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**ENVIRONMENTAL PROTECTION
DIVISION OF COUNTY ENVIRONMENTAL
AND WASTE ENFORCEMENT**

Solid Waste Utility Regulations

Proposed Readoption with Amendments: N.J.A.C. 7:26H
Proposed New Rules: N.J.A.C. 7:26H-8
Additional Proposed Amendments: N.J.A.C. 7:26-4.1

Authorized By: Lisa P. Jackson, Commissioner,
Department of Environmental Protection

Authority: N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-9, 48:3-1
et seq., 48:13A-1 et seq. and 48:13A-7.1 et seq.

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

DEP Docket No: 21-07-10/410

Proposal Number: PRN 2007- _____

A public hearing concerning this proposal will be held on

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Date: Monday, November 26, 2007

Time: 9:00 a.m. – 12:00 noon or until close of comments

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, New Jersey 08625

Submit written comments by (60 days from date of publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number _____

Office of Legal Affairs

401 East State Street

P.O. Box 402

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. 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.

Copies of this rule proposal can be viewed or downloaded electronically from the Department's web site at <http://www.state.nj.us/dep/rules>.

The agency proposal follows:

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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.

The Solid Waste Utility Regulations, N.J.A.C. 7:26H were scheduled to expire on October 11, 2007, pursuant to N.J.S.A. 52:14B-1 et seq.. The expiration date was extended by 180 days to April 8, 2008, pursuant to N.J.S.A. 52:14B-5.1c, as a result of the timely filing of this proposal to readopt the rules. The Department has reviewed the Solid Waste Utility Regulations to determine whether the rules remain necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department determined that amendments are necessary to improve clarity, reflect current solid waste technologies and increase administrative flexibility.

Additionally, the Department is proposing new rules at N.J.A.C. 7:26H-8 to codify the Commercial Landfill Regulatory Reform Act (N.J.S.A. 48:13A-7.24 through 7.33). These new rules and any amendments necessary to conform the existing regulations to these new rules are discussed in this summary at II, below.

I. Subchapter summary

The following is a summary of each subchapter proposed for readoption.

N.J.A.C. 7:26H-1 sets forth the general requirements of the rules, including the scope, construction, purpose, definitions and the right of the Commissioner or Division Director to exercise the discretionary powers of the Department or one of its Divisions pursuant to N.J.S.A. 47:13A-1 et seq. and 48:13A-7.1 et seq. in matters concerning solid waste utility management not specifically addressed by these rules. The subchapter also provides the general requirements

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for all solid waste utilities, including service and recordkeeping standards and Department office location and hours. It delineates which solid waste collectors or disposal entities are required to obtain a Certificate of Public Convenience and Necessity (CPCN), how many certificates a solid waste utility may possess, the procedures for applying for such a certificate and for Department review and approval or denial of same, and under what circumstances and the procedure by which the Department may revoke or suspend a CPCN. It generally addresses the rates a solid waste disposal service may charge including procedures for rate increases and the circumstances under which the Department may require a solid waste disposal utility to furnish proof that its rates for service are not unjust nor unreasonable. It defines the duty of every solid waste utility to provide safe, proper, and adequate service and the Department's authority to order another utility to take over for one which fails to render such service. It prohibits solid waste utilities from limiting bidding or withdrawing from a specific territory or taking other actions which endeavor to eliminate or limit the competition. It requires prior Department approval for sales or transfers of utility assets, securities, debt issuances, consolidations, mergers, dissolutions, and management agreements. It requires all solid waste utilities to own and have title to all property, equipment and facilities used to provide service, and specifies that the rules or practice adopted by the Board of Public Utilities for other public utilities shall apply to proceedings involving solid waste utilities. Lastly, it requires compliance with certain recordkeeping and submittal of business documents such as filing evidence of insurance with the Department, keeping books, records and accounts in accordance with generally accepted accounting principles and filing annual reports of solid waste operations.

N.J.A.C. 7:26H-2 establishes procedures for transactions requiring Department approval. This subchapter includes pleadings requirements, and establishes the form and content requirements for all petitions, answers, requests for *ex parte* relief, and motions. In addition, the procedures for Department review of all filings made in accordance with this section are established. Lastly, the subchapter specifies that the party to whom a Department order or

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N.J.A.C. 7:26H-3 contains the specific filing requirements for each type of transaction requiring Department approval pursuant to the Public Utility Statutes, N.J.S.A. 48-1 et seq. The filing requirements of this Subchapter are in addition to the requirements of N.J.A.C. 7:26H-2. Pursuant to N.J.S.A. 48:3-1 et seq., transactions requiring Department approval include sales or leases of property, transfers of capital stock, mergers or consolidations, issues of stocks, bonds, and other debt, and changes to solid waste disposal utility tariffs. In addition, the Department must issue an order of approval to allow a solid waste utility to keep its accounting books and records outside the State, to change depreciation rates, execute management agreements, and to exercise the power of eminent domain.

