking signage, operational hours, noise, dust and structural height. Since these are specific items dealt with in the Department's approval of a recycling center, and since the Department accepts and encourages comment from the local authority on these issues, the commenter is unable to understand why the Department would not pre-empt local rule and incorporate their concerns in the general or limited approval. (4, 6, 20)

RESPONSE to COMMENTS 32 AND 33: This provision details activities that are exempt from the requirements to receive General Approval as a Class B, C, or D recycling center. The reuse of materials on-site may be subject to local requirements under, for example the "Municipal Land Use Law," which enables municipalities to adopt local laws, or the Uniform Construction Code, which is administered at the local level. The Department does not maintain a library of all of the municipal laws that may be applicable for the 565 municipalities in the State. It is incumbent upon the recycling center owner/operator to research and comply with the laws of the municipality in which it is operating.

In some situations, depending on the type of recycling center, specific ordinances may not be applicable, as the Department's approval would preempt the local requirements. For example, a municipality may not require more stringent hours if operating hours are part of the Department's approval for the facility and after approval by the county through the Solid Waste Planning process per N.J.A.C. 7:26-6 without working through the county to change the hours through that same planning process. There may be circumstances under which a municipality could request its host county to impose restrictive operating hours or other conditions through the planning process. In the Department's experience, this is very uncommon after a facility is

approved and placed into the county solid waste management plan, although, theoretically such a situation could occur.

34. COMMENT: The proposed amendment to under N.J.A.C 7:26A-1.4(b)6 elaborates on the local regulatory issue by reading as follows, ". . . exemption from the requirement of a general or limited approval pursuant to (a) above shall not constitute an exemption from applicable county or municipal laws, including local zoning and site plan ordinances, or regulations." This failure on the part of the Department to recognize their pre-emption of local zoning is tremendously detrimental to the recycling industry. The recyclers want very much to comply with the local objectives; however, the recyclers are best equipped to receive that directive through the Department. Furthermore, in this time of municipal budgetary constraints, it seems burdensome for municipalities to bear the financial burden of hiring engineers, planners, attorneys and other professionals to review the recycling applications. In consulting with our fellow municipalities, we have found that many do not want the added financial, time or political burden of undertaking these reviews. They want the application and approval system to remain as it is now. (1)

35. COMMENT: N.J.A.C. 7:26-1.4(a)2 requires recyclers to obtain county and municipal approvals, N.J.A.C. 7:26A-1.4(b)6 states that recyclers are not exempt from applicable county or municipal laws including local zoning and site plan ordinances, and N.J.A.C. 7:26A-4.1(a)11 requires recycling centers to be in conformance with municipal ordinances. The commenter objects to these provisions, preferring that the existing approval hierarchy remain in place. Under the existing scheme, the recycler applies to the Department and copies the local authorities. The local authorities provide their comments to the Department and the Department addresses their concerns in the permit parameters. Without this hierarchy in place, pandemonium will ensue. This failure on the part of the Department to recognize its pre-emption of local zoning is tremendously detrimental to the recycling industry. The recyclers want very much to comply with the local objectives; however, the recyclers are best equipped to receive that directive through the Department.

The exemption at N.J.A.C. 7:26A-1.4(a)2 addresses the recycling of recyclables generated, processed and reused as a product at the point of generation. This is an exemption that we support; however, the exemption can only be applied when all applicable county and municipal approvals have been obtained. We are unaware of what county and municipal approvals would apply to the activities under this exemption. If no local approvals are required, then this language should be deleted from the exemption. (4, 20)

RESPONSE to COMMENTS 34 and 35: The Department is not changing the application and approval system for recycling centers; this is because no application process is currently codified. It is merely clarifying that local regulatory requirements may apply to recycling facilities, even if they are exempt under N.J.A.C. 7:26A-1.4 from the requirement to obtain a general approval. When the Department issues a general approval for a recycling center, it conducts a review of certain aspects of facility operation, thereby preempting local authority over those activities. When a facility is exempt from general approval under N.J.A.C. 7:26A-1.4, there is no Department review of the facility operation. That does not mean, however, that some municipalities may not have local regulations that may govern facility operations.

36. COMMENT: N.J.A.C. 7.26A-1.4(b)4 should not exempt certain activities from submitting tonnage reports. Every type of exempted facility should submit a tonnage report to the Department. The report should include the final market that the material was sent to so that double-counting of recyclables can be avoided. Requiring the submission of reports will help to ensure that the exempted operations are complying with regulations. (4, 6)

RESPONSE: Those activities exempted from the requirements to obtain a specific recycling approval from the Department, and which are not required to report annually on the materials received, stored, processed or transferred are exempt from the reporting requirement due to the fact that, specific to those exemptions, they can only transfer their recyclable materials to regulated entities, which in turn must report annually on their recycling activities, thus ensuring that all materials recycled will be reported.

37. COMMENT: N.J.A.C. 7:26A -1.4 (b)5 exempts small quantity handlers from providing written notice of operation to the Department, and the host county and municipality. Small quantity handlers should be required to provide written notice so they can be inspected to make sure they are operating under the guidelines of the exemption. (4, 6)

RESPONSE: To require small quantity handlers of universal wastes to notify the Department, county and municipality would exceed the Federal notification requirements at 40 C.F.R. 273.12, which is incorporated in the Recycling Rules by reference. Furthermore, imposition of additional notification requirements on small quantity handlers would defeat the purpose and intent of this exemption, which is to relieve these handlers from the full burden of the hazardous waste rules that apply to New Jersey businesses. Moreover, the Department's enforcement program routinely does a universal waste inspection as part of its generator hazardous waste inspection. During these inspections, the Department assesses whether or not these operations are in compliance with both sets of regulations.

Subchapter 3 amendments

38. COMMENT: N.J.A.C. 7:26A-3.2(a)18 requires that, as part of the requirements for an approval, the applicant must describe leachate, stormwater run-off and drainage control measures. The Department intends to use this information to determine if the recycling activity would also warrant a separate stormwater permit. It is our understanding of this rule that, as proposed, some recycling activities would not warrant a stormwater permit, depending upon their leachate, stormwater run-off and drainage control data. If that is true, the allowable limits for being exempt from stormwater permitting should be published. (4, 20)

RESPONSE: The Recycling Rules require that each application for a recycling center general approval include a description of leachate and storm water run-off and drainage control measures. The amendment to N.J.A.C. 7:26A-3.2(a)18 cross references the Stormwater Management Rules and the Pollutant Discharge Elimination System rules to provide clarification

as to the type of leachate and storm water run-off drainage control measure information that must be submitted. Whether a facility is eligible for an exemption from a stormwater permit or requires a general or individual stormwater permit is determined by the Department's Stormwater Management Program based upon site specific operations and conditions.

39. COMMENT: The proposed rule at N.J.A.C. 7:26A-3.2(a)18 includes a requirement that recycling facilities demonstrate compliance with N.J.A.C 7:8-5 and 6 and N.J.A.C. 7:14A-24 and 25 relative to the control of stormwater and leachate respectively. For clarity, the proposed rule should indicate mandatory compliance with the stormwater and leachate control requirements of the Pinelands Comprehensive Management Plan rules (N.J.A.C. 7:50) for recycling facilities operating in the Pinelands Area. (18)

RESPONSE: The Department agrees that compliance with stormwater and leachate control requirements specific to Pinelands facilities is important. Under the current recycling rules, one of the requirements for the submission of an application for a recycling center general approval is a description of leachate and storm water run-off and drainage control measures. The intent of this amendment is to provide a better description of the types of leachate and storm water run-off drainage control measure information that must be submitted. However, it is not necessary to amend N.J.A.C. 7:26A-3.2(a)18 to cross-reference the leachate and storm water requirements of the Pinelands Comprehensive Management Plan. This is because the Pollutant Discharge Elimination System rules already require that stormwater discharges in the Pinelands be in compliance with the Pinelands Comprehensive Management Plan rules (see, for example, N.J.A.C. 7:14A-24.7(a)2iii and 24.10). Accordingly, additional cross-references to the Pinelands Comprehensive Management Plan rules would be unnecessary and redundant.

40. COMMENT: The commenter applauds the Department for maintaining minor violation categories and grace periods in the Recycling Rules at N.J.A.C. 7:26A-3.6. It has been a long standing tenet that the Department should work with the regulated community, whenever possible and whenever there is no imminent environmental risk, to bring the regulated

community into compliance, as opposed to penalizing the regulated community and promoting an adversarial relationship. (20)

RESPONSE: The Department appreciates the commenter's support with respect to the retention of minor violation categories and grace periods. The Department remains committed to working with the regulated community to achieve compliance.

41. COMMENT: A penalty would be imposed upon a recycler who failed to submit its renewal application for a general approval to the Department at least three months prior to the expiration of the current approval, as is required by N.J.A.C. 7:26A-3.6. It is considered a minor violation, which is sensible in our opinion. However, we question how a recycler can cure the fact that he did not submit a document on a certain date after that certain date has passed? (20)

RESPONSE: The Department understands that once a compliance deadline is missed, it cannot be met retroactively. To resolve a violation of N.J.A.C. 7:26A-3.6 without a penalty, the renewal application must be submitted to the Department for approval within the 30 day grace period allotted.

42. COMMENT: Numerous limited Class B approval recycling sites have operated throughout the State over the past years and they have increased the State's recycling rate and provided a service to the contractors in their area. It is often the case that limited approval sites have been located in an area where no other recycling facilities (general or limited) have been located. Due to the financial constraints of hauling recyclables a long distance, if it were not for the limited approval sites, many recyclables would have been landfilled. The Department should retain the existing Class B limited approval parameters with one exception. No limited approvals should be granted for sites within 25 miles of a general approval recycling site. This modification would allow for the maximum recycling of Class B materials, which is the common goal of both the commenter and the Department. The general approval sites would handle the recyclable material within a 25 mile radius of its facility, and the limited approval sites would

step in to handle material outside of the 25 mile radius which, without the limited approval site, would likely not be recycled. (4)

RESPONSE: The intention of limited Class B approvals is to allow recycling activities that would otherwise require a Class B general approval to be conducted for short term projects (up to 180 days with a possible extension of up to 50 percent additional time) at sites undergoing improvements. Facilities that wish to engage in a commercial operation to accept Class B materials for processing to produce a product for off-site use are not exempt from the general approval requirements, regardless of the distance between Class B facilities.

43. COMMENT: The commenter disagrees with the proposed amendments to N.J.A.C. 7:26A-3.7, which concern the approval process for limited Class B recycling centers. The proposal to amend the limited approval to only allow the processing of material generated on-site, and to ban the operator from taking recyclables from neighboring projects, flies in the face of recycling. This limitation should be lifted. Additionally, the limitation that material generated at a limited recycling approval site must be used on-site is equally as detrimental to recycling, in that recyclers are having a difficult enough time selling their recycled products without the Department disallowing a recycler from selling products to a jobsite next door to their recycling site.

The rule section that prevents a property owner from applying for a limited recycling approval just because there was once a limited approval on his neighbor's property, is exceptionally limiting to recycling. The commenter fails to see the environmental harm generated by dropping this limitation on limited recycling approvals. (4)

RESPONSE: The Department is concerned that commercial recycling centers be operated in an environmentally sound manner. To accomplish this goal, the county planning and State recycling center general approval processes have been established to regulate the industry. The intent behind limited Class B approvals was not to exempt commercial Class B operators from the need to obtain county planning and general approval requirements. Rather, the intent behind

limited Class B approvals is to allow recycling activities for on-site generated materials that would otherwise require a Class B General Approval to be conducted for short-term projects (up to 180 days with a possible extension of up to 50 percent additional time) at sites undergoing improvements (e.g. land clearing, demolition, development, etc.). Also, if additional Class B materials are needed for the improvement project, materials may be brought on-site for processing with the stipulation that the products produced must be utilized on-site and not be marketed off-site. The amendments to N.J.A.C. 7:26A-3.7 clarify the intention of the limited Class B approval process.

N.J.A.C. 7:26A-3.7(b)2 provides that the Department shall issue an approval to operate a limited Class B recycling center only if (1) an approval to operate a limited Class B recycling center has been issued for the specific site no more than once before; and (2) only one approval for one 180-day time period is issued for any site located contiguous to a site for which a limited approval has been issued pursuant to this subsection. The Department notes that there have been instances where operators who own adjoining properties move their limited recycling operations from one adjoining property to another as a means of avoiding the regulatory requirement to obtain a full Class B permit. Operators who intend to operate on a permanent basis should obtain full regulatory approval; the amendments are intended to ensure that permanent facilities may not hide behind the limited Class B permits by moving their materials from one property to another while still providing the needed flexibility for which limited permits were designed.

44. COMMENT: N.J.A.C. 7:26A-3.7 appears to promote the creation of limited recycling centers, thereby placing the fully regulated industry at a disadvantage. Currently, Class B recyclers spend millions of dollars in permitting, land acquisition and capital projects. Limited recycling facilities will not have to meet the same regulatory requirements; hence, they will have a cost advantage over existing facilities in being able to bring materials in and process them. (8)

RESPONSE: Limited Class B approvals are not for commercial operations. They are only for short-term projects during which material may only be accepted from off site if it is to be utilized at the site. These operations are in contrast to the more extensive activities that are performed at

commercial Class B facilities. Accordingly, the Department does not agree that operators having limited Class B approvals would place commercial Class B facilities that have obtained a General Approval at an economic disadvantage because these two types of facilities serve different markets and purposes.

45. COMMENT: The Department is proposing to delete the word "receipt" from the heading of N.J.A.C. 7:26A-3.7 and from subsection (a) of this section and to insert the phrase "Limited Class B Recycling Center" in both places. These proposed amendments will clarify that Limited Class B Recycling Centers may only process Class B recyclable material generated on site and may not bring off-site generated Class B recyclable materials onto the site for processing for shipment off site. If a person who operates a recycling center wishes to bring off-site generated materials on site for processing for shipment off site, that person must obtain a recycling center general approval pursuant to N.J.A.C. 7:26A-3.

The current negative press and consequent end product crisis associated with Class B recyclers have been caused by mobile crushing operations (sometimes) operating under Limited Class B authority. Limited Class B approvals, in theory, offer an apparent economic solution to remote location recycling operations. Unfortunately they leave much to be desired in the way of municipal, county, and Department oversight and regulation.

Promoting or authorizing unrestricted Limited Class B operations is essentially deregulation of the concrete, asphalt, brick and block recycling industry. Most limited recycling operations are demolition activities that crush the resultant material on site. The problem our industry is experiencing is directly related to the mishandling of contaminated materials being commingled with traditional Class B recyclables and then being marketed to the general public. It is impossible for the Department to regulate limited Class B facilities in the same manner as they regulate permanent licensed Class B facilities. The Department or other governing agencies do not have the qualified personnel or the budget to accommodate thoroughly inspecting the volume of on-site crushing opportunities that abound in New Jersey's urban settings. For materials other than those originating on-site to be accepted, additional regulations would have to

be established and implemented in order to provide for proper material tracking and reporting. Municipalities require such material tracking to receive their Recycling Tonnage Grants, and to demonstrate that they are meeting recycling standards mandated by the State.

Class B recyclers have invested untold millions of dollars in capital improvements and soft costs (legal and engineering expenses). This is to ensure that they operate within the parameters set forth by the Department. They are subject to monthly inspections, reporting procedures, permitting for air and storm water and with very specific County plan approvals & site plans. Add to that the economic cost of permit fees, host community fees and other expenses associated with operating a licensed, regulated and compliant permanent Class B facility. A Limited Class B recycling facility, which does not incur these expenses or meet these stringent regulations, has been allowed to accept off-site material and market this product to the public. The acts of a few unscrupulous contractors have completely undermined the integrity of an entire recycling industry. This was evidenced by the Ford demolition project in Edison, the Martin Luther King High School project, and others.

A severe economic imbalance is created by a limited recycling facility's ability to operate in a manner similar to the preempted railroad facilities. Without having to incorporate all of the above mentioned costs associated with being a fully compliant, permanent facility, a limited recycling site can potentially market end products and accept materials at significantly lower costs than permanent, licensed Class B facilities. The limited recycling facility concept is counterproductive and contradictory to the existence of a regulated industry that has been put in place to protect the environment and the general public. (10, 12)

RESPONSE: In addition to its enforcement initiatives, the Department has also published a "Guidance for the Sampling and Analysis of Concrete Designated for Recycling," which is available on the Department's web site, to help prevent the mishandling of these materials by the recycling industry. The guidance document clarifies management and analysis recommendations for concrete being generated at sites subject to the Department's Site Remediation Program's requirements. As stated in response to the above comments, the purpose of limited Class B

approvals is to authorize short term site improvement projects and not to authorize commercial Class B operations for which a Class B general approval would be required. Therefore, with the adoption of the proposed amendments, sites obtaining limited Class B approvals will not be able to market recycled product for off-site use.

