

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

**ENVIRONMENTAL PROTECTION**

**ENVIRONMENTAL REGULATION**

**SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM**

**COMPLIANCE AND ENFORCEMENT**

**DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT**

**Solid Waste Rules**

Proposed Readoption without amendments: N.J.A.C. 7:26

Authorized By: Mark N. Mauriello, Acting Commissioner  
Department of Environmental Protection

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

Calendar Reference: See summary below for explanation of exception to calendar requirement.

DEP Docket No: 08-09-04/741

Proposal Number: PRN 2009-\_\_\_\_\_

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: \_\_\_\_\_

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 4<sup>th</sup> Floor

P.O. Box 402

Trenton, New Jersey 08625-0402

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document can be viewed or downloaded from the Department's web page at <http://www.nj.gov/dep/rules>.

The agency proposal follows.

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

N.J.A.C. 7:26 establishes rules for the management of solid waste. The rules govern the following activities: the registration, operation, maintenance and closure of solid waste facilities; the registration, operation and maintenance of solid waste transportation vehicles; fees charged for services provided by the Department to solid waste facilities, generators and transporters; civil administrative penalty assessments and requests for adjudicatory hearings; the implementation of various statutory loan programs; the disclosure and integrity review of solid and hazardous waste facilities and transporters; and the availability and confidentiality of information received by the Department in administering the solid waste program.

The Solid Waste rules were scheduled to expire on May 17, 2007, pursuant to N.J.S.A. 52:14B-5.1. The expiration date was extended by 180 days to November 7, 2009, pursuant to N.J.S.A. 52:14B-5.1c as a result of the timely filing of this proposal to readopt the rules.

As required by Executive Order No. 66(1978) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), the Department has examined the Solid Waste rules (including those aspects

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

that are more stringent than the Federal program) and has determined that they remain necessary and reasonable for the protection of the environment and the public health, safety and welfare, and are proper for the purpose for which they were originally promulgated. As noted in the notices of extension of the expiration date for these rules, since May 2007, the Department has been developing amendments that are intended to streamline, strengthen and clarify the rules (see 39 N.J.R. 2248(c), 39 N.J.R. 5081(b), 40 N.J.R. 3718(a) and 40 N.J.R. 6965(a)). In view of the quantity and complexity of those amendments, the Department has determined that it will readopt the rules without amendment at this time and that it will publish a separate proposal containing those amendments in the near future.

Note that the Department has separately proposed amendments to the Solid Waste rules at N.J.A.C. 7:26-2.1 and 2D.1 that are intended to bring rail carriers that transfer noncontainerized solid waste to and from rail cars under full solid waste facility permitting consistent with the Federal Railroad Safety Improvement Act. See 40 N.J.R. 6507(b) (November 17, 2008). A public hearing on that proposal was held on December 15, 2008 and the 60-day comment period closed on January 2, 2009.

#### Subchapter Summaries

The following is a summary of the substantive provisions of each subchapter proposed for readoption:

Subchapter 1 sets forth the scope, construction, purpose, definitions and right of the Commissioner or Director to exercise the discretionary powers of the Department within the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. in matters concerning solid waste management not governed by the rules. The subchapter establishes the definition of solid waste. The definition of solid waste is similar to the Federal definition at 40 C.F.R. 258.2, which is part of the Federal program implementing the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. This subchapter describes the classes of solid waste operations and activities that are exempted from solid waste facility permitting. In addition, the conditions for a temporary certificate of authority to operate are specified for facilities that meet the criteria for exemption.

Finally, the subchapter sets forth the criteria for transfer station facility master performance permits.

Subchapter 2 sets forth the procedures for obtaining, maintaining, and modifying a solid waste facility (SWF) permit. It also sets forth the submission requirements for an environmental health impact statement and the general engineering design requirements for a solid waste facility. In addition, this subchapter contains the general operational requirements for solid waste facilities including registration criteria.

Subchapter 2A sets forth the additional, specific engineering design requirements and standards, and operational, maintenance, inspection and monitoring requirements for sanitary landfills. The subchapter also establishes the engineering design and construction criteria and the financial requirements for closure and post-closure care of sanitary landfills.

Subchapter 2B sets forth the additional specific engineering design requirements and standards for thermal destruction facilities, transfer stations, materials recovery facilities, and composting/co-composting facilities.