N.J.A.C. 7:26H-4 sets forth the procedures for filing, maintaining and modifying a solid waste tariff.

N.J.A.C. 7:26H-5 sets forth the Department's rules for supervision of the solid waste collection industry in accordance with the requirements of the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 (Reform Act). In addition, it codifies the Department's authority to assess penalties pursuant to the provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. (Control Act) or the Reform Act, and identifies the reasons for which the Department may revoke or suspend a solid waste collector's Certificate of Public Convenience and Necessity (CPCN). N.J.A.C. 7:26H-5 also establishes procedures for requesting adjudicatory hearings, subsequent to the assessment of penalties or issuance of orders, suspensions or revocations. At N.J.A.C. 7:26H-5.15(b) through (d), contains the statutory penalty and violation provisions that are statutorily mandated by the Control Act at N.J.S.A. 48:13A-12.

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N.J.A.C. 7:26H-6 sets forth the Department's rules and regulations regarding uniform bid specifications for municipal solid waste collection contracts. The rules require every municipality that contracts for solid waste collection services to solicit and accept bid proposals and award contracts in conformance with the Local Public Contracts Law (LPCL) (N.J.S.A. 40A-11 et seq.) and the bid specifications described therein. Every municipality or contracting unit choosing to contract for solid waste collection services must prepare bid packages for prospective bidders that conform to a form which is included in the rules as Appendix A. In addition, the rules prohibit a municipality from using anti-competitive and overly restrictive standards in its specifications.

N.J.A.C. 7:26H-7 sets forth the procedures for determining the amount of the annual economic benefit paid to municipalities that host solid waste facilities, as required by N.J.S.A. 13:1E-28 and 28.1.

II. Proposed new rules and conforming amendments

The Department of Environmental Protection (Department) is proposing to amend the Solid Waste rules, N.J.A.C. 7:26, and the Solid Waste Utility Regulations, N.J.A.C. 7:26H, to codify rules implementing the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 through 7.33 (Sections 1 through 10 of P.L. 2003, c. 169) (the Act), effective January 1, 2004 and corresponding amendments to the General Public Utilities Statute at 48:3-7 and 9, the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. and the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq. The statutory amendments reform the current system of landfill economic regulation as it pertains to privately-owned commercial sanitary landfill facilities.

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When it promulgated the Act on September 3, 2003, the State Legislature found and declared that, “. . . it is imperative that the State ensure the economic viability and competitiveness of all solid waste disposal facilities in this State whether publicly or privately-owned to safeguard the integrity of the State’s solid waste management strategy; that it is equally imperative to safeguard the interests of consumers in efficient sanitary landfill services at competitive rates; that to achieve these ends and provide for consumer protection it is necessary to foster competition and this can best be achieved by establishing a responsible State supervisory role and abolishing traditional utility economic restrictions which place New Jersey’s commercial landfills at a competitive disadvantage and threaten their economic viability in today’s competitive market for solid waste disposal services.” See N.J.S.A. 48:13A-7.25.

The proposed amendments to the Solid Waste rules at N.J.A.C. 7:26-4.1 will be discussed below in connection with the proposed new Solid Waste Utility Regulations rule at N.J.A.C. 7:26H-8.4.

N.J.A.C. 7:26H-1.4 contains the definitions of terms used in the Solid Waste Utility Regulations. The Department proposes to amend the definitions section to codify the definitions of “market-based rates” and “privately-owned sanitary landfill facility” directly from the Act (see N.J.S.A. 48:13A-7.26). The Department is also proposing to delete the existing definition of “peak rate.” Under the existing definition, each solid waste disposal facility may have a different “peak rate” for each type of solid waste disposed of at the facility, resulting in a lack of uniformity and standardization statewide. Therefore, a new definition is being proposed that will create one uniform “peak rate” for each waste type statewide. The “peak rate” system allows disposal utilities additional flexibility in adjusting rates similar to the privately owned sanitary landfills

The Department also proposes to define the following terms that are used in proposed