46. COMMENT: The commenter supports the concept codified at N.J.A.C. 7:26A-3.9(b) of processing incoming material within a year; but, wonders how can a recycler prove that all of his loads are processed in a year unless he marks each item in a load? The issue with this provision is in the recycler's ability to prove to the Department what raw product has been on site for less than a year and what has been there more than a year. Practically speaking, all recycling plants have a site plan and a designated area in which to dump their raw recyclable product. As raw material is dumped in that pile, simultaneously a loader is taking material from the pile to send through the recycling process. The pile is ever changing. Unless the loads of incoming material were marked in some way, it is the commenter's position that it would be impossible to distinguish one load of concrete or stumps or tires from another. (4, 20)

RESPONSE: The Department recognizes the difficulty in the enforcement of the one year storage time limit for unprocessed recyclable materials. The Department's enforcement personnel have marked dates on tree stumps, pieces of broken concrete, etc. in order to monitor compliance with this regulatory requirement. The intent of this requirement is to ensure that piles of unprocessed materials do not remain static for long periods of time, but that, as new materials are being added, older recyclable materials are being removed from the pile for processing on a continual basis. The Department generally enforces this provision as an illegal land disposal activity only when it becomes obvious to the inspector that the pile has not changed for an extended period of time.

Subchapter 4 amendments

47. COMMENT: The Department should extend the deadline at N.J.A.C. 7:26A-4.4 for submission of recycling tonnage reports by operators of recycling centers from February 1st to March 1st. The current deadline is difficult to meet in that it provides only one month from the end of the calendar year to assemble and reconcile all required data, complete the Department's forms and distribute the data for materials recycled during the previous calendar year. (1)

RESPONSE: The Department agrees that providing one additional month for submission of recycling tonnage reports would be advisable, and may help improve the quality of the reports. The Department recognizes that the complexity of recycling operations, from the types of materials accepted, processed and marketed, to the gross tonnage of material handled, has increased considerably. Therefore, the Department believes providing an additional month to reconcile accounts and prepare accurate reports is beneficial to the regulated community, and to the municipalities that will utilize this data in the preparation of their annual tonnage reports to the Department. Accordingly, the Department has modified the rule on adoption to require that these reports are to be submitted by March 1st of each year. The Department is also modifying the rule summaries for violations of N.J.A.C. 7:26A-4.4(a) and (b) in the penalty tables at N.J.A.C. 7:26A-9.4(g) so that these summaries are consistent with the amended rule text.

48. COMMENT: The Department should not adopt the proposed amendment at N.J.A.C. 7:26A-4.5(a)15ii that requires all Class C recycling centers that receive materials other than yard trimmings to be fully enclosed. Enclosure of Class C recycling centers and installation of an air management system should only be required for facilities that generate a significant odor that migrates offsite. The addition of source separated supermarket flower waste, produce and produce trimmings, for example, to a class C operation that already accepts grass clippings may not have any discernable negative impact on odors or leachate run off and therefore, the Department's proposed rulemaking should provide greater flexibility. Specifically, the Department should provide all Class C recycling centers with the option of operating as a Research, Development and Demonstration (RD&D) Project which will specify what additional

facility specific measures, if any, are required to protect the environment and neighboring property owners for those Class C facilities that receive materials other than yard trimmings. (1)

RESPONSE: The proposed amendment at N.J.A.C. 7:26A-4.5(a)15ii does, in fact, provide that the Department may allow the recycling center to use a certificate of authority to operate an RD&D project obtained pursuant to N.J.A.C. 7:26-1.7(f) to demonstrate that the specific materials received do not require full enclosure to prevent leachate problems and off-site impacts such as odors. Based on the results of the RD&D project, the Department may specify in the general approval other forms of structures or other measures to prevent on and off-site impacts.

49. COMMENT: The commenter supports the rules at N.J.A.C. 7:26A-4.8(b)14 that would require petroleum contaminated soils to be treated. However, if such materials meet certain criteria for beneficial reuse, then the material should not have to undergo thermal treatment, saving money and energy without having a negative impact on the market for recyclable materials. There are instances where the levels of contamination do not exceed the non-residential criteria. Treating such materials would not be economical or environmentally sound. Petroleum contaminated soils with analytical data to verify that the material meets certain limits established for beneficial reuse sites, should not be required to be thermally treated. Instead, such materials should be transported to the end market subsequent to analytical testing. Additionally, these materials should be able to be combined with other like material at the facility, and stored for not more than 180 days prior to transport to the beneficial reuse site. Any soil that tests above the established limits for beneficial reuse would have to be treated by a LTID or other Department-approved process. (10, 12)

RESPONSE: The intent of this amendment is to ensure that recycling centers do not blend petroleum contaminated soils with cleaner soils or other materials in order to dilute the contamination to meet specified limits. However, the Department agrees with the commenter that there may be instances when incoming soils will not require any treatment at all because they already meet limits established for certain approved end markets, such as landfill alternative cover material or as fill material at remediation sites. Although the Department included at

N.J.A.C. 7:26A-4.8(b)14 the language, "or other Department approved physical, chemical, or biological treatment technology as specified in the general approval issued pursuant to N.J.A.C. 7:26A-3.5," the Department recognizes that to adopt this language without taking into account the circumstance described by the commenter could be counter productive and not environmentally sound. Accordingly, the Department is modifying the rule text on adoption to provide that a facility will not be required to treat soils that are contaminated with petroleum if, upon receipt at the facility, the soil is subjected to laboratory analysis by a laboratory that is certified pursuant to the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18, the results of that laboratory analysis show that the incoming shipment of soil complies as received with Department-approved analytical limits established for certain end markets, and those limits are specified in the general approval issued to the facility pursuant to N.J.A.C. 7:26A-3.5. . The Department is including the "as received" provision to ensure that dilution/mixing for the purposes of achieving the approved analytical limits does not occur at the recycling facility. It is important to note, however, that any of the treatment methods (or non-treatment procedures) employed by the facility must be approved by the Department and must be specified in the facility's general approval to operate a recycling center.

Subchapter 8 amendments

50. COMMENT: The Department should amend N.J.A.C. 7:26A-8.1 to require haulers to report to municipalities any recycling tonnage transported to facilities located within New Jersey. Currently, haulers are required to report only when transporting materials out of State. The intent may have been to avoid double counting of tonnage being reported by recycling facilities and end markets, but in reality, many municipalities rely on generators and/or haulers to provide recycling tonnage reports. It is also suggested that the Department consider including some type of reporting by haulers and that it consider re-evaluating the tonnage reporting process to see what works and what does not. Municipalities may be simply unable to capture a significant percent of recycling that is already taking place in their towns and the haulers are right in the middle of the whole process. (7)

RESPONSE: As the commenter noted, haulers are required to report only on those materials transported out of State to avoid double counting of recycled materials, since the Department already receives annual reports from all in-State recycling facilities. However, the Department notes that municipalities may adopt ordinances which would require the reporting of recycling activities by either those providing recycling services to business within the municipality, or by the generators of those recyclable materials.

51. COMMENT: The rules at N.J.A.C. 7:26A-8.2(a) are problematic because many of the large trucks transporting such waste as leaves, grass, and tree parts, are large and are frequently odorous. Many of these vehicles use interstate highways. These vehicles should be required to follow the established truck routes in the Solid Waste Plan. The routes were established to keep the truck traffic on the State and interstate highways as long as possible because the interstate and State highways are more capable of handling heavier truck traffic than the local roads. (5)

RESPONSE: Recyclable materials transporters are exempt from N.J.A.C. 7:26-3 because recyclable materials are not solid waste. However, while the Department is not aware of any county that addresses recycling truck routes in its solid waste management plan, the counties do have that option. Accordingly, specific truck routes designated in the county solid waste management plan would be applicable if a county chose to designate those routes in its plan.

52. COMMENT: The commenter agrees with the provision at N.J.A.C. 7:26A-8.3 that prohibits transporters from mixing source separated recyclable materials. The written exemption from this mixing prohibition needs to be more narrowly defined. Transporters should not have expectations that they will be permitted to mix source separated recyclables with solid waste, except under limited emergencies and then only for short durations. (1)

RESPONSE: N.J.A.C. 7:26A-8.3(a), which prohibits mixing source separated recyclable materials with solid waste "for any purpose" is definitive. Mixing loads is strictly prohibited. The Department included N.J.A.C. 7:26A-8.3(b) to ensure that it has the flexibility to grant an

exception to this prohibition in cases of natural disaster or epidemics, where normal recycling protocols may need to be bypassed in order to, for example, quickly address threats to public safety.

53. COMMENT: The prohibition at N.J.A.C. 7:26A-8.3(a) could be used to punish transporters for transporting loads contaminated by the generator before the transporter's arrival. (5)

RESPONSE: The prohibition against transporters mixing source separated materials with waste applies where the transporter takes materials already separated by the generator and mixes it with the generator's waste. This is a common occurrence, even after 30 years of the regulation of recycling by the State. There is no legitimate purpose for mixing recyclable material with solid waste that a generator have sorted out. The addition of this prohibition to the rules makes this clear to transporters and simplifies enforcement of this prohibition.

The Department will cite a transporter for a violation of N.J.A.C. 7:26A-8.3(a) only if the Department's inspector or authorized representative has personally witnessed the transporter mixing source separated recyclable materials with solid waste or has received a verified complaint from a party attesting to witnessing a transporter mixing source separated waste with solid waste. Neither of the scenarios described above involve a situation where the generator has mixed recyclables designated to be source separated into the trash prior to pickup by the transporter.

54. COMMENT: The Department should clarify N.J.A.C. 7:26A-8.3. Does this mean that if the generator (i.e. household) mixes a few cans and bottles with the solid waste designated for pick up and transport to a landfill, the transporter is not now required to refuse to pick up the load set out by the household? How does this compare with the requirements at tipping floors that prohibit recyclable material from being disposed of at the facility? (5)

RESPONSE: N.J.A.C. 7:26A-8.3(a) is not applicable to situations where a generator offers for pickup trash that contains designated recyclable materials. Likewise, transporters would not be cited for violation of N.J.A.C. 7:26A-8.3(a), should recyclables be found when a load of solid waste that they deliver to a facility is dumped on the tipping floor. However, transporters do have an obligation to refuse to pick up solid waste from a generator if it contains source separated recyclable materials. N.J.A.C. 7:26H-4.4(a)6 prohibits a transporter from collecting mixed loads of solid waste and recyclable materials designated to be source separated, unless the generator has a municipal exemption under N.J.A.C. 7:26A-11.5(a) from the source separation requirement.

55. COMMENT: The commenter certainly embraces the language codified at N.J.A.C. 7:26A-8.4 that no vehicle or transport unit used for the transportation of recyclable materials shall be used in a manner where littering, spillage, or emissions of recyclable materials will occur. But to print in the impact statement that it has come to the Department's attention that many transport units and vehicles that are used to transport recyclable materials are in poor condition, allowing release of their materials to the environment during transit, seems unfair considering that so many recyclers are extremely attentive to their vehicles. To further elaborate by saying that such releases can endanger the health and safety of those transporting or working with these materials and the general public and could cause environmental harm should they contain contaminants that then enter the ground or surface waters of the State is incredibly detrimental to recycling, especially in light of the issues that the Class B recyclers are currently facing regarding the backlash from the unregulated, poorly monitored sites such as Ford Motor Co. (20)

RESPONSE: The Department regrets if any statements are perceived as detrimental to the recycling industry as the Department fully encourages recycling as important to protecting human health and the environment and promoting sustainability. The Department's intent was to point out the importance of maintaining vehicles in good condition and the potential for releases if source separated recyclable materials such as contaminated soils leak from these vehicles.

Violations and penalties

56. COMMENT: A review of the various violations and penalties shows that several violations are categorized as non-minor violations with substantial financial penalties, and no grace period, but appear to be of no grave environmental harm. The minor and non-minor categorization should be closely re-examined. The Department should remove the categories of minor and non-minor and, instead allow for a grace period in every violation except those that have the potential to cause immediate personal or environmental danger. (4, 20)

RESPONSE: The Grace Period Law, N.J.S.A. 13:1D-129, directs the Department to codify rules identifying types or categories of violations as minor or non-minor for purposes of providing compliance grace periods for minor violations. A grace period is the period of time afforded under the Grace Period Law for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation. The statutory criteria require the Department to categorize violations that pose a threat to human health and the environment as non-minor. The statutory criteria do not require, however, that there be the potential to cause ***immediate*** personal or environmental danger for a violation to be categorized as non-minor. Violations that may result in discharges, releases, or odors and, therefore, be potentially detrimental to the environment, are also considered non-minor. Since the commenter did not provide specific examples as to which violation(s) the commenter believes have been mischaracterized as non-minor, the Department cannot respond with any greater specificity.

57. COMMENT: The aspects of a violation of N.J.A.C. 7:26A-4.1(a)10 are vague as written. For instance, what is traffic associated with the operation? What activities amount to a degradation of a level of service? What is a major intersection? Are recycling facilities now required to inspect trucks? It appears that the explanation of this violation may need to be improved. Additionally, a violation of this provision should be afforded a grace period to provide the recycler with time to comply, especially since the offending vehicles likely have no common ownership with the facility. (4, 20)

RESPONSE: As indicated in the penalty table headings, the penalty tables contain a summary of the provisions to which the violation applies. These rule summaries are not meant to be a detailed explanation of the regulatory requirements. Rather, the rule to which the table refers contains the full description of the regulatory requirements against which compliance is assessed. As specified at N.J.A.C. 7:26A-4.1(a)10, the commenter should review the New Jersey Department of Transportation's (DOT) highway access code (N.J.A.C. 16:47) for what constitutes, for example, "degradation of level of service" and "major intersection." The DOT's highway access code defines "Level of Service" to include such factors as speed, travel time, **freedom to maneuver** (emphasis added), traffic interruptions, and delay. A reduction in freedom to maneuver and the inability to maintain one's normal expected speed at a major intersection would be expected to cause increased traffic accidents, while increased traffic interruptions and delays can be expected to cause an increase in air pollutant levels, posing more than a minimal risk to the public health and safety. Therefore, such degradation of the level of service at a major intersection or public roadway within a half-mile radius of the recycling center does not meet the Grace Period Law's criteria for categorization as a minor violation N.J.S.A. 13:1D-129(b)3.

58. COMMENT: The Department should not assess a penalty for a violation of N.J.A.C. 7:26A-9. The imposition of financial penalties from one governmental unit to another (State to counties or municipalities) is burdensome, redundant and unnecessary. The Department currently controls the distribution of recycling grant funding to both counties and municipalities and has the authority to withhold distribution of that funding to a county or municipality which is not in compliance. To add a new layer of financial penalties can and will inflate a financial disincentive to unwarranted and unjust levels. The Department should reconsider the justification and the need for the imposition of these fines. Despite the fact that most of the penalties listed are minor and have grace periods, some violations are not readily curable and even 90 days may not be enough time to cure. (7)

RESPONSE: While it is true that the Department controls the distribution of recycling grant funding to counties and municipalities, the Department disagrees with the commenter that it

should "withhold distribution of that funding to a county or municipality which is not in compliance," instead of imposing a penalty for non-compliance. Payment of penalties is not a purpose for which these statutory funds may be used. Governmental entities are "persons" as defined at N.J.S.A. 13:1D-126, and as such are subject to notices of violation and attendant penalties if warranted. The Department notes that the vast majority of the regulatory requirements in the recycling regulations for counties and municipalities have been statutory requirements since the enactment in 1987 of the Mandatory Source Separation and Recycling Act (P.L. 1987, c. 102, N.J.S.A. 13:1E-99.11 et seq.). Governmental entities have, therefore, had a significant amount of time to come into compliance with these requirements. Governmental entities that are in compliance with these provisions will incur no penalties. Additionally, the issuance of a notice of violation does not necessarily mean that a penalty will be assessed. Instead, it puts the entity on notice that a violation has been cited and documented in the Department's records. For those violations classified as minor violations and which meet the case-specific criteria for minor violations, a grace period may be applicable affording the regulated entity an opportunity to address the violation without incurring a penalty. However, if the violation occurs again in the same year, even though it is categorized as minor, no grace period will be afforded the second time around. Also, in deciding when to afford the grace period, the Department checks to see if the regulated entity committed the same violation any time in the preceding year, and if so, no grace period is afforded. Lastly, N.J.A.C. 7:26A-9.10(d)4 sets forth procedures to be followed should the person responsible for a minor violation need additional time beyond the specified grace period to correct that violation.