Subchapter 2C sets forth the requirements for landfills to participate in the Silver Track II Tier of the Silver and Gold Track Program for Environmental Performance.

Subchapter 2D sets forth the requirements for rail carriers that transfer containerized or non-containerized solid waste to or from rail cars.

Subchapter 3 sets forth the registration requirements for the transportation of solid waste in New Jersey and establishes the conditions for non-applicability of the rules to certain types of waste transportation.

Subchapter 3A defines and sets forth the requirements for the handling, transportation, treatment, storage and disposal of regulated medical waste.

Subchapter 4 sets forth the fee schedule for activities related to solid waste facilities and solid waste transporters. This subchapter also establishes the county enforcement activity fees for solid waste control programs.

Subchapter 5 contains the civil administrative penalty assessment procedures, procedures for requesting adjudicatory hearings, and base penalty amounts for violations of the Solid Waste Management Act, including violations of any rule promulgated, any

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPENCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

administrative order, permit, license, or other operating authority issued, and any district solid waste management plan approved pursuant to the Act.

Subchapter 6 governs Interdistrict and Intradistrict Solid Waste Flow. It specifies the types of waste that may be covered by waste flow, and contains provisions for additional information requests by the Department on waste sources, procedures for applying for a rate for planning related to dry industrial waste, ID type 27 (residue from a scrap metal shredding facility), procedures for modifying district solid waste management plans and plan amendments, steps in the administrative action process concerning a district solid waste management plans, and provisions for compliance with district solid waste management plans.

Subchapter 14 sets forth the procedures for the distribution of bond funds appropriated pursuant to the Natural Resources Bond Act, P.L. 1980 c.70, for the development and implementation of resource recovery projects through grants or loans to solid waste management districts or their implementing agencies.

Subchapter 14A governs the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Bond Act. The Fund is also the depository for \$50,000,000 for the Natural Resources Bond Fund. The distribution of funds, in the form of loans, to local government units within the State, helps defray the cost on constructing resource recovery facilities and environmentally sound sanitary landfill facilities. This subchapter establishes minimum standards of conduct to prevent conflicts of interest and to ensure proper administration and accounting procedures for the loans.

Subchapter 15 governs the disposition of recycling grants and loans from the State Recycling Fund. Funds are distributed through planning, program, and education grants to municipalities, counties, non-profit groups or authorized regional recycling coalitions; loans or loan guarantees to eligible recycling businesses and industries in New Jersey; and tonnage grants for eligible municipalities based upon the tonnage of recyclable material generated by and recovered for recycling in the municipality. This subchapter establishes the standards to ensure proper administration and accounting procedures for the grants and loans.

Subchapter 16 sets forth the licensing and revocation criteria for the solid and hazardous waste industry pursuant to the Disclosure Act. This subchapter establishes the

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

procedures for filing a disclosure statement by applicants for licensing, the criteria for disqualification from licensing, the procedures for the review of the disclosure statement by the State Attorney General's Office and the Department, the fees to be charged by the Attorney General and the Department for that review and the procedure for handling confidential information associated with the disclosure statements. This subchapter also establishes the requirements for revocations of a license issued to any solid or hazardous waste facility or transporter.

Subchapter 16A sets forth the procedures for the submission of a disclosure statement by licensees who were in existence on or before July 2, 1984, and for applications pending before the Department prior to July 2, 1984 (the effective date of this subchapter).

Subchapter 17 sets forth the procedures for making information received by the Department in administering the solid waste program available to the public and maintaining confidentiality of certain parts of that information. It contains procedures for making a confidentiality claim, treatment of information pending a confidentiality determination, disclosure of confidential information to other public agencies and/or contractors, and procedures for contesting a Departmental ruling on confidentiality.

#### Social Impact

The rules proposed for readoption at N.J.A.C. 7:26 contain reasonable and necessary standards for the regulation and management of solid waste. This chapter governs the collection, transportation, storage, handling, transfer, treatment, processing, recovery, recycling and disposal of solid waste in a manner that protects the environment and the public health, welfare, and safety. The rules proposed for readoption benefit the solid waste industry as a whole by providing a consistent regulatory structure that treats the industry in a fair and equitable manner. The rules proposed for readoption also validate the efforts of a large portion of the solid waste industry that manages its operations responsibly by giving facility owners and operators flexibility in their facility management options.