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N.J.A.C. 7:26H-1.12 sets forth the mechanism by which the Department may determine whether the rates charged by a solid waste disposal utility exceed just and reasonable rates for such service. Pursuant to this section, the Department may review the rates of any solid waste disposal facility and adjust those rates if the Department finds, after a hearing, that the rates are unreasonable. However, the Act mandates that “. . . the solid waste disposal rates collected by a privately-owned sanitary facility shall be deemed just and reasonable . . . if those rates are market-based rates.” N.J.S.A. 48:13A-7.30a. The statute goes on to provide that rates that exceed this market-based standard would not be deemed unjust and unreasonable if they are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity (needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located); or (2) recover sufficient revenues to meet the facility's revenue requirement. See N.J.S.A. 48:13A-7.30b. Additionally, the statute places restrictions on the Department's ability to consider the internal cost of service or financial condition of a privately-owned sanitary landfill in determining whether or not that facility's rates are just and reasonable. See N.J.S.A. 48:13A-7.30c. Accordingly, the Department proposes adding new subsections (f) through (h) to N.J.A.C. 7:26H-1.12 to establish a new, market-based standard for ensuring that the solid waste disposal rates charged by a privately-owned sanitary landfill are just and reasonable by codifying the provisions of N.J.S.A. 48:13A-7.30.

The Act adds a new section to the General Public Utilities Statute at N.J.S.A. 48:3-7(f)(1) that allows privately-owned sanitary landfill facilities to sell or transfer assets, or issue stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior Department approval, except in three enumerated circumstances. Accordingly, the Department proposes to

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Additionally, the Department proposes amending N.J.A.C. 7:26H-1.17(a) to except a privately-owned sanitary landfill from the requirement of obtaining prior Department approval if the landfill is consolidated or merged with another solid waste disposal utility or is dissolved, as long as the landfill complies with N.J.A.C. 7:26H-8.6, discussed below (see N.J.S.A. 48:3-7(f)(2)).

N.J.A.C. 7:26H-1.19 sets forth annual report filing requirements. The Department proposes to amend N.J.A.C. 7:26H-1.19 to clarify that both solid waste collectors and disposal utilities must file an annual report. However, a privately-owned sanitary landfill is excepted from the requirement to submit an annual report summarizing ownership, financial condition, contractual arrangements, and operations for the preceding calendar year. Instead, the Department requires that these facilities file a certification of gross operating revenues in accordance with proposed new N.J.A.C. 7:26H-8.4 (requiring that privately-owned sanitary landfills need only submit a certification of gross operating revenues received from intrastate utility services during the preceding calendar year). N.J.S.A. 48:13A-11 enables the Department to compel production of an annual report and other information concerning a disposal utility's financial condition. However, N.J.S.A. 48:13A-7.30 provides that the Department may deem the financial condition of such a facility of relevance only if a contested case proceeding has been initiated pursuant to N.J.S.A. 48:13A-7.31 and the facility raises a revenue requirement defense.

The Act at N.J.S.A. 48:13A-7.27 and 7.28 specifies the mechanisms by which the

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The Department proposes to amend N.J.A.C. 7:26H-4.2(b) to except peak rate adjustments for privately owned sanitary landfills and instead require compliance with proposed new N.J.A.C. 7:26H-8.3, discussed more fully below. Additionally the Department proposes to delete the reference to Atlantic Coast Demolition and Recycling, Inc.v. Board of Chosen Freeholders of Atlantic County, 112 F.3d 652 (3d Cir. 1997), *amended by* 135 F.3d 891 (3d Cir. 1998), *cert. denied sub nom Essex County Utilities Authority v. Atlantic Coast Demolition and Recycling, Inc.*, 522 U.S. 966 (1997), from the rule text and retain the date November 10, 1997, because this is the date that the United States Supreme Court denied the petition for writ of *certiorari* and it is this date that is relevant.

Throughout N.J.A.C.7:26H-5.15, 5.16, 5.19, 5.20, and 5.21 the Department is proposing to update the list of statutory authority under which a penalty may be assessed. These authorities are the “Solid Waste Utility Control Act,” the “Solid Waste Collection Regulatory Reform Act” and the “Commercial Landfill Regulatory Reform Act,” known collectively as “the Acts.” In light of these proposed amendments, the Department also proposes amending the definition of “Act” at N.J.A.C. 7:26H-5.5 by making it plural and including all three statutes. These amendments will clarify the Department’s statutory authority with respect to non-compliance.