As a practical matter, while penalty amounts are fixed by rule, grant amounts vary from year to year. Accordingly, a municipality cannot be assured that the amount of the grant would cover potential penalties, should those penalties be incurred.

59. <u>COMMENT:</u> The Department should clarify that there is no violation of 40 CFR §§ 273.13(a)2 and 273.33(a)2 as listed at N.J.A.C. 7:26A-9.4(g)5 unless the Small/Large Quantity Handler breaches a casing of a battery cell and does not immediately manage this battery as a

hazardous waste. This is consistent with EPA's RCRA On-Line Guidance #EPA530-R-005i dated September 2002, which states (paraphrased) that a handler of universal waste must manage a battery with a breach in the cell casing as a hazardous waste, not as a universal waste. The Department has already made this change in a previous rule adoption (see 38 N.J.R. 3783, 3807, & 3810) and should change the wording of the "Rule Summary" sections of these citations to read as follows:

"Failure of small quantity handler of universal waste [to ensure that the casing of individual cells was not breached when activities were conducted on batteries] **conducting activities not to manage as hazardous waste casings of individual battery cells that have been breached**."

"Failure of large quantity handler of universal waste [to ensure that the casing of individual cells was not breached when activities were conducted on batteries] **conducting activities not to manage as hazardous waste casings of individual battery cells that have been breached**." (11)

RESPONSE: The Department agrees with the commenter that this change was made in a previous adoption. The Department appears to have inadvertently left this amendment out when the proposed recodification of the penalty tables from N.J.A.C. 7:26 to 7:26A was published in the New Jersey Register. The Department has corrected the erroneous rule summaries in the penalty tables codified at N.J.A.C. 7:26A-9.4(g) on adoption.

60. COMMENT: The rule cross references in the penalty table at N.J.A.C. 7:26A-9.4(g)8 seem to be incorrect: N.J.A.C. 7:26A-10.1(a) would make more sense if it was 10.2. N.J.A.C. 7:26A-10.3(a)1 does not exist and should probably be 10.4(a)1. N.J.A.C. 7:26A-10.3(a)2 does not exist and should probably be 10.4(a)2. Finally, N.J.A.C. 7:26A-10.3(a)3 does not exist and should probably be 10.4(b). (4, 7)

RESPONSE: The Department agrees with the commenters and has corrected the erroneous cross references in the penalty table on adoption.

61. COMMENT: The following cross references in the penalty table at N.J.A.C. 7.26A-9.4(g)9 are incorrect:

1) N.J.A.C. 7:26A-11.3(a) does not exist and should probably be 11.3.
2) N.J.A.C. 7:26A-11.5(a)6 would make more sense if it was 11.5(a)7.

Also, under this section, N.J.A.C. 7:26A-11.5(a)1-5 should say "alternate" not "alternating," and should be revised to state, "Failure of a municipality to ensure adequate alternate recycling has been achieved by a generator which has been issued an exemption." (4, 7)

RESPONSE: The Department has corrected the erroneous cross references in the penalty table on adoption. Additionally, the Department is revising the penalty table entry for N.J.A.C. 7:26A-11.5(a)1-5 upon adoption to more closely track the regulatory text. The table is amended as follows: "Failure of municipal coordinator to review the applicant's documentation of alternate provisions for recycling of designated materials prior to issuing an exemption." The Department declines to amend the penalty table as recommended by the commenter, because the regulatory provisions at N.J.A.C. 7:26A-11.5(a)1-5 require the municipal recycling coordinator to review and make a determination before issuing a recycling exemption that the applicant's alternate recycling plan is "sufficient to meet the requirements for *issuance* of an exemption." They do not require the municipal recycling coordinator to ensure that adequate alternate recycling has been achieved subsequent to issuing the exemption to the applicant as the commenter's language would require.

62. COMMENT: The summary of a violation at N.J.A.C. 7:26A-9.4(g) regarding N.J.A.C. 7:26A-11.5(a)1-5 is inaccurate and confusing. It has a double negative that implies the municipality ought to be issuing an exemption without ensuring adequate alternate recycling will

be achieved. Also, they do not mean "alternating" recycling, but rather "alternate" or "alternative." It should read "Failure of municipality to ensure adequate alternative recycling will be achieved before issuing a recycling source-separation exemption." (4)

RESPONSE: The Department agrees with the commenter and has amended the text of the rule summary at N.J.A.C. 7:26A-9.4(g)9 accordingly, as noted in the prior response.

63. COMMENT: The violation summarized at N.J.A.C. 7:26A-9.4(g) of N.J.A.C. 7:26A-11.5(a)6 should be minor. It is often impossible for a recycling coordinator to stay current on what a business is doing with its recyclables. Unless the haulers and licensed materials recovery facilities/transfer stations notify the coordinator whenever they lose an exempt customer, how is the coordinator going to be aware that the business is no longer complying with the exemption requirements? No exempt business has ever notified the commenter that it has changed its arrangements and is no longer eligible for an exemption. Even if a coordinator were to inspect every business annually, a business might change its haulers at any time and be out of compliance for as much as a year before the next inspection.

There should be a grace period during which the coordinator can revoke the exemption after being notified by the Department that the business has been violating its conditions. (4)

RESPONSE: The Department agrees that a municipal recycling coordinator may not immediately know that a generator is failing to comply with the conditions of a municipal exemption. The Department has the discretion to exercise its enforcement authority to not issue a notice of violation to a municipality that can show it is making a concerted effort to stay current on the status of municipal exemptions that it has issued. However, if the Department had information that a municipality was not actively checking the status of generator recycling exemptions or that the municipality was aware of non-compliance by a generator and failed to take action against that generator, then the Department would cite the municipality for violation of N.J.A.C. 7:26A-11.5(a)6. The Department believes that the failure of a municipality to revoke a generator exemption as required would "substantially undermine or impair the goals of the

regulatory program" and, therefore, does not satisfy the criteria for designation as "minor" under the Grace Period Law, N.J.S.A. 13:1D-129(b).

64. COMMENT: In the penalty table at N.J.A.C. 7:26A-9.4(g)10, a penalty is listed for violation of N.J.A.C. 7:26A-12.3(a)2. This violation should be deleted or the summary of the violation should be revised to account for the fact that a county recycling coordinator will only know about exemptions issued if it is notified by the municipality that issued it. If the municipality does not notify the county, the county will not be able to maintain the records and should not be financially penalized. (7)

RESPONSE: The Department believes that it is the county's obligation to contact each of its constituent municipalities for exemption information. This is not to say that municipalities are not required to provide this information to the counties, but only that counties are equally responsible for obtaining and maintaining this information. A county that has made a concerted effort to maintain current information on municipal exemptions would not be cited for a violation of this provision.

65. COMMENT: A violation of N.J.A.C. 7:26A-10 carries penalties that may be imposed on generators of recyclable material. Generators as defined under the regulation include residential households. The base penalty of $3,000 for failing to separate, store, and set out waste in accordance with the municipal ordinance is excessive. Although there is a 30 day grace period to take corrective action, the penalty should be reduced. (5)

RESPONSE: The , responsibility for inspecting household generated waste generally falls to municipalities and counties. Therefore, a residential household is more likely to be cited for a violation of the applicable municipal ordinance than for a violation of the Department's regulatory provisions, and the penalty would probably be significantly lower under a municipal or county ordinance than under the Department's rules. With respect to the request to lower the penalty amount in the Department's rules, the Department has set the base penalty for all minor

violations at $3,000, the minimum amount the Department believes would have the required deterrent effect.

Subchapter 10 – Generator Standards

66. COMMENT: N.J.A.C. 7:26A-10.1(a) defines generators as including all persons occupying residential, commercial or institutional premises. There is no definition of commercial or institutional in the regulations. It should be made clear that generators include all persons occupying residential (including multi-family), governmental, institutional, and commercial (retail, restaurants, offices, warehousing, construction sites, etc.) premises. (6)

RESPONSE: The Department does not believe that greater specificity in the definition of generators is required. The definition tracks the New Jersey Mandatory Statewide Source Separation and Recycling Act, N.J.S.A. 13:1E-99.1 et. seq. Moreover, residential, commercial, or institutional premises often overlap. The Department believes that the definition is broad enough to capture all persons occupying schools, courts, and parks, as generators who are required to properly separate materials designated for source separation and recycling by the applicable county and municipality; codifying a list of particular types of generators would be unnecessarily restrictive.

67. COMMENT: N.J.A.C. 7:26A-10.2 should also mention the county plan. The following wording should be added: "Generators…shall keep all materials designated for source separation **in the applicable district recycling plan and** in the municipal recycling ordinance…"

N.J.A.C. 7:26A-10 also states "… and shall place these specified recyclable materials for collection in the manner provided by the ordinance." Municipalities may not be able to craft ordinances that are detailed enough to encompass all material handling by all sectors. (4, 7)

RESPONSE: Municipal recycling ordinances are required to comply with the applicable county solid waste management plan. Therefore, materials designated in the county solid waste

management plan must, at a minimum, also be designated in the municipal ordinance. Additionally, the municipal recycling ordinance requirement noted in this subsection only refers to the requirement for generators to comply with the manner or specifics of recycling program performed in the municipality.

68. COMMENT: N.J.A.C. 7:26A-10.3 should be amended to require multi-family complexes to report recycling tonnage. (6)

RESPONSE: To the extent that multi-family complexes are served by public entities for recycling services, the recyclables collected would already be included in the report filed annually by those public entities with the Department. However, to the extent they are not thus served, the municipality can always address this reporting requirement in its municipal recycling ordinance. The Department agrees that an amendment to the rule text that clarifies that "commercial and institutional generators" included multifamily housing owners or their agents, would add clarity to the rule text without adding a new class of regulated entities, and has amended the rule text accordingly on adoption.

69. COMMENT: N.J.A.C. 7:26A-10.4 should be clarified to state that persons occupying commercial and institutional premises may only apply for an exemption if the exemption is provided for in the municipal recycling ordinance. (6)

70. COMMENT: The Department's goals to reinvigorate and encourage recycling are strongly supported. To this end, N.J.A.C. 7:26A-10.4(a)1 should be amended to allow businesses with multiple locations using materials recovery facilities additional time to implement this exemption, and to either apply to the affected municipalities and receive the exemption letters back from the municipality governing bodies, or to convert commingled recyclables programs to source separation per the county/district recycling plans. The Department should change the wording of this paragraph to read as follows:

1. Such persons must obtain the services of a materials recovery facility to separate from the waste generated at the premises, all recyclable materials designated in the district recycling plan found in solid waste at the generator's premises. Provision of these services shall be documented in writing, through contract or correspondence with the materials recovery facility providing the service and the documentation shall be submitted by *(insert date that is 180 days from the effective date of this rule adoption in the NJ Register)* to the municipal recycling coordinator or other municipal official as may be identified in the municipal recycling ordinance. (11)

RESPONSE: The Department agrees that persons applying for the exemption from the municipal source separations requirements should be allowed additional time to submit documentation concerning the hiring of a materials recovery facility and, on adoption, will amend N.J.A.C. 7:26A-10.4(a)1 to provide an additional 180 days for those persons to provide documentation to their respective municipalities. Many generators don't know where their waste is taken, and will need to work with their haulers and with MRFs to obtain assurance of separation before submitting applications for exemption.

The commenter recommends that 7:26A-10.4 be amended to state that generators be allowed to submit applications only if municipalities include provision for this in their ordinances. The Department, however, neglected to specify that municipalities must embody the exemption process within their ordinances. Nevertheless, the Department is confident that most municipalities will do so. In any case, municipalities must decide who will oversee the process: the recycling coordinator, or another person. They must develop forms or model letters. This will also take time. The Department will not require municipalities to embody the process in ordinance, and will not prevent generators from applying to towns that have no such ordinance. On adoption, the Department has, however, delayed the operative date of the provision for granting the exemption at 7:26A-11.5 by 4 months. The reason for the difference between the delays is that municipalities must have a program in place early enough for generators to obtain approval through it. Four months should allow municipalities to make decisions and amend ordinances in time to approve applications before the 6 month generators deadline. The

Department recommends that municipalities start setting exemption parameters upon adoption of this rule, and those generators who want to apply for an exemption alert their municipal officials immediately of their desire to do so.

Subchapters 11 and 12

71. COMMENT: N.J.A.C. 7:26A-11 would require municipalities to "arrange" for the composting of leaves. This is at best ambiguous and could be interpreted so as to require municipalities to pick up and/or compost leaves. The cost associated with the composting or picking up of leaves would be of a magnitude so severe as to strain some municipalities' limited budget. Current cap regulations restrict spending and severely hamper a municipality's ability to maintain current services for its residents. (13)

RESPONSE: The rule does not require municipalities to "arrange" for the composting of leaves. The rule at N.J.A.C. 7:26A-11.1(b)2 requires that municipal recycling ordinances adopted pursuant to the "Statewide Mandatory Source Separation and Recycling Act," N.J.S.A. 13:1E-99.11 et seq., either provide for a collection system for leaves generated from residential premises, or require that residents compost or mulch their own leaves, and it also prohibits the placement of leaves for collection as solid waste. The commenter is correct that any program initiated by the municipality will incur a cost factor. However, the municipalities can opt to not initiate such a program and instead mandate that the individual homeowner arrange for the disposition of the leaves.

72. COMMENT: N.J.A.C. 7:26A-11 and 12 codify administrative requirements to which municipalities must adhere. Violations of these subchapters contain substantial penalties. In most of the cases, a $3,000 base penalty is imposed, although a 30 to 90 day grace period to take corrective action is provided. Failing to designate a municipal recycling coordinator has the same financial penalty and grace period as does the failure of small or large quantity handlers of universal waste that handle universal waste imported from a foreign county to operate in compliance with Federal regulations after the waste was imported into the United States. It

seems that violating the Federal requirement is more serious than failing to designate a recycling coordinator. There are other examples where the severity of the violation does not correlate with the severity of the penalty. (5)

RESPONSE: With one exception, all of the entries in the penalty tables for Subchapters 11 and 12 are minor violations with a $3,000 base penalty. While the Department understands that $3,000 can represent a significant amount of money to a county or municipality, the Department has set the base penalty for all minor violations at $3,000, the minimum amount the Department believes would have the required deterrent effect. Similarly, the base penalty of $4,500 is the lowest amount the Department believes would have the required deterrent effect for non-minor violations. That said, if the county or municipality corrects a minor violation within the grace period and the violation does not occur again with one year, no penalty assessment is issued.

With respect to the commenter's assertion that there are inequities in the penalty table concerning the characterization of penalties as minor and non-minor, the Department can only address the commenter's specific example, as other examples of inequities were not provided. In the example provided by the commenter, the Department believes the commenter is referring to the penalty table entry for violation of 40 CFR 273.70(b), which is designated as a minor penalty, with a base penalty of $3,000 and a grace period of 30 days. 40 CFR 273.70(b) requires a universal waste handler that imports waste to comply with the small or large quantity handler requirements of Subparts B or C as applicable. Using small quantity handlers as an example, Subpart B encompasses the Federal regulations at 40 CFR 273.10 through 273.20. Violations of these provisions can be minor or non-minor, depending on the provision that was violated. For example, violation of 40 CFR 273.11, which is illegal dilution, is a non minor violation, with a $4,500 base penalty. Violation of 40 CFR 273.14(a) however, which is failure to properly mark universal waste batteries, is designated as minor, with a $3,000 base penalty and a 30 day grace period. Therefore, the Department cannot designate all violations of 40 CFR 273.70(b) as non minor; it depends on the particular circumstances of the violation. Since some violations of 40 CFR 273.70(b) may in fact be minor, the Department has categorized a violation of this provision as minor. This does not prevent the Department from using its discretion to treat a

violation of 40 CFR 273.70(b) as non-minor if the circumstances of the violation as it occurred so warrant. It also does not prevent the Department from citing the small quantity handler for violation of both 40 CFR 273.70(b) and the specific provision of Subpart B violated (most of which are designated as non minor.) Therefore violating the import requirements is not equivalent to failing to designate a recycling coordinator with respect to penalties and in many cases would result in the violator receiving a significantly larger penalty amount.