#### Economic Impact

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Under the rules proposed for readoption at N.J.A.C. 7:26 solid waste landfills, surface impoundments, treatment, storage, and disposal facilities, thermal destruction facilities, transfer stations, materials recovery facilities, mixed solid waste and co-composting facilities, regulated medical waste generators and facilities, and collection and transportation operations will continue to be economically impacted because these facilities are required to pay permitting and other fees to the Department.

All applicants for a solid waste facility permit must comply with the appropriate information submittal requirements including the preparation of an environmental and health impact statement and an engineering design for solid waste facilities. The costs associated with complying with these requirements will vary according to the size and nature of the facility, but will generally create a substantial economic impact on the applicant. Although these costs can be significant, the Department has determined that the information is required to properly evaluate the environmental impacts and safety of such proposed facilities.

Additionally, under the rules proposed for readoption, facilities to continue to incur the cost of complying with operations standards, including record-keeping and reporting. These standards provide the minimum operational criteria that the facilities must meet, and the recordkeeping and other information reporting requirements with which approved facilities and transporters must regularly comply. Solid waste facility operators will also experience costs related to compliance with the design and other technical criteria when constructing such facilities. Although these criteria and operational and recordkeeping standards can represent a significant cost of operating a solid waste, recycling facility, or transportation business, the Department has determined that these criteria and standards are necessary to ensure that such facilities and transporters are operated in a manner that is protective of human health and the environment.

Solid waste facility owners and operators, and solid waste transporters experience a direct economic impact from the requirement to pay the fees established in N.J.A.C. 7:26-4. Additionally, N.J.A.C. 7:26-3A contains the regulatory requirements for regulated medical waste, including a fee for generators, transporters, intermediate handlers, and destination facilities that deal with regulated medical waste. N.J.A.C. 7:26-

16 contains a fee schedule applicable to all solid and hazardous waste business concerns which must undergo disclosure and integrity review pursuant to N.J.S.A. 13:1E-126.

However, the resource recovery and solid waste disposal facility loan program and the recycling grant and loan programs will continue to positively impact municipalities by ensuring that funds are available to solid waste management districts and local governments for the development and implementation of resource recovery projects and environmentally sound sanitary landfill facility projects.

#### Environmental Impact

The rules proposed for readoption at N.J.A.C. 7:26 will ensure that solid waste continues to be managed in an environmentally sound manner. This positive impact is realized through regulation of the collection, transportation, storage, handling, transfer, treatment, processing, utilization, reuse, recovery and disposal of solid waste in a manner that ensures protection of the environment and the health, safety and welfare of the general public. The readoption of these rules will ensure that properly designed, constructed, operated and maintained facilities and vehicles are in place for the environmentally sound management of solid waste, and the facilities that handle that waste, once terminated, are properly closed and maintained during any post closure period.

#### 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 that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. These solid waste 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 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 proposed for readoption are not proposed under the authority of or in order to implement, comply with or participate in

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPENCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

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 rules proposed for reoption that set forth the requirements for the design, construction, operation and closure of sanitary landfills at N.J.A.C. 7:26 are equivalent to the Federal requirements for Municipal Solid Waste landfills at 40 C.F.R. Parts 257 and 258. The Department's sanitary landfill permitting program has been approved by the USEPA and is adequate to implement the requirements at 40 C.F.R. Parts 257 and 258. While the Department's sanitary landfill permit program is equivalent to the USEPA program, there is one area in which the Department's program is more stringent than the Federal program. At N.J.A.C. 7:26-2A.7(f)1i, the Department requires that the landfill gas collection and venting system be designed to prevent and control the accumulation of any methane gas at any concentration in any structure. The Federal regulations at 40 C.F.R. 258.23(a)1 are less stringent because they only require methane gas collection and venting systems be designed to prevent and control the accumulation of methane gas in a landfill structure when that concentration reaches 25 percent of the lower explosive limit ("LEL"). The LEL is five percent of methane in air.