In addition to the amendments described above, the Department is proposing to add a new Subchapter 8 to codify the provisions and directives of the Act. The Department proposes

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As stated in proposed new N.J.A.C. 7:26H-8.1, the purpose of proposed new subchapter 8 is to establish requirements for privately-owned sanitary landfills in order to implement the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq. and related amendments to the General Public Utilities Statute at N.J.S.A. 48:3-7 and 9.

Proposed new N.J.A.C. 7:26H-8.2 codifies the requirement of N.J.S.A. 48:13A-7.27 that the owner or operator of a privately-owned sanitary landfill must hold a certificate of public convenience and necessity issued by the Department, file a tariff detailing the terms and conditions of solid waste disposal services with the Department, and amend that tariff within ten days of any deletion or addition of a service.

Proposed new N.J.A.C. 7:26H-8.3 codifies the provisions of N.J.S.A. 48:13A-7.28, regarding the adjustment of disposal rates collected by privately-owned sanitary landfills. This section permits the owner or operator of a privately-owned sanitary landfill to adjust its rates, but only after giving notice of the proposed adjustment to current customers, publishing notice of the adjustment in a newspaper of general circulation in its service area at least 30 days before putting the new rates into effect, posting the new rates at the entrance to the facility on the first day that the new rate becomes effective and every day thereafter until such time as the rate changes, and filing the notice of rate adjustment and proof of publication with the Department.

Proposed new N.J.A.C. 7:26H-8.4 implements N.J.S.A. 48:13A-7.29. N.J.S.A. 48:13A-7.29 authorizes the Department to collect an annual fee from the owner or operator of a privately-owned sanitary landfill, as long as that fee is not in excess of the annual assessment authorized under N.J.S.A. 48:2-59. The Department is statutorily authorized to annually assess

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each public utility an amount equal to a percentage of the gross operating revenue of the public utility that is derived from intrastate operations during the preceding calendar year. See N.J.S.A. 48:2-60. N.J.S.A. 48:13A-7.29 also specifies that the annual fee collected from privately owned sanitary landfill facilities is to be used to cover the Department's costs of supervising these facilities. Since the annual fee is calculated as a function of gross operating revenues, privately-owned sanitary landfills are also required to file with the Department not later than May 1st of each year a certification of gross operating revenues received from intrastate utility services during the preceding calendar year.

In addition to proposed new N.J.A.C. 7:26H-8.4, the Department proposes to amend the Solid Waste rules at N.J.A.C. 7:26-4.1(a) to cross-reference the new fee provisions applicable to privately owned sanitary landfills discussed above. N.J.A.C. 7:26-4.1(a) states that the fees contained in that subchapter pertain to all sanitary landfill operations. The cross reference to proposed new N.J.A.C. 7:26H-8.4(d) makes clear that the annual fee for privately owned sanitary landfills is in addition to the fees set forth in Subchapter 4 of the Solid Waste rules. Accordingly, both provisions apply to privately-owned sanitary landfills.

Proposed new N.J.A.C. 7:26H-8.5 implements N.J.S.A. 48:13A-7.31 by providing the mechanism by which the Department may initiate contested case proceedings before the Office of Administrative Law when the Department has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned sanitary landfill are not in compliance with the market-based rate standard.

Proposed new N.J.A.C. 7:26H-8.6 implements N.J.S.A. 48:3-7.f by allowing an owner or operator of a privately-owned sanitary landfill to sell or otherwise dispose of its assets without the approval of the Department, except in the following circumstances: (1) the sale of all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the

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operation of the sanitary landfill facility to a new owner or operator; (2) the sale of a controlling ownership interest in the sanitary landfill facility; or (3) the merger or consolidation of the landfill's property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal. Any owner or operator seeking approval for any of these transactions must file with the Department an application for approval of the transaction, following the requirements of Subchapter 3. The Department will review all such applications and serve requests for information regarding any transaction within 30 days following the filing of an application if the Department determines that such information is necessary. The Department must approve or deny the application within 60 days of receipt of all requested information. However, in the event that the Department does not take action on an application within the 60-day period, the transaction shall be deemed to have been approved.

III. Additional Proposed Amendments:

In addition to the new rules discussed above, the Department is proposing amendments to the Solid Waste Utility Regulations that clarify regulatory provisions, correct typographical errors and update cross references.

At N.J.A.C. 7:26H-1.5(a), 1.11(b), 2.1, 3.2(d), 5.11(a)3, and 5.12(c)4, the Department proposes to update the regulatory text to reflect recent Departmental reorganizations.