73. COMMENT: N.J.A.C. 7.26A-11.1(a)1 cross references N.J.A.C. 7:26-15.5 in which a formula for how to pay a grant to each municipality is codified (see N.J.A.C. 7:26-15.5(e)1). The Department currently pays different amounts on different materials, but this formula does not seem to account for that. From where does the ability come to pay different amounts on different material categories? Further, how will the existing formula be affected by the new Recycling Enhancement Act's requirement that ensures that a municipality which paid directly into the fund will be guaranteed to recoup at least that amount? (4, 7)

RESPONSE: N.J.S.A. 13:1E-96.b provides that no grant may exceed $10 per ton of materials recycled, and indicates that the Department may provide for bonus grants to counties and municipalities in certain cases. as Additionally, the formula is not affected by any provisions of the "Recycling Enhancement Act," but the total amount of money available for recycling tonnage grants would certainly be limited by any amount necessary to reimburse municipalities for their payments to the fund. The formula for payment of recycling tonnage grants is the number of tons documented as recycled and for which grants monies will be paid, divided by the amount of total grant moneys available. The fact that the Recycling Enhancement Act will require that, prior to the issuance of any tonnage grant, taxes paid by the municipalities must be first deducted from the total amount of grant money available, does not alter the formula for payment of the grants (tonnage recycled divided by grant money available).

74. COMMENT: In a county where most recycling coordinator positions are part-time and unpaid, requiring at N.J.A.C. 7:26A-11.1(a)3 that the municipality to provide training and

requiring enrollment in the recycling program at Cook College is unreasonable. Instead, the Department and Cook College should provide training in each county for the coordinators. (5)

RESPONSE: The Department notes that many small municipalities employ persons such as planners and attorneys as part time contractors, and it is natural that these towns would hire part-time recycling coordinators. Nevertheless, the person hired as the town's recycling coordinator must be educated in his/her duties just as other professionals are appropriately educated and licensed in their fields.

The Department has long believed that the use of untrained coordinators is a barrier to effective support of recycling. At the same time, the Department recognizes that the costs imposed by the mandates in the New Jersey Mandatory Source Separation and Recycling Act often exceeded State funding. Therefore, the Department included this training provision only upon consideration of the likely passage of the Recycling Enhancement Act, which establishes funding which far exceeds past levels. With the passage of the Recycling Enhancement Act and its associated source of new funding, towns now have the option of paying for the training courses for their town's coordinator or to enter into interlocal agreements to appoint and train one coordinator, who will serve several towns. Certified Recycling Professionals may choose to freelance for towns. For example, Warren County, which has 14 towns, each with a population of less than 5000 people, could benefit economically from jointly hiring a coordinator and joint report filing. Pahaquarry, with a population of zero, is exempt from hiring a recycling coordinator.

To further ease the burden, the Department will use increased funding through the Recycling Enhancement Act to expand its subsidy of the Recycling Certification Courses offered by the Office of Continuing Professional Education at Cook College. Thus, more coordinators will be able to attend at less than the full cost of the program, and courses will be offered in a variety of locations in the North and South of the State, to help increase the likelihood that coordinators will attend.

The Department finds that municipal coordinators that attend and complete the course series not only prepare more accurate reports but also employ a wider variety of successful strategies to boost recycling rates. The courses provide grounding in recordkeeping, statistics, economic analysis, and communications, and familiarize participants with recycling systems used around the State and with the operating standards of disposal and recycling facilities. They offer an array of techniques that assist the coordinator in the performance of his/her duties, regardless of whether he/she works full or part time, and whether he/she is paid or unpaid. The Department believes that many of these skills and strategies will be new to the most accomplished appointees, and that even experienced coordinators can benefit from the courses through exposure to new recycling programs not used in their towns.

75. COMMENT: At N.J.A.C. 7:26A-11.1(a)3ii, the Department proposed that within 10 years of appointment, the municipal recycling coordinator shall have completed all prerequisites and have become certified. This is inconsistent with Section 9 of the Recycling Enhancement Act which states that each municipality must designate a municipal certified recycling coordinator no later than January 12, 2010. (1, 4)

RESPONSE: The Department agrees that there is a discrepancy between new N.J.A.C. 7:26A-11.1(a)3ii and section 9 of the Recycling Enhancement Act, N.J.S.A. 13:1E-99.13.b. At the time that the proposed readoption of the Recycling Rules was published on January 7, 2008, the legislation that was to become the Recycling Enhancement Act, PL 2007, c.311, had not yet passed (it passed soon thereafter, with an effective date of January 13, 2008). As the commenter points out, the Recycling Enhancement Act amended N.J.S.A. 13:1E-99.13.b to now require that municipalities shall modify their district recycling plans to include the designation of a municipal certified recycling coordinator within 24 months of the Act’s effective date (by January 28, 2010), and defines a municipal certified recycling coordinator a person who has completed the requirements of a course of instruction in various aspects of recycling program management, as determined and administered by the Department. It also states that the Department shall not accept tonnage grant reports that have not been signed by this certified recycling coordinator. To

reconcile the language of the rule text with the language of the Act, the Department has, on adoption, amended N.J.A.C. 7:26A-11.3 to delete proposed new N.J.A.C. 7:26A-11.3(a)3ii.

A municipality has two options to come into compliance with these new rules. First, it may enroll it's current coordinator in the certification courses, which that person still has time to complete. Approximately 450 people can be accommodated before January of 2010. In the alternative, a municipality may share coordinators and the corresponding tonnage grant with neighboring towns, to obviate the need for multiple coordinators and reports.

76. COMMENT: The time limits at N.J.A.C. 7:26A-11.1(a)3ii should be reduced to 7 years. The text should be revised because the phrase "shall have received certification" may incorrectly imply that every coordinator who serves for ten years shall be considered certified. (4, 7)

RESPONSE: Given the logistical difficulty in establishing enough certification courses to allow hundreds of coordinators to obtain certification, and the personal time constraints of some potentially talented coordinators the Department felt that it was more reasonable to allow the ten years. However, the Recycling Enhancement Act has altered that timeframe, as explained in response comment 75 above. Accordingly, on adoption, the Department has amended N.J.A.C. 7:26A-11.3 to be consistent with The Act.

77. COMMENT: If the requirement is to keep records for three years, how would a municipality show that the coordinator was certified 7 years ago, as is required at N.J.A.C. 7:26A-11.1(a)3ii. The text should be amended to require the coordinator send a copy of the State when they become certified. (4, 7)

RESPONSE: Upon adoption, the Department has amended N.J.A.C. 7:26A-11.3 to be consistent with the requirements of the Recycling Enhancement Act and deleting N.J.A.C. 7:26A-11.3ii. Coordinators are recertified regularly, as part of the requirement to retain their certification status. Records of certifications and recertification are maintained by those entities issuing same on behalf of the Department.

78. COMMENT: N.J.A.C. 7:26A-11.1(b) should require that municipal recycling ordinances contain an anti-scavenging provision for those recyclable materials set out in accordance with the municipal ordinance and that such ordinances be required to set forth municipal fines for failure to comply with any provision of such ordinance. (1)

RESPONSE: Department finds the idea worthy of consideration. However, the Department does not have enough information on which to base such an amendment at this time. The Department will consider this idea for a future rulemaking initiative and welcomes any information the commenter can provide to aid in the formulation of such an amendment.

79. COMMENT: Why specify municipal solid waste at N.J.A.C. 7:26A-11.1(b)1? It is suggested that the word "municipal" be deleted. (4, 7)

RESPONSE: The Department agrees that municipalities have the authority and a mandate to control diversion of industrial waste as well as municipal solid waste, and their ordinances should provide for source separation of all waste. The Department will consider amending this rule provision in the course of future rulemaking initiatives. However, municipalities are not prohibited from mandating controls concerning the diversion of industrial waste absent a provision in the Recycling Rules.

80. COMMENT: At N.J.A.C. 7:26A-11.1(b)2, the Department should replace "residents that" with "that residents." (4)

RESPONSE: The Department agrees with the comment, and has corrected this typographical error on adoption.

81. COMMENT: It is difficult to understand what the rule at N.J.A.C. 7:26A-11.1(b)3 is trying to convey. It could be worded better. Some suggested wording changes follow: "The ordinance shall set forth standards governing the [inclusion] provision, in all new multi-family

housing developments that require subdivision or site plan approval, of collection or storage [facilities] sites and equipment within the development which allow for the placement of all those recyclable materials which are required to be recycled by [of] other single family residences by the ordinance.…" (4, 7)

RESPONSE: The Department believes that the rule adequately conveys the message that provisions for the recycling of designated recyclable materials must be a part of the initial site designs for new multi-family developments.

82. COMMENT: At N.J.A.C. 7:26A-11.1(b)4, instead of saying "…municipal officials that may enforce the ordinance…," the rule text should be amended to say "…shall specify the municipal officials(s) by title that are capable of and obligated to enforce the ordinance… ." (4, 7)

RESPONSE: The Department does not intend to have local ordinances list by name those municipal officials who have the authority to enforce recycling requirements. Accordingly, the Department agrees that adding the words "by title" would add clarity and thus, has so amended the rule text on adoption.

83. COMMENT: The rule at N.J.A.C. 7:26A-11.1(b)4 should be amended to read, "The municipal source separation ordinance shall specify the municipal officials that may enforce the ordinance…" to "shall enforce the ordinance…". (16)

RESPONSE: The Department concurs and has made change upon adoption.

84. COMMENT: Under N.J.A.C. 7:26A-11.1 (a), the distribution of moneys to counties and municipalities from the "State Recycling Fund" in the form of "Direct Recycling Grants" depends on the receipt on all Tonnage Grant Applications. Adding a "civil administrative base penalty" of $3,000 and a grace period of 30 days to file the Tonnage Grant may motivate

municipalities to submit the application in a timely manner, providing there is an enforcement component from the Department. (4)

RESPONSE: The civil administrative penalty suggested already exists at N.J.A.C. 7:26A-9.4(g)9. The Department agrees with the commenter that the $3,000 base penalty may motivate municipalities to submit their tonnage grant applications in a timely manner. The Department has and will continue to pursue enforcement actions against municipalities that do not comply with the submittal requirements.

85. COMMENT: Can N.J.A.C. 7:26A-11.4(a) be interpreted to require that if a business decides it doesn't want to hire a hauler to handle its recyclables, the municipality is responsible for collecting them? Handling recycling for the entire commercial sector could place an unbearable burden on some municipalities. (4)

RESPONSE: N.J.A.C. 7:26A-11.4(a) is derived directly from the enabling statute at N.J.S.A. 13:1E-99.16.a. Municipalities must plan for collection and are designated by the statute as the marketer of last resort. Municipalities may perform residential and business collection and marketing, may contract for that service, or may instruct residents and resident businesses to obtain service from private purveyors. As long as any of these systems provides for the collection of all designated materials, the municipality has performed its obligation. However, in rare cases, businesses cannot obtain service. Municipalities have hitherto ignored the lack of service provision and the prohibition against mixing designated recyclables with solid waste. These municipalities may face the burden of collecting or contracting, and because of that, will likely work to find transporters willing to provide their services. Municipalities may require transporters providing solid waste removal services within the municipality to also provide recycling services.

86. COMMENT: Under N.J.A.C. 7:26A-11.4(c), is the Department of Community Affairs (DCA) going to notify the municipal Planning Boards of this requirement? The Municipal Land Use Law (MLUL) specifies what has to be included in the Master Plan. Is the MLUL going to

be amended to include these rules? The MLUL requires the Master Plan to be revised every six years. Will it have to be reviewed every three years with respect to recycling and every six years for everything else? The Department should have the MLUL amended to reflect the requirements in this section. (4, 5)

RESPONSE: The requirement for municipalities to review and revise their master plans and to develop regulations every 36 months concerning the collection, disposition and recycling of designated recyclable materials codifies the statutory requirement promulgated at N.J.S.A. 13:1E-99.16(c). This requirement, which has been effective for 21 years, is often overlooked by municipalities. The Department plans to conduct municipal outreach efforts through the League of Municipalities and the County Planners. The Department does not have the authority to amend the MLUL; that authority rests with the Legislature. The Department cannot attest to the activities of the Department of Community Affairs as the DCA is a sister agency with jurisdiction independent from that of the Department.

87. COMMENT: Some municipalities may mandate that additional materials be recycled beyond those materials specified in the district plan. Accordingly, the Department should amend N.J.A.C. 7:26A-11.5(a)2 as follows: "The municipal coordinator shall review the applicant's documentation of alternate provision for the recycling of those materials designated in the district recycling plan and/or municipal recycling ordinance that may be found in the solid waste generated at that location." (4, 7)

RESPONSE: If a municipality designates additional recyclable materials mandated for recycling beyond those designated by the county, that additional designation should be noted within the appropriate county solid waste management plan. Accordingly, the suggested amendment is not necessary.

88. COMMENT: None of the licensed Material Recovery Facility/transfer stations that handle exempt businesses provide a per-business tonnage report as is required at N.J.A.C. 7:26A-11.5(a)3. Their annual recycling tonnage reports do not distinguish between the material

they handled from generators that source-separate and the material they extract from exempt businesses' commingled waste. (4)

RESPONSE: There currently are no rules that require solid waste facilities to submit records of recycling activities to the specificity indicated by the commenter (individual generators). Accordingly, the Department cannot comment on the statement that "none of the licensed Materials Recovery Facility/transfer stations that handle exempt businesses provide a per-business tonnage report." However, the Department believes that a recordkeeping and reporting system can be established by the Materials Recovery Facility/transfer station, which would enable the recycling coordinator to reasonably determine the amount of materials received at the solid waste facility, the amount of materials extracted for recycling, and the amount of residue remaining from this activity. If such records do not exist, or the municipal coordinator is not convinced that the required recycling actually occurred, then the coordinator is not obligated to issue the source separation exemption.

89. COMMENT: According to N.J.A.C. 7:26A-11.5(a)4, municipal recycling coordinators are required to ascertain if facilities are permitted "to perform that recycling." The Department should carefully consider the wording of this rule so that it does not place undue burden upon municipal recycling coordinators. The Department should maintain a listing of facilities that have achieved satisfactory recycling levels in the process of separating mandated recyclable materials from garbage. The levels of recycling considered satisfactory needs to be determined by the Department. The Department should maintain this list of facilities. For each facility, those materials that the facility recycles to the satisfaction of the Department should be indicated. It doesn't seem plausible that a municipal recycling coordinator will be able to make this determination. Further, the determination can be made once by the Department, instead of over and over by different municipalities. (4, 7)

RESPONSE: As noted in the rule proposal, material recovery facilities (MRFs) have been discovered to separate and recycle materials which they had no permission to accept. Thus,

coordinators need to check application information against a list of all materials that facilities may legally accept. These lists are maintained at the Department's website.

However, there is no specific percent diversion required by the Department. Each county is charged with diverting 50 percent of its Municipal Solid Waste, and is charged with setting diversion goals for each town. In turn, each town may expect and require differing levels of diversion from different generators. Schools, for instance, should be able to divert 50 percent or more of their trash by weight. Law offices should be able to divert 80 percent or 90 percent. Restaurants may only be able to divert 25 percent. A municipal coordinator may find it acceptable that an MRF divert 20 percent of restaurant waste but 80 percent of warehouse waste. At the time of granting the exemption, the municipal coordinator cannot know how much will be diverted, but N.J.A.C. 7:26A-10 requires the MRF or generator to tender a report of the diversion to the coordinator yearly, to obtain renewal. The coordinator may, at that time, refuse renewal.

At present, few MRFs separate more than 2 percent of the waste they receive. The Department anticipates that municipal coordinators will refuse to grant or renew an exemption if the MRF can't divert at a rate that supports the whole town's diversion rate. However, MRFs may agree to separate material in addition to quantities agreed in a contract with a generator, especially if the materials are dry, such as warehouse wastes. The Department anticipates that MRFs will refuse to undertake separation from wastes with low levels of recyclables or wastes that are putrescible and difficult to manage, and that most generators will not be able to apply for exemption. However, when a MRF is willing to provide separation, it need only divert a percentage close to that obtained by source separation. Perfect parity is not required.