The Department based its standard on operational experience at New Jersey facilities. In many cases in which methane was detected onsite or migrating off-site, the strategy was to mitigate the potential build up to prevent any fires or explosion. In several cases, however, fires have occurred and structures have been damaged because of methane gas buildup. The overall benefit is the protection of life and property. Since the difference between these standards, that is, between a discernible gas concentration in any structure and 25 percent of five percent gas concentration (the LEL) is small, it is not fully possible to explore the cost of complying with the State standard versus the Federal standard. The cost of compliance with the additional standard over the Federal standard is extremely small and probably zero. The Department's standard simply removes the need for any decision making in this potentially dangerous situation. In fact, the real world response to any methane gas concentration in a confined structure would be to mitigate the situation. Given the benefit of potentially saving lives and property at a landfill and

the likely zero additional cost to the regulated community, the more stringent requirement is reasonable and attainable under current technology.

#### Jobs Impact

While these rules have been instrumental in creating jobs, overall they have not resulted in a significant generation or loss of jobs in the State. Because each member of the regulated community may respond differently to permitting, inspection, and associated costs (that is, different strategies to address costs, and differing abilities to absorb them), it is not possible to estimate accurately the extent, if any, to which the rules proposed for re-adoption will affect employment.

#### Agriculture Industry Impact

The rules proposed for re-adoption will continue to provide for the environmentally sound management of solid waste at the facilities which treat, store, transfer, utilize, process or otherwise manage them. The agriculture industry as a whole does not typically engage in solid waste disposal operations. Moreover, the rules proposed for re-adoption at N.J.A.C. 7:26-1.1(a)3 continue to exempt from the definition of solid waste, source separated food waste fed to livestock in the State of New Jersey as approved by the New Jersey Department of Agriculture. The Department, therefore, believes that the agricultural industry will not be impacted by the re-adoption of these rules.

#### Regulatory Flexibility Analysis

In accordance with the New Jersey Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and that employ fewer than 100 full time employees.

The Department believes that some of the businesses affected by the rules proposed for re-adoption are small businesses in accordance with the definition. For example, dry cleaners, autobody shops and related vehicle maintenance operations, small transporters, schools, including high schools and college laboratories, warehouse

operations, hospitals, printers, retail establishments, facilities which treat or otherwise process solid waste, and recreational facilities may qualify as small businesses.

The Department has reviewed the impact of the rules proposed for readoption on small businesses. The Department has determined that no blanket exemption to the rules can be granted to small businesses due to the necessity to protect public health, safety and the environment. The rules proposed for readoption, therefore, will continue to result in the expenditure by small businesses of funds to ensure continued compliance with the rules.

For solid waste, these costs consist primarily of paying fees that are designed to cover the Department's cost of administering the solid waste program, including application processing, conducting county and Statewide recycling plan consistency reviews, and preparing approval or denial letters.

Additionally, small businesses that own or operate solid waste facilities may incur consulting fees to the extent that they deem it necessary to hire a consultant to assist them in preparing permit applications and renewals or other documents required to be prepared under these rules. In addition, small business transporters will continue to incur costs for vehicle registration and inspections. These costs may vary among small business depending on the type and the amount of solid waste handled.

#### Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to the Administrative Procedure Act to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking and has determined that the nature and extent of the proposed amendments will have no impact on smart growth and the implementation of the State Plan. Since the proposed amendments will encourage protection of the environment, including solid waste planning, the amendments support the conservation and environmental protection goals and policies underlying the State Plan.

#### Housing Affordability Impact Analysis

THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION IS SCHEDULED TO BE PUBLISHED IN THE JUNE 1, 2009 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPENCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the Solid Waste rules proposed for readoption to determine their impact, if any, on the affordability of housing. The Department has determined that the rules will impose an insignificant impact because there is an extreme unlikelihood that the rules will evoke a change in the average costs associated with housing. Because these rules provide for the management of solid waste, they do not affect the average costs of housing.

#### Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4(a), the Department has evaluated the rules proposed for readoption to determine what, if any, impact these rules will have on smart growth development. Because these rules concern the management of solid waste, they do not impact the type or number of housing units, increase or decrease the availability of affordable housing in any manner, or affect new construction within Planning areas 1, 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:26.

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), permit the public to understand accurately and plainly the purposes and expected consequences of this proposed readoption without amendments. I hereby authorize the proposal of this readoption.

Date: \_\_\_\_\_

\_\_\_\_\_  
Mark N. Mauriello, Acting Commissioner  
Department of Environmental Protection