At N.J.A.C. 7:26H-1.9(a)1, the Department proposes to delete the requirement to notify a petitioner in writing that their application for a Certificate of Public Convenience and Necessity (Certificate) is complete. The Department believes such notification is unnecessary given that once an application is determined to be complete, either the Certificate will be issued to the petitioner or a letter denying the Certificate will be sent to the petitioner in a timely manner. Written notification of an incomplete application will continue to be required.

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At N.J.A.C. 7:26H-1.14(d), the Department proposes to delete the requirement that disposal utilities petition the Department for approval to discontinue service to a customer, requiring only that the disposal utility notify the Department prior to discontinuing service. The Department amended its regulations for collector utilities in 1996 to allow collectors to simply notify rather than petition the Department when discontinuing service to a customer and has found a notice to be sufficient. Moreover, requiring a disposal utility to petition the Department unduly extends the time the disposal utility's customer can continue to tip waste at the facility while the Department reviews the petition. It has been the Department's experience that the vast majority of disposal utility customers are denied service due to non-payment of their bill. Allowing a disposal utility to simply notify the Department that a customer's service is being discontinued will prevent customers from incurring large debts at these facilities. Should the Department or a customer have reason to believe the discontinuance of service unwarranted, the Department can investigate the matter.

At N.J.A.C. 7:26H-1.19(a), the Department proposes to add a statement putting utilities on notice that failure to file the annual report on the due date shall subject the utility to a statutory penalty of \$5.00 for each day thereafter until such report is filed. See N.J.S.A. 48:2-16.3.

On November 4, 2004, the Department repealed the Uniform System of Accounts (see 34 NJR 3819(a)). Therefore, the Department proposes to delete from N.J.A.C. 7:26H-3.5(a)7vi(3) the requirement that all books of account must be kept in conformity with the Uniform System of Accounts since it is no longer applicable.

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At N.J.A.C. 7:26H-4.3(b)1, the Department proposes to replace the word “collected” with “accepted” as it is the more correct term. A disposal utility does not collect waste. It is permitted to accept or receive certain wastes.

At N.J.A.C. 7:26H-4.4(b)2, the Department proposes to extend the number of days a collector must wait before discontinuing service to a customer from 7 days to 10 days for consistency with N.J.A.C. 7:26H-4.4(a)9. N.J.A.C. 7:26H-4.4(a)9 allows a collector to discontinue service for nonpayment of bills provided it gives the customer at least 10 days written notice of its intention to discontinue.

At N.J.A.C. 7:26H-4.4(b)5i., the Department proposes to correct a typographical error by deleting the reference to “disposal facility” and replacing it with “collector.” Section 4.4 of the regulations deals with collector not disposal utilities. Specifically at N.J.A.C. 7:26H-4.4(b)5i, the regulations govern actions *collectors* may take in response to non-payment of bills by their customers.

On November 4, 2002 (see 34 N.J.R. 3819(a)), the Department deleted the term “Uniform Tariff” replacing it with the term “Tariff.” The reference to “Uniform Tariff at N.J.A.C. 7:26H-5.11(c)2 was inadvertently left in (not replaced with the term “tariff”) at this time. The Department proposes to amend N.J.A.C. 7:26H-5.11(c)2 to address this error.

At N.J.A.C. 7:26H-5.12(c)7, the Department proposes to delete the requirement that collectors notify their customers in writing of decreases in rates. It has been the Department’s experience that rate increases, not decreases, are of most concern to a customer. Additionally, the Department is amending the text to clarify that collectors must notify their customers only when there have been increases in the service component of the collector’s rate. The bill a customer receives from a collector includes both the cost of the collector’s services such as

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waste pickup and administrative costs, known as the “service component,” and the cost to dispose of the waste at a disposal facility, known as the “disposal portion” plus any taxes. Given past deregulation of collector rates, loss of discriminatory waste flow control, and rapid changes in the cost of diesel fuel, the only part of a collector’s bill that tends to remain stable is the service component. Therefore, it has become a significant burden on collectors to notify all their customers in accordance with N.J.A.C. 7:26H-5.12(c) when costs such as disposal rates or fuel charges increase. Moreover, these are external costs over which a collector has no control.

At N.J.A.C. 7:26H-5.15(f)1, the Department proposes to delete the requirement that a collector submit customer list updates as part of its annual report. In November 2002, the Department deleted the requirement for collectors to maintain customer list updates (see 34 NJR 3819(a)). Deletion of this reference to customer list updates, however, was inadvertently missed at that time.