90. COMMENT: The word "shall" appears to be missing from N.J.A.C. 7:26A-11.5(a)6: "The municipal coordinator shall keep a record…" Further, instead of allowing the reporting to be on the destination of the waste or the identity of the waste transporter handling the waste, both of these categories of information should be required. The word "or" should be changed to "and" in the phrase "…the destination of the waste or identity of the waste...." One of the criteria for granting an exemption is proof that the receiving facility can separate and recycle the waste.

If the county recycling coordinator is not provided with that information, he/she cannot tell whether the exemption was properly granted. Also, the word "waste" should be replaced by with "mixed waste and recyclables."

Also, does this mean that if a company has an exemption for five years, it gets reported to the county five times or just the first time? (4, 6)

RESPONSE: The Department agrees that there is a typographical error at N.J.A.C. 7:26A-11.5(a)6, where the word "shall" is missing. The Department has made this correction upon adoption. The commenters also suggest that both the destination and identity of waste transporters be recorded, and not just one or the other. The Department is interested to learn that this is the opinion of a county authority and would like to hear from other county agencies concerning which information would be most helpful to the counties in tracking waste movement, before mandating both tracking methods. The commenters further suggest that the text be amended to refer to the waste as "mixed waste and recyclables." Although the suggested language is more technically accurate, the Department believes that the existing text is sufficiently clear, and the recommended change would make the sentence longer and denser. The rule requires the submittal of a list of exempted generators, from the municipalities, to the counties each year. Even if a generator receives a 5 year exemption, that generator would still need to be included on the annual list.

91. COMMENT: N.J.A.C. 7:26A-12.3 refers to the Hackensack Development Commission, but other sections of the rules refer to the New Jersey Meadowlands Commission. Was the HMDC renamed NJMC? If so, reference to the agency should be current and consistent. (4, 7)

RESPONSE: The Hackensack Meadowlands Development Commission has been renamed the New Jersey Meadowlands Commission; the Department has corrected the rule text on adoption.

92. COMMENT: Under N.J.A.C. 7:26A-12.2(a), what if a county plan amendment is late? Will a county be fined? (4, 7)

RESPONSE: Every attempt will be made to assist the counties in the development of their county solid waste management plans. However, the Department will take enforcement action against a county that refuses to comply with the Recycling Rules.

The Department will evaluate on a case-by-case basis whether enforcement action is appropriate for late submittal of a plan amendment. If the Department has granted the county an extension, there is no violation, and therefore, no penalty will be assessed. Moreover, the issuance of a notice of violation does not necessarily mean that a penalty will be assessed. Instead, it puts the county on notice that a violation has been cited and documented in the Department's records. Violation of N.J.A.C. 7:26A-12.2(a) is designated as minor; if the violation is corrected within the 30 day grace period, no penalty will be assessed.

93. COMMENT: N.J.A.C. 7:26A-12.2(a)2 seems to ask for the past 10 year period. However, in the recent county plan amendments, counties were required to do a 10 year projection. Please clarify if this is a 10 year history starting with the adoption of the plan and going backward or a 10 year projection starting with the adoption of the plan and going forward. (4, 7)

RESPONSE: The New Jersey Solid Waste Management Act requires that each county solid waste management plan provide data and programs for the management of the solid waste and recycling for a 10 year planning period beginning with the current year the county plan is being developed and extending 10 years into the future.

94. COMMENT: N.J.A.C. 7:26A-12.2(a)3 should be amended to eliminate truck routes as a mandatory item to be included in the solid waste and recycling facility inventory for all facilities. Instead, leave it up to each county to decide which facilities require the inclusion of truck routes. (4, 7)

RESPONSE: The New Jersey Solid Waste Management Act requires that each county solid waste management plan include truck routes to solid waste facilities. However, the counties may adopt county solid waste management plans, with State approval, that contain provisions that require truck routes to specific recycling facilities.

95. COMMENT: There are too many factors that influence the time frame for including facilities in the county plan. Therefore there should be no requirement in N.J.A.C. 7:26A-12.2(a)5 to include a time frame. Requiring a time frame may result in the rejection of a facility's plan inclusion (to conform to the plan to approve or reject within a certain time) instead of allowing time for a matter to be resolved. (4, 6)

RESPONSE: All solid waste and recycling facility applicants have the right to a timely determination as to the inclusion of their particular facility into a county solid waste management plan. The statewide solid waste management plan required all counties to adopt modifications to their county solid waste management plans that provide specific time frames for the timely consideration for the inclusion of facilities into their respective plans.

96. COMMENT: Contrary to N.J.A.C. 7:26A-12.2(a)6iv, the number of inspections per year should not be in the county plan. The more appropriate place for that information would be in the County Environmental Health Agency (CEHA) work plan. Also, as a result of the review by the NJ District Attorney's Office, county plans should not contain penalties that differ from the State's penalty matrix. If this is correct, then the reference to the county solid waste management plan penalties should be deleted. (6, 7)

RESPONSE: The number of inspections per year should be in the CEHA work plan and the specifics of the CEHA work plan should also be included within the county solid waste management plan. The Department agrees that county plans should not contain penalties that differ from the State's penalty matrix until additional rules modifying this requirement are adopted.

The Department believes that each district solid waste management plan should include an overview of the county's solid waste compliance monitoring program, which identifies the entity(ies) responsible for inspections, the frequency of inspections, and describes how violations will be addressed. The CEHA work plan is a grant contract that the Department executes each year with the lead county health agency, which includes the minimum number of inspections that will be completed in each program area by the lead county health agency and/or its subcontractors. Municipal recycling officials, solid waste authorities, and local boards of health have independent authority conduct certain solid waste activities, which do not require coordination through CEHA. The district solid waste management plan must include the solid waste activities of all entities in the county, to facilitate coordination of efforts and to capture all the activities conducted in a county in one single plan.

97. COMMENT: N.J.A.C. 7:26A-12.2(a)6v needs to be clarified. This level of detail, "anticipated gains…by material and by generating sector," is too detailed of a request of information. Counties do not have that level of detail of information available and if they did, it would be too fluid to capture. Once the data were estimated, it would be outdated. Does this mean that counties are to provide special strategies to target these sectors? What does "anticipated gains" mean? Also, counties do not receive recycling tonnage reports by sector and would have no way to comply with these requirements unless the Department is planning to provide such data to the counties. Why does this specify "**small** business sector"? Shouldn't it just be business sector? (4, 5, 6, 7)

RESPONSE: The Department disagrees that the level of detail required to comply with this regulatory requirement cannot be ascertained. There are numerous sources of information relative to the composition of the waste stream by type of generator (schools, small businesses, residents, etc.). In the absence of such information, a relatively simple visual waste "audit" of waste materials in a particular site's waste collection system (dumpster, compactor, etc.) would yield the same information. The Department agrees that the information would be fluid, but believes that changes to the composition of the waste stream occur slowly, because the waste stream is composed of items in general commerce. Goods and their packaging change rapidly in

style but are constrained in basic construction by their manufacturing methods. These manufacturing practices require, in many instances, large commitments of capital and equipment, which remain in commerce for years, if not decades.

98. COMMENT: Shouldn't N.J.A.C. 7:26A-12.3(a) refer to the Hackensack Meadowlands Development Commission instead of the New Jersey Meadowlands Commission? (4, 7)

RESPONSE: The Hackensack Meadowlands Development Commission (HMDC) has been renamed the New Jersey Meadowlands Commissions (NJMC). Accordingly, the text at N.J.A.C. 7:26A-12.3(a) is correct. However, the heading for N.J.A.C. 7:26A-12.3 erroneously refers to the Hackensack Meadowlands Commission; this error has been corrected on adoption.

99. COMMENT: At N.J.A.C. 7:26A-12.3(a), the phrase "or the entity designated by county government as the implementation agency" should be inserted after the word "freeholders" in the first line of the first paragraph in subsection (a). In some cases, there is a designated implementation agency that designates the county recycling coordinator. (1)

RESPONSE: County board of chosen freeholders may delegate the naming of the solid waste coordinator; however, it is the responsibility of the county freeholder board to adopt the county solid waste management plan and ensure that the position county recycling coordinator is established.

100. COMMENT: The Department proposed at N.J.A.C. 7:26A-12.3(a)3 that each county recycling coordinator shall be required to "ensure that the (municipal recycling) ordinances are consistent with the county recycling plan." In some cases, the county recycling coordinator does not have the statutory enforcement power to ensure such compliance. The commenter recommends that the phrase "ensure that" be changed to "determine if." If the Department rejects this suggestion, does this mean that the county will need to get a copy of each municipal recycling ordinance any time one is updated? (1, 4 7)

RESPONSE: The county has the authority to require that the municipal ordinance is in compliance with the county solid waste management plan pursuant to N.J.S.A. 13:1E-99.13. Furthermore, the county must have a copy of every appropriate current municipal recycling ordinance.

101. COMMENT: At N.J.A.C. 7:26A-12.3(b), why is used oil singled out as a material which requires having these lists maintained? Did the State maintain the list in the past? It would be more efficient for the Department to compile this information. Many of the commercial used oil sites are part of a larger retail chain and it would be more efficient to gather a list of all of a chain's locations for the whole State rather than have each county try to contact each location. In addition, it would be more logical for the Department, a State agency, to contact another State agency, the Motor Vehicle Commission (MVC), to obtain the list of all of the reinspection stations, instead of each county contacting the MVC. (4, 6, 7)

RESPONSE: Used oil presents an environmental danger that is disproportionate to its toxicity and volume. Residents need only release small amounts of used oil to drains to cause widespread damage, and are likely to do so if not offered convenient recycling opportunities. Although the total number of do-it-yourselfers is unknown, several hundred thousand people may still be changing their own oil. To this end, the Legislature required at N.J.S.A. 13:1E - 99.36 that all retail automotive repair shops with used oil containers (which would be all of them) and all licensed reinspection stations shall accept used oil from do-it-yourselfers. But these entities do not all comply, and do not post required signage to let residents know that they may recycle there. The Department's communications with do-it-yourselfers show that they cannot obtain local advice on recycling locations, and are often directed by local officials to the Department's main offices. The Department maintains an online list, but county coordinators have not all maintained and contributed local lists, and the Department cannot reasonably track all municipal drop-offs, county programs, and retail repair shops that accept used oil. Several counties do a good job of listing many drop-off sites. Warren County simply identifies all retail automotive repair shops. Union County does not yet list all retail automotive repair locations but lists 13 municipal drop-off sites. Middlesex County uploads its list to the Earth 911 website.

The Department believes that each county can develop a way to track the collection points, publicize them, and educate their operators to the importance of accepting the oil.

102. COMMENT: If N.J.A.C. 7:26A-12.3(b) remains in the rules, the following changes should be made:

The following additional underlined language should be added to 12.3(b)1: "Retail service stations, within the respective county, that have used oil collection tanks on the premises;"

The following additional underlined language should be added to 12.3(b)2: "Re-inspection stations, within the respective county, permitted by the Motor Vehicles Commission;"

The following additional underlined language should be added to 12.3(b)3: "Used oil collection centers; do-it-yourselfer used oil collection centers, within the respective county;"

The following additional underlined language should be added to 12.3(b)4: "Used oil aggregation points, within the respective county;" (4, 7)

RESPONSE: The Department intended that the proposed amendments to N.J.A.C. 7:26A-12.3(b) require county coordinators to collect information only for their respective counties and concurs that the rule text could be more succinctly worded to convey this intent. Accordingly, the Department has amended subsection (b) upon adoption to add the phrase "used oil handling locations within the county, including . . . ." With this amendment, the additional amendments to the paragraphs of subsection (b) suggested by the commenters are extraneous.

"Clean fill" and "Uncontaminated"

103. COMMENT: The commenter is concerned that this proposal will make it difficult to use recycled concrete or any other material that may contain any asphalt millings or any traces of asphalt in the recycled material. The rule will hinder the ability of construction firms to recycle construction materials or use recycled construction materials from licensed Class B recycling facilities. There is currently a working committee comprised of representatives from the Department, NJDOT and several industry groups that are working on identifying uses of asphalt millings and the commenter feels this proposal is in direct conflict with the current goals of that committee. (2)

104. COMMENT: The commenter takes issue with the Department's statement that the proposed rules will encourage the development of new facilities for the recycling of solid waste to meet the established goals, which could result in new employment opportunities. Class B recycling accounts for an enormous amount of recycled tons in New Jersey; and, this proposal with its clean fill and uncontaminated language may in fact severely decrease the recycling in New Jersey. (4)

105. COMMENT: The Department is proposing to allow the categorical beneficial use approval of the use of asphalt millings as well as Portland cement concrete pieces or aggregate that may contain some amount of asphalt or asphalt millings, under paved surfaces for outdoor vehicular surfacing construction. In addition to the beneficial reuse under paved surfaces, this rule should be expanded to include all impervious surfaces, such as concrete, etc. Additionally, such materials may also be beneficially reused as fill materials where a liner or cap exists. A prime example is a landfill where engineering controls are in place. It has been demonstrated that asphalt does not leach[2]; expanding the use of such fill should not pose any adverse impacts to the environment. The negative ramifications that would accompany the decision to limit the beneficial reuse of such fill will be detrimental to the overall well being of the State of New Jersey and its residents. Limiting beneficial reuse will accelerate the depletion of available space in New Jersey's already overburdened landfills. There would also be a negative impact to the market for recyclable materials. With the tighter restrictions and a decrease in the profitability of operating such recycling facilities, some owners would be forced to leave the business

altogether. The resulting undesirable trickle-down effect will be felt in the form of lost jobs; tax revenue paid to The State of New Jersey and lost commerce from workers whose buying power was derived from earning a living in the once vibrant New Jersey recycling industry. (10, 12)

106. COMMENT: In the context of the proposed definition changes, the Department should clarify the status of the Department's ID-27 soils' categorical approval for reuse where such soils meet the standards set forth in Department Soils Reuse guidance. It is important to be consistent in changes to posted guidance when making changes to regulations. The Department's guidance document should continue to be the primary guidance regarding soil reuse and the proposed definition of "clean fill" should be changed to reflect that soils should be handled per the Soils Reuse guidance. (15, 19)

107. COMMENT: The Department defines Class B recyclable material as source separated, non-putrescible, uncontaminated waste concrete, brick, block, wood waste; and, source separated asphalt and asphalt-based roofing scrap. The Department should not include "uncontaminated" when the class B recyclers are unable to visually inspect incoming loads of raw product and guarantee that the load has met all of the criteria for being uncontaminated. As we have mentioned in previous comments, it is likely that most loads meet or exceed the benchmarks for being uncontaminated; but, to guarantee that by visual inspection is impossible. (4)

108. COMMENT: The amended definition for clean fill and uncontaminated material is impossible to use in the real recycling world. To visually determine if there is contamination would not be possible in all instances. Hence all New Jersey recyclable concrete will be considered contaminated and must be sent to a landfill. That would mean sending annually 4,636,375 tons of concrete to a landfill.

The majority of crushed concrete purchasers are going to determine whether they "buy recycled" based upon whether the crushed concrete can meet this clean fill definition. Those same purchasers are already asking the New Jersey Class B recyclers for proof that their recycled product is clean and uncontaminated. With this definition of clean fill, we now have a standard

for clean. However, it would be difficult for any Class B recycler to definitively confirm in writing that their recycled finished product has met that standard for clean and uncontaminated. Most, if not all, of the Class B recycled product coming out of New Jersey regulated plants could meet the standard for clean and uncontaminated if tested, but it is impractical to perform the tests required by the definition of clean fill. Possibly, the definition of aggregate substitute (see N.J.A.C. 7:26A-1.1(c) could be expanded so that there would be an additional uncontaminated category of crushed concrete other than just clean fill and contaminated material.

The section defining the word uncontaminated is even more problematic to a recycler than the definition of clean. In this definition the Department is asking a recycler to determine whether the load of concrete contains levels of Department-recognized contaminants above the levels recognized by the Department's codified criteria and standards, including but not limited to the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Remediation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B. The recycling plant would need to determine by visual inspection that the concrete load meets these benchmarks. Again, this is extremely difficult, if not impossible.

So this all brings us back to the question of if a fully regulated, in compliance, Class B recycler is unable to visually inspect an incoming load of concrete and deem it uncontaminated and clean, then it is the commenter's understanding that the load of concrete must be considered contaminated; and, as a contaminated load of recyclable concrete the load must be considered solid waste and disposed of appropriately. It is felt that this definition alone has the ability to completely stop the recycling of concrete in New Jersey. Furthermore, the prior purchasers of crushed concrete would begin exclusively purchasing from the quarries. However quarried material has no requirement for meeting these clean fill benchmarks, so the clean fill definition may in fact result in preventing recycled products to be used while allowing potentially contaminated quarry material to be spread in its place.

The members of The Association of New Jersey Recyclers are the regulated recycling community endeavoring daily to operate in total compliance with the Department rules; and this recycling community is currently facing a crisis that has grossly limited the Class B recyclers' ability to market their recycled product. New Jersey Class B recyclers have the technology and the expertise to make products such as crushed concrete that meet or exceed the performance of quarried material. However, the Class B recyclers are finding it increasingly difficult to sell this high quality recycled product because of the growing mindset among purchasers and their engineers that recycled products are contaminated and un-clean (which they are not). (4)

109. COMMENT: There are major concerns regarding the definitions of "clean fill" and "uncontaminated" as proposed. The way that these definitions are presented will not allow for achieving practical material use in our industry. The Department should provide clarification as to the definition of "clean fill" with regard to aggregates, soils and other recyclable materials. Currently, the industry utilizes the term "clean fill" to define many materials that the recycling market produces, which when analyzed, mayor may not test to the most stringent New Jersey Soil Cleanup Criteria. However, definitions to the multiple meanings of "clean fill" as defined by the industry that are mostly dependant on an end-use, have not yet been established. The end-use of a "clean fill" material would be determined on a case by case basis, specific to each material type to ensure that little or no environmental impact will result from the material use. The processing of recycled aggregates provides for many uses in the construction industry, while providing an economical solution to support New Jersey's continued development. The industry is facing a challenge meeting the general characterization of "clean fill" as they relate to Recycled Concrete Aggregates (RCA) or Densely Graded Aggregates (DGA). The Department's Guidelines regarding material acceptance for Class B facilities stipulates that a Class B facility may accept aggregate that has been characterized as uncontaminated by the site owner with no additional testing requirements. This poses an issue to the facility, as mixed aggregate by nature may contain asphalt. In general, depending upon the material composition, mixed concrete and asphalt can have the potential to test above the NJ Residential Direct Contact Soil Cleanup Criteria (NJRDCSCC). The analytical results in turn deem the recycled product ineligible for use as "clean fill," and in effect change a recyclable to a solid waste. Therefore, the means of

acceptance are contradictory of the Department's Guidance for Characterization of Concrete and Clean Material Certification for Recycling. This unfounded scenario presents a “catch-22” for a licensed and compliant Class B facility, which having followed the Department's protocol is now unable to market its recycled product. The American Society for Testing & Materials defines asphalt as a dark brown to black cementitious material, with the predominating constituent being bitumens that either occur in nature or are obtained in petroleum processing. Bitumen is a generic term for natural or distillation from coal or petroleum materials that are composed mainly of hydrocarbons. When any amount of said material is included in the processing of recycled aggregates, there is potential for sampling analysis to yield elevated levels of certain polycyclic aromatic hydrocarbon (PAH) parameters, which would determine the material unsuitable for use as "clean fill" under the current definition.

Another significant fact is that the definition of “clean fill” does not make mention of remediated soils. Petroleum contaminated soils that undergo treatment through an LTTD or another NJDEP approved treatment process, should not be classified as “uncontaminated”. If the analytical test results representative of post-treated soils indicate that the material meets the most stringent NJDEP criteria, the material should be classified as “clean fill” with a specified end use. (10, 12)

110. COMMENT: If material does not satisfy the standards for “clean fill” it may be classified by the Department as “solid waste.” Thus, anyone accepting such material may be liable for violating the Solid Waste rules by accepting, storing and managing solid waste without a solid waste facility permit, and be subject to criminal or civil prosecution by the Department, a municipality or county. The proposal has the potential to significantly reduce the amount of material accepted by recyclers and thereby increase reliance on virgin material. Also, even assuming that recyclers should be responsible for policing the activities of generators of recyclable material, the language used in the proposed definitions of “clean fill” and “uncontaminated” are in many respects vague, subjective and unclear. Under the proposed definition of “uncontaminated,” a recycler is not provided adequate notice of the standard by which its actions will be judged. This is unfair, given the potentially severe consequences of

noncompliance and fails to provide sufficient legal notice, The Technical Rules adopted by DEP establish different acceptable contaminant levels for the same contaminants based upon the future use of the site. Thus, whether material is "uncontaminated" will depend upon where the material will be ultimately placed, which is not ordinarily knows at the time the material is accepted and managed by a recycler. (17)

111. COMMENT: The Department has proposed to amend the definition of "clean fill" and therein has established standards for materials to qualify as "clean." The proposed standards include a requirement that clean fill materials must meet the Department's regulatory definition of "uncontaminated" as proposed. Under this proposed standard, fill materials would qualify as "clean fill" provided the fill contains levels of Department-recognized contaminants at concentrations that are below the Department's codified criteria and standards, including but not limited to, the remediation standards defined under N.J.A.C 7:26E (Technical Requirements for Site Remediation), N.J.A.C 7:28 (the Radiation Cleanup Standards), N.J.A.C 7:9C (the Ground Water Criteria standards) and N.J.A.C 7:9B (the Surface Water Quality Standards).

Materials proposed for use as "clean fill" in the Pinelands Area must meet the Commission's antidegradation standard as opposed to the Department's proposed "clean fill" standard. In practice, fill materials proposed for use in the Pinelands Area cannot contain contaminant levels above background concentrations or above laboratory detection limits, even if those concentrations are below the Department's actionable codified criteria and standards. Therefore, the proposed rule should clearly state that materials meeting Department's proposed "clean fill" standard do not necessarily meet the Pinelands antidegradation standard applicable to fill materials and therefore may not be used in the Pinelands Area unless such fill material is consistent with the requirements of N.J.A.C. 7:50-6.71 et seq., in particular N.J.A.C. 7:50-6.73. (18)

112. COMMENT: The commenter believes that the insertion of the term "uncontaminated" at points in the regulation, other than in reference to clean-fill, requires additional clarification. Materials such as asphalt and scrap metal have constituents above NJ Standards that are intrinsic

to material. The definition does not appear to differentiate between those constituents inherent to the material and those which are contaminants from other sources. In order to encourage recycling, it is important to clarify the difference. In addition, there is no reference to the concrete recycling guidance recently issued by the Department, which should be checked for consistency with the definition of "uncontaminated." (19)

113. COMMENT: The definition of "clean fill" is too broad. Industry has used the term "clean fill" as a definition for materials that it recycles and that can be re-used. Clean fill as used by some industry is material that is considered appropriate and approved for any type of use. It is the final use that should dictate the definition on a case by case basis. (8)

114. COMMENT: Most of the regulated recycling community endeavors daily to operate in total compliance with the Department's rules and this recycling community is currently facing a crisis that has grossly limited the Class B recyclers' ability to market their recycled product. New Jersey Class B recyclers have the technology and the expertise to make products such as crushed concrete that meet or exceed the performance of quarried material. However, the Class B recyclers are finding it increasingly difficult to sell this high quality recycled product because of the growing mindset among purchasers and their engineers that recycled products are contaminated and un-clean (which they are not).

In the cited definition, the Department fully defines clean fill; and, it is our position that the majority of crushed concrete purchasers are going to determine whether they "buy recycled" based upon whether the crushed concrete can meet this clean fill definition. The New Jersey purchasers are already seeking a safety net to be protected from instances such as Ford Motor Co, etc.; and, those purchasers are already asking the New Jersey Class B recyclers for proof that their recycled product is clean and uncontaminated. With this definition of clean fill we now have a standard for clean; but, can any Class B recycler definitively confirm in writing (as many purchasers are asking the recycler to do) that their recycled finished product has met that standard for clean and uncontaminated? It is our position that the answer is no. Although most, if not all, of the Class B recycled product coming out of the regulated NJ plants could meet the

standard for clean and uncontaminated if tested we see no practical way to perform the tests required by the definition of clean fill.

Class B recyclers depend heavily on their recycled product being marketable. That means that the recyclers exhaustively scrutinize their incoming feedstock. A high quality feedstock contributes positively to a high quality finished product. But even with the most ambitious inspection at the front gates of our recycling plants, it will be extremely difficult for staff to visually determine if any staining results from normal vehicular use and allow only dripping of small amounts of vehicular lubricants and nothing else. Furthermore, we question how even the most rigorous visual inspection at the recycling plant gate could determine if a piece of concrete within a truckload of concrete had ever been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58-10.11 et seq.

In this definition the Department writes that material is to be considered clean fill if it is not contaminated, which indicates that class B recycled material must either meet the clean fill definition or be considered contaminated. As mentioned above, logistically and realistically, it may be very difficult for a Class B NJ recycler to guarantee that the concrete which he is seeing for the first time at his front gate has never been affected by a release under the SCCA or whether the concrete's staining is from a small amount of vehicular lubricant or otherwise. We urge the Department to modify this definition so that a Class B recycler can realistically determine if their product meets the definition of clean and uncontaminated. Possibly the definition of aggregate substitute (see N.J.A.C. 7:26A-1.1 (C) could be expanded so that there would be an additional uncontaminated category of crushed concrete other than just clean fill and contaminated material.

As a further complication to this definition, the section defining the word uncontaminated is even more problematic to a recycler than the definition of clean. In this definition the Department is asking a recycler, who is seeing the load of raw product for the first time at his plant gate, to determine whether the load of concrete contains levels of Department recognized contaminants above the levels recognized by the Department's codified criteria and standards,

including but not limited to the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Remediation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B. And the recycling plant would need to determine by visual inspection that the concrete load meets these benchmarks. It is our position that such a visual inspection is impossible.

So this all brings us back to the question of if a fully regulated, in compliance, Class B recycler is unable to visually inspect an incoming load of concrete and deem it uncontaminated and clean, then it is our understanding that the load of concrete must be considered contaminated; and, as a contaminated load of recyclable concrete the load must be considered solid waste and disposed of appropriately. It is our position that this definition alone has the ability to completely stop the recycling of concrete in New Jersey. That would mean stopping hundreds of thousands of tons of concrete would be landfilled annually. Furthermore, the prior purchasers of crushed concrete would begin exclusively purchasing from the quarries. However quarried material has no requirement for meeting these clean fill benchmarks, so the clean fill definition may in fact result in preventing recycled products to be used while allowing potentially contaminated quarry material to be spread in its place.

Lastly, the Department writes that the proposed amendment regarding “clean fill” will have a positive social impact helping to prevent the misuse of materials in the construction industry. The Department is also proposing to qualify that clean fill may include materials generated from Class B recycling center, but only if the material is uncontaminated to prevent any spread of contamination to sites using recycled products from Class B facilities. It is our position that the bulk of the regulated Class B recycling community in New Jersey is in compliance with the rules; and, is certainly committed to making a very high quality product. They have to make a high quality product, it is how the legitimate recyclers make their income and stay in business. Misuse of materials in the construction industry can only happen when a non-regulated or poorly monitored facility produces those undesirable products. We request that

the Department refine this definition so that it can enhance and promote recycling and be applied under practical circumstances. (20)

115. COMMENT: The commenter objects to the Department's inclusion of the word uncontaminated when the class B recyclers are unable to visually inspect incoming loads of raw product and guarantee that the load has met all of the criteria for being uncontaminated. It is difficult to determine visually if there was any groundwater contamination or if there was leakage onto the concrete or stump. It is likely that most loads meet or exceed the benchmarks for being uncontaminated; but, to guarantee that by visual inspection is impossible. Even material that is considered "uncontaminated" under the Department's standard has the potential to test above the established limits for Residential clean fill due to the presence of asphalt which can contain polycyclic aromatic hydrocarbons but has been proven as a product that does not leach. (4)

116. COMMENT: The commenter believes the insertion of the term "uncontaminated" at points in the regulation, other than in reference to clean-fill, requires additional clarification. The Department has defined "uncontaminated" at 7:26-1.4 and has indicated that this definition will apply to both the Solid Waste and the Recycling Rules. The term appears at N.J.A.C. 7:26A-1.4(a)(2) around recycling of "uncontaminated" source separated recyclable materials and at N.J.A.C. 7:26A-1.4(a)(20), which states ". . . demolition activities generate uncontaminated source separated concrete, asphalt, uncontaminated brick and uncontaminated block. . . ." Materials such as asphalt (polycyclic aromatic compounds) and scrap metal (nickel-chrome alloy, painted surfaces) have constituents above New Jersey standards that are intrinsic to the material. The definition does not appear to differentiate between those constituents inherent to the material and those which are imparted as contaminants from other sources. In order to encourage recycling, it is important to clarify the difference.

As noted in the proposal, it would not be uncommon for asphalt to include staining from normal vehicular traffic and dripping of small amounts of vehicular lubricants. This asphalt

staining should not be viewed as "contamination" negating the construction and demolition activity exemption at 7:26A-1.4(a)(20). Additionally, there is no reference to the concrete recycling guidance recently issued by the Department, which should be checked for consistency with the definition of "uncontaminated." (15)

RESPONSE to COMMENTS 103 through 116: In the January 7, 2007 rule proposal, the Department proposed a definition of the term "uncontaminated," and added several references to that term throughout the proposed rules, along with related amendments. The Department has determined not to adopt the proposed new definition of "uncontaminated" and the related proposed amendments that utilize this term, including proposed amendments to the definition of “clean fill.” In view of numerous comments from the regulated community concerning the term "uncontaminated" and its application to Class B facility products and clean fill, the Department has determined that the use of the specific criteria in the definition of "uncontaminated" as proposed would be unnecessarily and improperly burdensome on the recycling industry. The Department intends to review this matter and repropose rules regarding the definition of "uncontaminated" and the application of the term to CLass B facility products and clean fill in the future.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Recycling Rules are proposed under the authority of N.J.S.A. 13:1E-1 et seq., 13:1B-3, and 13:1D-9. New Jersey has been regulating solid and hazardous waste, including recyclable materials, since 1970. The United States Environmental Protection Agency (USEPA) has regulated solid and hazardous waste management since 1978. The two programs operate, for the most part, in conjunction and coordination.

Except for the provisions noted below, the rules being readopted with amendments and new rules are not adopted under the authority of or in order to implement, comply with or participate in any program established under Federal law. Accordingly, no comparison with Federal law is required under P.L. 1995, c. 65, and Executive Order No. 27(1994) for these provisions.

The readopted and amended used oil rules, and the readopted, amended and new universal waste rules, are developed under the USEPA used oil rules at 40 CFR Part 279 and the USEPA universal waste rules at 40 CFR Part 273, respectively, as authorized under the Resource Conservation and Recovery Act (RCRA). To be authorized by the USEPA to implement the used oil and universal waste program in the State, New Jersey's regulations governing used oil and universal waste must be at least as stringent as the corresponding Federal requirements. The Department is adopting all of the substantive requirements of the USEPA universal waste rule, and is retaining the substantive requirements of the Federal used oil management standards. The adopted new rules for universal waste are essentially an incorporation by reference of the Federal program and do not include any standards or requirements which exceed the standards or requirements imposed by the Federal universal waste program. No further analysis of them, therefore, is required.

The rules being readopted with amendments and new rules regarding used oil, however, do contain some standards that exceed those of the Federal used oil program. Those areas where the adopted rules are more stringent than the comparable Federal rules are specifically identified and discussed below.

Mixing used oil with virgin oil products

N.J.A.C. 7:26A-6.1(a)4 adds a restriction on the mixture of used oil with virgin oil products. In the Federal program, used oil may be mixed with diesel fuel on-site and used in the generator's own vehicle. This adoption continues to restrict that mixture to used diesel engine

fuel at a blending of less than or equal to a maximum rate of five percent or 19:1 virgin fuel to diesel used oil.