At N.J.A.C. 7:26H-5.18(f)1 and 4, the Department proposes to amend the penalty tables to comport with amendments proposed above at N.J.A.C. 7:26H-1.14(d) and 5.12(c)7. Additionally at N.J.A.C. 7:26H-5.18(f)4, the Department is proposing to amend the summary in the penalty table for violation of N.J.A.C. 7:26H-5.6(a) to clarify that a penalty will be issued to a solid waste utility for failure to pay the annual utility fee or the annual assessment.

At N.J.A.C. 7:26H-6.3, the Department proposes to amend the definition of “multi-family home” to increase the minimum number of residents required from three to four. The current definition requires four units of dwelling space occupied by at least three residents living independent of one another. Four residents is a more logical number of residents for four units as it assumes at least one resident per dwelling unit.

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At N.J.A.C. 7:26H-6.4(b), the Department proposes to increase the time required to advertise for a bid from 30 to 60 days for consistency with the Local Public Contracts Law (LPCL), administered by the State Department of Community Affairs (DCA). When the Department last readopted these regulations in 2002, the amount of time required to advertise for bids was reduced from 60 to 30 days in anticipation of the DCA working with the Legislature to amend the statute to address this and other local public contract law issues. However, to date, the LPCL has not been amended and the Department understands that DCA does not anticipate that the LPCL will be amended in the near future.

At N.J.A.C. 7:26-6.4(d), the Department proposes to increase from 5 to 7 days the number of days that notices of revisions or addenda to advertisements or bid documents must be published in the newspaper prior to acceptance of bids. This will conform the Department's regulations to the DCA regulations regarding revisions or addenda to bids.

At the recommendation of the DCA, the Department proposes to amend N.J.A.C. 7:26H-6.5(c) to expand the means by which a bidder must submit his or her bid to the municipality. Hand delivery, delivery by carrier, or delivery by mail will all be acceptable methods for transmittal of the bid.

The proposed amendments at N.J.A.C. 7:26H-6.5(e) clarify that it is the "contracting unit's" work specifications to which the regulation refers and that a bidder may "provide" rather than "substitute" an "equivalent" rather than "equal" product, subject to the approval of the contracting unit. (See also proposed amendment to Appendix A, 3.4.) These amendments are proposed to conform the Department's uniform bid specifications to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

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At N.J.A.C. 7:26H-6.8(c), the Department proposes to delete the phrase “a history of intentional noncompliance with mandatory terms and conditions of similar collection contracts with any contracting unit or has” from the list of reasons a governing body may reject an otherwise complete bid proposal. This will make the Department’s regulations for bid rejection consistent with the DCA’s bid rejection policy. The DCA does not consider the problems a bidder had with other municipalities when evaluating bids received. Only a prior bad experience with the same contracting unit (municipality) can be used to reject a specific bid.

At N.J.A.C. 7:26H-6.12(g), the Department proposed deleting “should” and adding “shall.” The word “should” is permissive. By substituting “shall” for “should,” the Department intends to convey that bid specification must include the information enumerated in subsection (g).

At N.J.A.C. 7:26H-6.12(g)5, the Department proposes to replace the term “commercial” waste with “institutional.” The Department notes that commercial waste is already addressed at N.J.A.C. 7:26H-6.12(g)4. This amendment clarifies that this provision applies only to institutional waste.

At N.J.A.C. 7:26H-6.16(d)1, the Department proposes to replace the term “governing body” with “contracting unit,” since it is the contacting unit not the governing body that actually goes out for bids.

N.J.A.C. 7:26H-6.18(a) provides contracting units with the option to bundle bid proposals for the collection of recyclable materials together with bids for solid waste collection and disposal services proposals. Choosing not to bundle these services does not relieve a municipality of its responsibility under other state regulations to provide recycling services to its residents. The proposed amendment to N.J.A.C. 7:26H-6.18(a), therefore, puts a contracting unit

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The Department is proposing a number of amendments to Appendix A to Subchapter 6. At N.J.A.C. 7:26H-6, Appendix A, 1.2, the Department proposes to amend the number of days a notice of revision or addenda to advertisements or bid documents must be published prior to the date for acceptance of bids. The Department proposes to increase this timeframe from five to seven days to conform with the DCA regulations regarding addenda to bids.