Diesel fuel formulated with a heavy hydrocarbon content has been demonstrated to produce higher per-mile and per-unit of power particulate, hydrocarbon, carbon monoxide and nitrogen oxides emissions from both diesel-powered and gasoline powered engines than would be exhibited from the same engine when operated using fuel of proportionally lower heavy hydrocarbon content. Heavy hydrocarbon is a relative term which indicates that a hydrocarbon molecule may be composed of many hydrogen and carbon atoms, thus producing a relatively high or heavy molecular weight. Motor oils specifically and lubricating oils in general, which are the basis of used oil, are typically composed of these heavier hydrocarbon molecules.
The heavier hydrocarbon molecules are less likely to vaporize and combust during the engine firing cycle due in part to their greater mass requiring more heat for vaporization and their size which provides a measure of insulation. The abnormal mass and associated higher energy content also tend to create "hot spots" in the engine combustion chamber, resulting in oxidation of atmospheric nitrogen during the combustion process. The end result in the combustion process is composed of completely combusted molecules (carbon dioxide and water, product of complete combustion), carbon monoxide, unburned and partially burned hydrocarbon molecules and oxidized nitrogen. These environmental impacts are discussed in the SAE paper 932725 entitled How Heavy Hydrocarbons in the Fuel Affect Exhaust Mass Emissions: correlation of Fuel, Engine-Out and Tailpipe specification-The Auto/Oil/Air Quality Improvement Research Program. Although this paper addresses gasoline-fueled engines, the principles are similar.
The fuel Cetane number, a measure of a fuel's volatility profile, can be affected by the addition of thicker and comparatively viscous lubricating oils. Motor oils tend to be engineered to not evaporate under high heat conditions, lending to their poor combustive qualities. This fact, as discussed above, would result in elevating a vehicle's exhaust emission contaminant levels as the SAE paper 950251, Effects of Cetane Number on Emissions from a prototype 1998 Heavy-Duty Diesel Engine, demonstrates that there is a clear relationship between cetane number and excessive exhaust contaminants.

The USEPA finalized Regulation of Fuels and Fuel Additives at 40 CFR Part 80 as part of the Clean Air Act Amendments of 1990 establishing a maximum sulfur content of 0.05% by weight and a minimum Cetane index of 40 for fuels for diesel-powered motor vehicles. As the addition of oils can effect the Cetane Number of the diesel fuel, mixing of used oil may result in oil with diesel fuel non-compliance with the Federal rules at 40 CFR Parts 80 and 86. Commercially available diesel fuel tends to have a Cetane index relatively close to 40 due to the expense of the fuel constituents which would produce a higher number. Mixing of the contents of one crankcase volume of used oil (8-12 quarts) may be sufficient to render the fuel itself to be rendered in non-compliance. Therefore, the adopted rule would restrict the mixing on-site of used oil and diesel fuel at a ratio of 19:1 virgin diesel fuel to used oil or of a maximum rate of five percent, in order to ensure compliance with both the Federal used oil rules at 40 CFR Part 279 and the Fuel and Fuel Additive Rules-diesel fuel at 40 CFR Parts 80 and 86.

The Department does not estimate an additional cost to diesel fuel engine operators who may be impacted by this restriction, since its used diesel fuel consumed and combusted in a diesel engine is greater than the generation rate of used diesel oil and greater than the 19:1 dilution ratio. The USEPA, in their adoption of the used oil rules at 40 CFR Part 279 (see 57 FR 41583), recommends a dilution ratio that assures a high concentration of diesel fuel to used diesel crankcase oil. The Department believes, therefore, that retaining a dilution ratio of 19:1 will ensure the resultant blended fuel will meet the used oil fuel specifications.

Halogen content of on-specification used oil

At N.J.A.C. 7:26A-6.2(a), the Department is retaining the maximum level for total halogen in used oil of 1,000 ppm. This is more stringent than the Federal comparable used oil management standard which sets the limit at 4,000 ppm.

The USEPA established a level of total halogen at 1,000 ppm for the generator, collector, transporter and processing facility, above which the used oil is defined as a hazardous waste. This classification may be rebutted by either testing the used oil to determine if the halogen level

is from an exempt source or if the individual halogen compounds are below a significant concentration, or by applying knowledge (with substantiating documentation) that the oil with the halogen content over the threshold level was from an exempted source. Exempted sources of halogens may then be introduced into or a component of a used oil batch or blend within a tank or container at a used oil storage, transfer or processing facility. The total level of halogens in the on-specification used oil could, therefore, exceed the 1,000 ppm rebuttable level to a limit of 4,000 ppm.

The Department is retaining the on-specification limit at 1,000 ppm oil. Used oil from exempted sources exceeding the 1,000 ppm halogen limit may be processed with other used oil provided the final product does not exceed 1,000 ppm halogens. A report prepared by the Vermont Agency of Natural Resource Department of Environmental Conservation, entitled "Vermont Used Oil Analysis and Waste Oil Furnace Emission Study" (September 1994) indicated that the average value of total halogens in used oil is between less than 200 and 350 ppm and that the total organic halogens were between less than between 200 and 300 ppm. Data from New Jersey used oil processing facilities confirms an average concentration for total halogens in used oil of less than 1,000 ppm.

Data provided in a report entitled "Metals Emissions from Combustion of Used Oil Fuel" by the National Oil Recyclers Association indicates that the total quantity of used oil which may have limits of total halogen above the 1,000 ppm limit which would be exempt from the 1,000 ppm limit and rebuttable is approximately 16 percent of the total quantity of used oil available for recycling. This data presents a scenario if all the used oil with typical values below the 1,000 ppm limit were blended with all the used oil from exempted sources with levels above the 1,000 ppm limit, the resulting partitioned mixture would generate a blend below the 1,000 ppm limit. The current New Jersey air emission standard at N.J.A.C. 7:27 for total organic halogen is 500 ppm. The halogens include bromine, chlorine and fluorine and form acid gases upon combustion which require control equipment to ensure compliance with the New Jersey acid gas emission standards at N.J.A.C. 7:27. Based on the level of total halogen and total organic halogens in the Vermont study, there was an exceedance of an hydrochloric acid (HCl) emission from a waste oil

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furnace. Control of total halogens at or below the 1,000 ppm limit can assist in ensure compliance with the New Jersey HCl emission standards at N.J.A.C. 7:27. This lower threshold will have a positive impact on the air quality of New Jersey and ensure that the combustion of used oil or any blend of on-specification used oil and commercial grade oil products meets air quality emissions levels.

All permit renewals for used oil processors in New Jersey are currently issued at the 1,000 ppm level and keeping this limit at its current level would not result in additional costs within the current system. Further, retaining the halogen threshold of 1,000 ppm will not limit the current or future markets for on-specification used oil. In fact, a higher revenue can be generated from a used oil of a higher grade than the Federal on-specification levels.

The Gasoline Retailers Association and the New Car Dealer Association, which represent service stations that collect and aggregate used oil, have indicated that the majority of gasoline stations and service stations have moved away from the use of chlorinated solvents which is a source of halogens in used oil. According to these associations, the use of chlorinated solvents is being replaced with non-chlorinated solvents such as mineral spirits and kerosene in response to worker health and safety concerns. Furthermore, an exemption from CERCLA liability is available to service stations if they comply with the adopted used oil management standards and do not mix any hazardous substances in their collected used oil. Hazardous substances, as defined by CERCLA, is a broader category than hazardous waste and includes the chlorinated solvents that may increase the total halogen level. The above examples of efforts to replace chlorinated solvents with mineral spirits or kerosene by the service station and other such companies in similar fields which clean parts during maintenance of their equipment will serve to lower overall average total halogen concentration below the 1,000 ppm level, typically to 350 ppm.

The information supplied to the Department indicates that the average total halogen concentration content in used oil is below 1,000 ppm. The readoption of the current limit of 1,000 ppm for halogen is not expected to result in new additional costs or the loss of current

markets for used oil processors. This requirement is expected to have a zero added cost factor in the processing of used oil. The benefits to be derived from retaining the halogen on-specification used oil level at no greater than 1,000 ppm are:

1. Continued adequate enforcement to ensure that illegal blending of used oil and characteristically or listed hazardous waste by generators or transporters is prevented;

2. Continued lowering of the acid gas (HCl) emissions from the combustion of fuel oil containing a blend of used oil; and

3. Continued generation of higher revenue to be derived from the sale of used oil meeting the higher requirements.

The new or added costs to the used oil proeessing industry re expected to be zero.

Requirement for air pollution control permit

At N.J.A.C. 7:26A-6.2(b), 6.3(c), 6.3(d) and 6.3(f), the Department is retaining provisions which state that 1) the burning of used fuel oil in any device requires an air pollution control permit or other authorization from the Department's air program, and 2) the burning of off-specification used oil in a space heater is prohibited. Therefore, in order to be consistent with the air pollution control regulations, the adopted readoption appropriately cross-references the requirement to obtain an air pollution control permit. These provisions are more stringent than comparable Federal used oil standards. For a detailed cost benefit analysis for the air pollution control aspects of the permitting and prohibition provisions, see the Department's Federal Standards Analysis included in the adoption of the Used Oil Combustion Rule, N.J.A.C. 7:27-20, on December 6, 1999 (31 N.J.R. 4016).

Used oil transfer facility notifications

At N.J.A.C. 7:26A-6.6(c), the Department is retaining the requirement that owners or operators of used oil transfer facilities provide written notification of the location of the transfer facility to the Department prior to conducting used oil activities at the transfer facility. Notification as to the Location of these facilities is necessary to enable the Department to exercise its statutory duty to monitor (through periodic inspection) the activities at used oil transfer facilities in order to ensure that used oils are being managed in an environmentally sound manner at these facilities.

Generally, USEPA assigns EPA ID numbers to a transportation company as a whole and not on an individual site basis, unlike the manner in which EPA ID numbers are assigned to hazardous waste generators and treatment, storage or disposal facilities. All of a particular used oil transporter's trucks and terminals use the same company-wide EPA ID number unless the transporter specifically requests or notifies otherwise. Furthermore, the Department does not require persons who do not actually transport used oil, but are considered used oil transporters solely because they operate a used oil transfer facility to obtain an approved registration statement as a New Jersey solid waste transporter. Therefore, the Department would not be notified when a person with an out-of-state EPA ID number operates a used oil transfer facility in New Jersey.

The Department is therefore requiring notification as to the address of all such used oil transfer facilities so that their activities can be monitored. The notification may be in the form of a letter identifying the address of the facility. A copy of the transporter's original notification and request for EPA ID number or a copy of a subsequent notification to USEPA identifying the address of the used oil transfer facility would also satisfy this requirement. Therefore, this notification requirement adds negligible additional costs to owners or operators of used oil transfer facilities. Once notified of the location of used oil transfer facilities, the Department will be able to periodically monitor the activities at these facilities, ensuring the environmentally sound management of used oils at all used oil transfer facilities. The Department believes, therefore, that the environmental benefit derived from direct notification to the Department, far outweighs the costs of this additional requirement.

The Department believes that the penalties are necessary and reasonable in order to implement the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. as amended by the Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99 and to implement its recycling program generally. Adopting new Subchapter 9 will continue to encourage compliance and discourage noncompliance with the State's recycling law and rules. Additionally, the Department has conducted an analysis of the adopted new penalty provisions and has determined that they do not exceed any standard or requirement imposed by Federal law; they are consistent with Federal law. Accordingly, no Federal standard analysis is required with regard to the new penalty subchapter at N.J.A.C. 7:26A-9.

Full text of the proposal can be found in the New Jersey Register, 40 N.J.R. 7.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***.

CHAPTER 26 SOLID WASTE
SUBCHAPTER 1. GENERAL PROVISIONS

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.

. . .

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as concrete, glass and/or clay or ceramic products *[that has not been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and its implementing rules, and has no visible staining (not including staining resulting from normal

vehicular use and dripping of small amounts of vehicular lubricant), odor, or other sensory nuisance resulting from chemical contaminants associated with the material. Nondecomposable means that the material does not contain putrescible material that could cause nuisance odors or water pollution*]. Clean fill does not mean processed or unprocessed mixed construction and demolition debris including, but not limited to, wallboard, plastic, wood or metal. The non[-]water soluble, non[-]decomposable inert products generated from an approved Class B recycling facility, *[limited Class B recycling center or a facility acting in accordance with the requirements at N.J.A.C. 7:26A-1.4(a) for activities exempt from obtaining a general or limited approval,]* are considered clean fill *[if the products are uncontaminated and have not been blended or otherwise diluted to qualify as uncontaminated, unless approved by the Department]*.

. . .

["Uncontaminated" means that a material contains levels of Department-recognized contaminants below the levels recognized by the Department's codified criteria and standards, including, but not limited to, the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Radiation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B.]

. . .

7:26A-1.1 Scope and authority

(a) – (b) (No change from proposal.)

(c) The use or reuse of material that would otherwise become solid waste pursuant to N.J.A.C. 7:26 as *[clean]* fill material, aggregate substitute, fuel substitute, or landfill cover which in some cases may be recycling, are reviewed and approved in accordance with N.J.A.C. 7:26-1.7(g).

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(d) Unprocessed recyclable materials, post-consumer materials, and used or abandoned materials that are or will be deposited on or in the lands of the State for any period exceeding six months, including by stockpiling, staging or storing, are solid waste that shall be managed in accordance with the Solid Waste rules, N.J.A.C. 7:26, unless:

1. - 5. (No change from proposal.)

6. The material is approved for use *[as clean fill]*under N.J.A.C. 7:26-1.7(g).

(e) This chapter shall not apply to the composting and on-site use of farm feedstocks where the feedstocks are composted as follows:

1. (No change from proposal.)

2. Only the following site-generated feedstocks are composted:

i. – iv. (No change from proposal.)

v. Hay; *[and]*

vi. Silage*[,]** and

vii. Other farm feedstocks, except grass clippings, that meet the definition of vegetative waste set forth at N.J.A.C. 7:26-2.13(g)1v;*

3. (No change from proposal.)

4. The composting method used shall be *at least* low level technology windrow composting pursuant to N.J.A.C. 7:26A-4.5(a)14vi*[(2)]*;

5. - 6. (No change from proposal.)

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 chapter.

***

"Architectural salvage item" means any component removed from a building that is scheduled for or is undergoing demolition or renovation for the purpose of reinstallation in *or on* any building. Architectural salvage items are not solid waste.

* * *

"Class B recyclable material" means a source separated recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to, the following:

1. Source separated, non-putrescible, *[uncontaminated]* waste concrete, [asphalt,] brick, block, wood *[waste]*; and source separated asphalt and asphalt-based roofing scrap and wood waste;

2.-5. (No change.)

* * *

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as concrete, glass and/or clay or ceramic products *[that has not been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and its implementing rules, and has no visible staining (not including staining resulting from normal vehicular use and dripping of small amounts of vehicular lubricant), odor, or other sensory nuisance resulting from chemical contaminants associated with the material. Nondecomposable means that the material does not contain putrescible material that could cause nuisance odors or water pollution]*. Clean fill does not mean processed or unprocessed mixed construction and demolition debris including, but not limited to, wallboard, plastic, wood or metal. The non[-]water soluble, non[-] decomposable inert products generated from an approved Class B recycling [facility], *[limited Class B recycling center or a facility acting in accordance with the requirements at N.J.A.C. 7:26A-1.4(a) for activities exempt from obtaining a general or limited approval]*, are considered clean fill *[if the products are uncontaminated and have not been blended or otherwise diluted to qualify as uncontaminated, unless approved by the Department]*.

. . .

"Total municipal solid waste stream" means the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus the total number of tons <u>*of material separated from municipal solid waste and*</u> recycled.

* * *

["Uncontaminated" means that a material contains levels of Department-recognized contaminants below the levels recognized by the Department's codified criteria and standards, including, but not limited to, the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Radiation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B].

* * *

7:26A-1.4 Activities exempt from general or limited approval

(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. Manufacturers shall not be required to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 for the receipt, storage or processing of source separated recyclable materials. This exemption shall also apply to:

i. Asphalt manufacturing plants[, which] that receive solely source separated recyclable asphalt millings or larger pieces, and [pre-consumer] preconsumer asphalt shingles or other asphalt-based roofing scrap, or a combination thereof prior to [its] their introduction into the asphalt manufacturing process. The materials shall be delivered to the manufacturing plant directly from the site of generation unless intermediate storage is authorized by the Department; [or]<u>*or*</u>

ii. Pallet manufacturers and/or refurbishers [who] that process non-salvageable wood pallet materials generated from their manufacturing and refurbishing activities. Storage of processed wood materials shall not exceed one year*[; and]**.*

***[**iii. Concrete manufacturing plants that utilize uncontaminated source separated recyclable off-specification or surplus concrete and/or block manufactured on site as raw material in their concrete or aggregate manufacturing process. For purposes of this exemption, recyclable concrete may be used either as aggregate in a fresh concrete mix by the original concrete manufacturer or as sub-base products, but only if the recyclable concrete qualifies as exempt from solid waste regulation pursuant to N.J.A.C. 7:26-1.1(a)1;]*

2. The recycling of ***[**uncontaminated**]*** source separated recyclable materials that are generated, processed and reused as a product exclusively at the point of generation where all applicable county and municipal approvals have been obtained for that activity. Specifically excluded from this exemption are source separated petroleum contaminated soils, and the receipt, storage, processing or transfer of materials generated off-site;

3. - 19. (No change.)

20. Any construction company or contractor which through the course of construction and demolition activities generates ***[**uncontaminated**]*** source separated concrete, asphalt, uncontaminated brick, and *[uncontaminated]* block, may receive, store, process, and transfer the material provided that:

i.-ii. (No change from proposal.)

21. – 22. (No change from proposal.)

23. The receipt and composting of farm feedstocks where the activity meets the following criteria:

i. (No change from proposal.)

ii. Only the following feedstocks are received or composted:

(1) – (4) (No change from proposal.)

(5) Hay; ***[**and**]***

(6) Silage*[,]**_;]**<u> and</u>

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(7) Other farm feedstocks, except grass clippings, that meet the definition vegetative waste set forth at N.J.A.C. 7:26-2.13(g)1v;*

iii. – iv. (No change from proposal.)

v. *[Only]**At least* low level technology windrow composting as described at N.J.A.C. 7:26A-4.5(a)14vi*[(2)]* shall be used as the composting method;

vi. (No change from proposal.)

vii. A buffer distance of *[200]*50* feet shall be maintained between composting activities and the facility property line; and

viii. (No change.)

24. (No change.)

(b) The general requirements applicable to all exemptions set out in (a) above are as follows:

1. (No change from proposal.)

2. All persons operating pursuant to an exemption in (a) above shall ensure that the receipt, storage, processing or transfer of materials pursuant to the exemption is conducted in a manner which minimizes degradation of existing transportation patterns, ambient acoustical conditions, ambient air quality, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands *Area* and agricultural development areas, dedicated recreational or open space areas floodways and

endangered or threatened wildlife and vegetation, consistent with applicable municipal, county, State and Federal law and regulations;

3. – 8. (No change from proposal.)

(c) (No change from proposal.)

SUBCHAPTER 2. FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER FOR CLASS B, CLASS C, AND CLASS D RECYCLABLE MATERIAL

7:26A-2.1 Fees for general or limited approval

(a) (No change from proposal.)

(b) The following apply to the annual fee for general approval and the monthly fee for limited approval:

1.-4. (No change from proposal.)

5. All persons who possess a general approval to operate a multi-class recycling center, shall be billed the applicable annual fee and the applicable fee for an initial application and renewal of general approval set forth at (b)5i through viii below. A modification of a multi-class facility is billed according to *[(b)5viii through x]** *(b)5xi through xiii* below for the type of activity being added to the existing facility. If more than one type of activity is added, then the respective fee shall be billed for each type of activity.

Type of Multi-Class Facility	Annual Fee	Application Fee	Renewal Fee	Modification Fee

--------	----------	---	----	----
i. Class B and C	$8,792	$14,223	$5,306	-------
ii. Class B and D	$7,970	$18,341	$3,620	-------
iii. Class B and D - Oil only	$7,970	$18,341	$3,620	-------
iv. Class B and D - Universal Waste only	$7,970	$ 7,898	$3,620	-------
v. Class C and D	$10,808	$21,491	$6,396	-------
vi. Class C and D - Oil only	$10,808	$21,491	$6,396	-------
vii. Class C and D - Universal Waste only	$10,808	$14,199	$6,396	-------
viii. Class B, C and D	$11,672	$24,132	$6,876	-------
ix. Class B, C and D - Oil only	$11,672	$24,132	$6,876	-------
x. Class B, C and	$11,672	$16,839	$6,876	-------

D - Universal Waste only				
xi. Any Class/add or modify Class B	-------	-------	-------	$2,400
xii. Any Class/add or modify Class C	-------	-------	-------	$4,826
xiii. Any Class/add or modify Class *[B]* *D*	-------	-------	-------	$3,140

(c)-(f) (No change from proposal.)

SUBCHAPTER 3. APPROVAL OF RECYCLING CENTERS FOR CLASS B, CLASS C OR CLASS D RECYCLABLE MATERIALS

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 commencing 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 a manner and format consistent with N.J.A.C. 7:1D, 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 3.20.

1. – 8. (No change from proposal.)

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] other professional qualified in accordance with the State Board of Professional Engineers and Land Surveyors rules, N.J.A.C. 13:40, 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. – iii. (No change from proposal.)

iv. Delineate the incidence of wetlands, ***[**New Jersey Pinelands]*****Pinelands Areas*, prime agricultural lands, historic sites (where applicable) and other environmentally sensitive areas;

v. - ix. (No change from proposal.)

10. - 21. (No change from proposal.)

19. – 21. (No change from proposal.)

(b) – (j) (No change from proposal.)

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. 7:26-3.2, the following information:

1. – 8. (No change from proposal.)

9. A description of the impact that the proposed facility will have on applicable Federal, State or local land uses including the Pinelands *[area]* <u>*Area* </u>and agricultural development areas, dedicated recreational or open space areas, floodways and endangered or threatened wildlife and vegetation.

(b) (No change from proposal.)

SUBCHAPTER 4. DESIGN AND OPERATIONAL STANDARDS AND GENERAL RULES FOR RECYCLING CENTERS WHICH RECEIVE, STORE, PROCESS OR TRANSFER CLASS A, CLASS B, CLASS C AND CLASS D RECYCLING MATERIAL

7:26A-4.1 Design and operational standards for recycling centers which receive Class A, Class B, Class C and Class D recyclable materials

(a) All owners or operators of recycling centers which receive, store, process or transfer Class A, Class b, Class C, or Class D recyclable material shall comply with the following design and operational standards:

1. - 8. (No change from proposal.)

9. All recycling centers located within the Pinelands *[Protection]* Area shall be operated in a manner consistent with the goals of the comprehensive management plan developed by the Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and shall obtain all approvals required by the Pinelands Commission;

10. – 14. (No change.)

(b) (No change.)

7:26A-4.4 Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by ***[**February 1]* <u>*March 1* </u>of 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 shall also be submitted to the Department. The report shall detail the amount of each source of 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. Those persons reporting the recycling of lamps shall also report the volume of the received materials in linear feet. Non-tubular lamps may be reported as individual units. Those persons reporting on mercury-containing equipment shall also report the number of devices received. Lamps or mercury containing equipment which are shipped using a hazardous waste manifest may be reported in pounds or gallons.

(b) Except as otherwise provided in N.J.A.C. 7:26A-1.4(b)4, all persons operating pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4 shall provide recycling tonnage reports by *[February 1]* <u>*March 1* </u>of each year to the applicable municipalities, to the county and to the New Jersey Department of Environmental Protection, Solid and Hazardous Waste Management Program, Bureau of Recycling and Planning, P.O. Box 414, 401 East State Street, Trenton, New Jersey 08625-0414 for the previous calendar year. The report shall detail the

amount of each source separated recyclable material, expressed in tons, cubic yards, cubic feet, or gallons received, stored, processed or transferred. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons. Those persons reporting the recycling of lamps shall also report the volume of the received materials in linear feet. Non-tubular lamps may be reported as individual units. Those persons reporting on mercury-containing equipment shall also report the number of devices received. Lamps or mercury containing equipment which are shipped using a hazardous waste manifest may be reported in pounds or gallons.

7:26A-4.8 Additional design and operational standards for recycling centers which receive, store, process or transfer Class B recyclable materials

(a) (No change from proposal.)

(b) In addition to the requirements of N.J.A.C. 7:26A-4.1 and (a) above, the following operational and design criteria apply to recycling centers receiving Class B petroleum contaminated soil:

1.-13. (No change from proposal.)

14. The facility shall process all source separated petroleum contaminated soil received at the recycling center by thermal treatment or other Department approved physical, chemical, or biological treatment technology, as specified in the general approval issued pursuant to N.J.A.C. 7:26A-3.5*. This requirement does not apply to petroleum contaminated soil if, upon receipt at the facility, the soil is subjected to laboratory analysis by a laboratory that is certified pursuant to N.J.A.C. 7:18, and the results of that laboratory analysis show that the incoming shipment of soil complies as received with Department-approved analytical limits established for certain end markets, as specified in the general approval issued to the facility pursuant to N.J.A.C. 7:26A-3.5*.

SUBCHAPTER 9. CIVIL ADMINISTRATIV PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26A-9.4 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) – (f) (No change from proposal.)

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

1. (No change from proposal.)

2. The violations of N.JA.C. 7:26A-4, Operational Standards and General Rules for Recycling Centers which Receive, Store, Process to Transfer Class A, Class B, Class C and Class D Recyclable Materials, Right of Entry and Inspection, the type of violation as minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are set forth in the following table.

Rule N.J.A.C.	Rule Summary	Base Penalty	Type of Violation	Grace Period Days
* * *				
7:26A-4.4(a)	Failure of the operator of a recycling center to provide a recycling tonnage report by	$3,000	M	30

	[February1] ***March 1*** of each year.			
7:26A-4.4(b)	Failure of exempt person to submit required tonnage reports by *[February 1]* ***March 1*** of each year.	$3,000	M	30

* * *

3. – 4. (No change from proposal.)

5. The violations of 40 CFR 273, Standards for the Management of Universal Waste, the type of violation as minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil base administrative penalty for each violation, are as set forth in the following table.

Rule CFR	Rule Summary	Base Penalty	Type of Violation	Grace Period Days
* * *				
§273.13(a)2	Failure of small quantity handler of universal waste *[to ensure that the casing of individual cells was not breached when activities were conducted on batteries]* *conducting activities not to manage as hazardous waste casing of individual battery cells that have been breached*.	$4,500	NM	

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* * *

§273.33(a)2	Failure of large quantity handler of universal waste *[to ensure that the casing of individual cells was not breached when activities where conducted on batteries]* *conducting activities not to manage as hazardous waste casings of individual battery cells that have been breached*.	$4,500	NM

* * *

6. – 7. (No change from proposal.)

8. The violations of N.J.A.C. 7:26A-10, Standards for Generators of Source Separated Recyclable Materials, the type of violation as minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are as set forth in the following table.

Rule CFR	Rule Summary	Base Penalty	Type of Violation	Grace Period Days
7:26A-*[10. 1(a)]* *10.2*	Failure of generator to separate, store, and set out waste in accordance with the municipal recycling ordinance.	$3,000	M	30
7:26A-*[10. 3 (a)1]**10.4(a)1*	Failure of generator to obtain approval from governing municipality for alternate recycling of non-source-separated waste.	$3,000	M	30
7:26A-*[10. 3 (a)2]**10.4(a)2	Failure of generator to provide annual written documentation to the	$3,000	M	30

	municipality of the total number of tons recycled.			
7:26A- *[10.3(a)3]* *10.4(b)*	Failure of generator to show letter of exemption to enforcement officers or municipal recycling coordinator.	$3,000	M	30

9. The violations of N.J.A.C. 7:26A-11, Standards for Municipalities, the type of violation as minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are as set forth in the following table.

Rule CFR	Rule Summary	Base Penalty	Type of Violation	Grace Period Days
* * *				
7:26A-11.3*[(a)]*	Failure of municipality to notify persons occupying residential, commercial, and institutional premises within its municipal boundaries of local recycling opportunities, and the source separation requirements of the ordinance.	$3,000	M	30
* * *				
7:26A-11.5(a)1-5	Failure of [municipality] *municipal coordinator* to *[issue recycling exemption to generator without ensuring adequate alternating recycling will be achieved.]* *review the applicant’s documentation of alternate provisions for recycling of designated materials prior to issuing an exemption.*	$3,000	M	30
7:26A-	Failure of municipality to revoke	$4,500	NM	

11.5(a)*[6]****7***	exemption to generator upon failure to meet requirements.			

10. (No change from proposal.)

SUBCHAPTER 10. STANDARDS FOR GENERATORS OF SOURCE SEPARATED RECYCLABLE MATERIALS

7:26A-10.3 Recordkeeping and reporting

Commercial and institutional generators *including multifamily housing owners or their agents* shall report the tonnage of designated recyclable materials collected for recycling from their premises, as directed in the municipal recycling ordinance.

7:26A-10.4 Source separation exemption

(a) Persons occupying commercial and institutional premises may apply to the governing body of the municipality for exemption from the municipal source separation requirements of the applicable municipal recycling ordinance.

1. Such persons must obtain the services of a materials recovery facility to separate from the waste generated at the premises, all recyclable materials designated in the district recycling plan found in solid waste generated at the generator's premises. Provision of these services shall be documented in writing, through contract or correspondence with the materials recovery facility providing the service and the documentation shall be submitted *by (180 days from the effective date of this rule)* to the municipal recycling coordinator or other municipal official as may be identified in the municipal recycling ordinance.

2. (No change from proposal.)

(b) (No change from proposal.)

SUBCHAPTER 11. STANDARDS FOR MUNICIPALITIES

7:26A-11.1 Appointments and ordinances

(a) Each municipality in this State shall designate one or more persons as the municipal recycling coordinator, and shall set forth in writing the duties of the municipal recycling coordinator.

1.-2. (No change from proposal.)

3. The municipality shall [ensure that the appointed] *, by January 28, 2010, appoint a* municipal recycling coordinator *[has sufficient educational background, employment experience and training to enable him/her to perform his/her duties in such a manner as to ensure the municipality's]* * who has achieved professional certification in* compliance with the requirements of N.J.S.A. 13:1E-99 et seq., the provisions of the county recycling plan, and the municipal recycling ordinance passed pursuant to N.J.S.A. 13:E1-99.11 et seq.

i. (No change from proposal.)

[ii. Within three years of appointment, the coordinator shall be enrolled in the New Jersey Recycling Certification Series offered by the Cook College Office of Continuing Professional Education, or other such program approved by the Department. Within 10 years of appointment, the coordinator shall have achieved Certification]*.

iii. Recodify to ii. (No change in text from proposal.)

(b) The governing body of the municipality shall adopt an ordinance establishing a recycling program sufficient to achieve the designated recovery targets set forth in the district recycling plan.

1. (No change from proposal.)

2. The ordinance shall provide for a collection system for leaves generated from residential premises and shall require *[residents that]* *that residents* source separate leaves from solid waste, and, unless the leaves are stored or recycled for composting or mulching by the generator, place the leaves for collection in the manner provided by the ordinance. Alternately, the ordinance may prohibit the placement of leaves for collection or disposal as solid waste, and specify that all residents shall mulch or compost the leaves generated at those premises.

3. (No change from proposal.)

4. The municipal source separation ordinance shall specify the municipal official(s) *by title* that *[may]* *shall* enforce the ordinance, and to issue fines as needed.

7:26A-11.5 Source separation exemption

(a) The governing body of a municipality may exempt persons occupying commercial and institutional premises within its municipal boundaries from the source separation requirements of its recycling ordinance.

1. The municipal coordinator shall develop and make available a form or model letter for persons who wish to apply for this exemption *by (insert date that is 120 days from the effective date of these new rules)*.

2. - 5. (No change from proposal.)

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6. The municipal coordinator *shall* keep a record of all generators who have received the exemption, and the destination of the waste or identity of the waste transporters handling the waste, and shall report this list annually to the applicable county recycling coordinator.

SUBCHAPTER 12. STANDARDS FOR COUNTIES

7:26A-12.3 Appointment of a county or a *[Hackensack]*New Jersey* Meadowlands District recycling coordinator

(a) (No change from proposal.)

(b) County recycling coordinators designated pursuant to N.J.S.A. 13:1E-99.13.b.1 shall maintain a current list of *used oil handling locations within the county, including*:

1. – 4. (No change from proposal.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this readoption with amendments and new rules. I hereby authorize this readoption with amendments and new rules.

____________________	____
Date	Mark N. Mauriello, Acting Commissioner Department of Environmental Protection