At N.J.A.C. 7:26H-6, Appendix A, 1.4, the Department proposes to amend the list of documents that must be submitted by every bidder to include a Business Registration Certificate (BRC). The Department notes that the State Department of Treasury (Treasury) now requires all companies bidding on public contracts to be registered with them. The BRC is proof of this registration. Additionally, the Department proposes to correct a typographical error regarding the number of photo-copies of the bidder's Certificate of Public Convenience and Necessity (CPCN) that must be submitted at the time of bid and to delete the provision that the CPCN copy be certified. The DCA does not required a certified copy of this document.

At N.J.A.C. 7:26H-6, Appendix A, 2, the Department proposes to amend the definition of "Contract Administrator" to clarify that this person is not authorized to "procure" contracts for solid waste collection services.

The Department proposes to amend the title of N.J.A.C. 7:26H-6, Appendix A, 3.4, to read "BRAND NAME OR EQUIVALENT." The Department is concerned that the use of the word "SUBSTITUTION" in the title could be interpreted to allow the use of equipment totally

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At N.J.A.C. 7:26H-6, Appendix A, 4.5, the Department proposes to delete B and C which require the submittal of certain Affirmative Action documents. Over the past several years, State affirmative action requirements have been amended. Consequently, the requirements codified in Appendix A are out-of-date. Moreover, N.J.A.C. 7:2H-6, Appendix A, 4.5 A already requires the bidder to be compliant with the Affirmative Action Statute and regulations. Therefore, 4.5 B and C are unnecessary.

At N.J.A.C. 7:26H-6, Appendix A, 5.12, the Department proposes to delete the second sentence of the paragraph dealing with liquidated damages. Appendix A, 5.12 pertains to soliciting or receiving gratuities which would not be covered under liquidated damages. Therefore, it is inappropriate for paragraph 5.12 to include the soliciting or receiving gratuities as liquidated damages. The Department is not recodifying this provision elsewhere in Appendix A, as the LPCL at N.J.S.A. 40A:11-19 already includes adequate liquidated damages provisions covering solid waste contracts.

The Department proposes to recodify N.J.A.C. 7:26H-6, Appendix A, 6.2 through 6.8 as (a) through (g), as the current numbering is confusing. Additionally, the Department proposes to add "(h) Business Registration Certificate" to the bidding documents checklist to comport with the proposed change described at 1.4 above.

At N.J.A.C. 7:26H-6, Appendix A, 6.4, the Department proposes to replace the term "CONTRACTING UNIT" with "CONTRACTOR." A bid guarantee is supplied by the contractor bidding on the contract, and not the contracting unit.

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At N.J.A.C. 7:26H-6, Appendix A, 6.7, the Department proposes to replace the words “supplied by the contract unit” with “held by the contract unit” to conform to the LPCL.

At N.J.A.C. 7:26H-6, Appendix A, 7.3, the Department proposes to update the date fields to reflect dates after the year 1999.

At N.J.A.C. 7:26H-6, Appendix A, 7.5, the Department proposes to delete Attachment #1; the mandatory affirmative action language contained therein is currently incorrect. Moreover, the current affirmative action language is likely to continue to be amended from time to time, requiring the Department to do periodic rulemaking to ensure consistency. N.J.A.C. 7:2H-6, Appendix A, 4.5 A already requires compliance with the Affirmative Action Statute and regulations, thereby ensuring contractors and contracting units use the most current affirmative action language.

Social Impact

Solid waste utility regulation began in New Jersey when the Legislature enacted the Solid Waste Utility Control Act (Act), effective in 1970. The Act was adopted in response to a State of New Jersey Commission of Investigation (SCI) report published in 1969 that detailed the influence organized crime held on the New Jersey Solid Waste collection industry. In response to this report, the Board of Public Utilities (BPU) was charged with regulating the economic aspects of solid waste collection and disposal and adopting appropriate regulations. In 1989, the SCI released a second report concerning the solid waste industry in New Jersey. This report was highly critical of continued rate regulation of solid waste collection utilities only and ultimately lead to the State legislature enacting the Solid Waste Collection Regulatory Reform Act in 1992 (Reform Act) to deregulate collector rates. The Department took over responsibility for the economic regulation of solid waste from BPU in 1991, and in 1996 adopted new solid

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waste utility regulations to address the Reform Act provisions. While the Department would continue to review and approve all utility transactions such as sales or leases of property, transfers of capital stock, mergers or consolidations, issues of stocks, bonds, and other debt, and changes to solid waste disposal utility tariffs, its role with respect to the collector rates would be one of oversight, monitoring the industry to ensure competitive rates. The Department believes that the Solid Waste Utility Regulations proposed for re-adoption herein have been very effective in eliminating the involvement of organized crime and in ensuring that the general public is provided safe, proper, and adequate solid waste services. Therefore re-adoption of these regulations will provide a positive social impact. These regulations have ensured that sufficient regulatory authority and enforcement powers are maintained to deter anti-competitive activities, while continuing the positive effect of not over regulating the industry. The public will benefit from the re-adoption of these rules, because their re-adoption will continue to ensure safe, adequate, and proper solid waste collection services at competitive prices. The Department believes that the vast majority of solid waste collectors will also benefit from re-adoption of the solid waste utility regulations since these regulations address anti-competitive behavior by their competitors.

The Department anticipates an overall positive impact of the proposed amendments and new rules. Many of the proposed amendments clarify regulatory requirements and correct cross-references and typographical errors. Such changes help the regulated community more fully understand and comply with the regulations. The proposed amendments and new rules will reduce overall compliance requirements on the regulated community where the Department believes modifying the requirements is appropriate and will not adversely impact the regulated community or the general public.

Additionally, the proposed amendments and new rules will continue to ensure that sufficient regulatory authority and enforcement powers are maintained by the Department to

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deter anti-competitive activities, while continuing the positive effect of not over-regulating the industry. The public will benefit from the proposed amendments and new rules because they will ensure continued safe, adequate, and proper solid waste collection services at competitive prices. The proposed amendments and new rules will reduce record keeping and reporting requirements on privately-owned sanitary landfills, and will not adversely impact either the regulated community or the general public. The new definition of “peak rate” will create uniform “peak rates” state-wide and will reduce the burden on those facilities which operated in an efficient manner prior to the elimination of sold waste flow control. Such reduction in regulation will not negate the Department's authority to investigate effective competition issues or to insure safe adequate and proper service at reasonable rates.

Economic Impact

Readoption of the solid waste utility regulations will continue the economic impact on solid waste collector and disposal utilities. Solid waste utilities pay an annual assessment based on their gross operating revenues set at a minimum of \$500.00 for disposal utilities and \$600.00 for collector and transporter utilities. New utilities pay a statutory filing fee of \$25.00 plus 1/10th of 1 percent of their estimated gross operating revenue for one year up to a maximum of \$500.00 to obtain their CPCN. Such assessments are necessary to provide the Department with sufficient funds to oversee and enforce the public utility regulations. Accordingly, compliance with certain requirements of N.J.A.C. 7:26H may have a negative economic impact on regulated solid waste utilities by requiring them to pay the above noted fees and to gather, prepare, and submit the information necessary to petition the Department for approval of various transactional filings, for example, mergers, stock transfers, and management agreements, as well as the costs of recordkeeping and reporting. However, the regulatory standards in N.J.A.C. 7:26H codify the minimum information necessary for the Department to assess the impact of a transactional filing

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on effective competition in the State, ensure that solid waste services are provided in a safe, adequate, and proper manner, and otherwise supervise the industry to effectively safeguard the rights of consumers of solid waste services. Readoption of the existing regulations, therefore, will continue these economic impacts to the regulated universe of solid waste utilities.

The public may experience a positive economic impact from this readoption, since these regulations serve to safeguard the rights of consumers of solid waste services and to ensure that the rates they pay for such services are the result of effective competition.

All solid waste utilities including privately-owned sanitary landfills will continue to pay an annual assessment based on their gross operating revenues. Such assessments are necessary to provide the Department with sufficient funds to oversee and enforce the public utility regulations. Privately-owned sanitary landfills should experience a positive economic impact from the proposed amendments and new rule. Owners and operators of these facilities will be subject to reduced recordkeeping and reporting requirements as many transactional filings will no longer be subject to prior Department approval. Therefore, these facilities will not need to expend the funds previously required to gather, prepare, and submit the information necessary to petition the Department for approval of various transactional filings (such as mergers, asset sales, and stock transfers). All solid waste disposal utilities will experience a positive economic impact from the new definition of “peak rate” because the new definition will cause a reduction in the rate cases brought before the Department.

Environmental Impact

The current rules have promoted the environmentally sound management of solid waste collection and disposal utilities. Readoption of these provisions will continue this positive environmental impact. For example, readoption of the grace period provisions will allow a

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The proposed amendments and new rules do not establish a significant change in the policies or the regulations of the Department governing the solid waste industry in the State. They are a continuation of New Jersey's commitment to represent safe and effective procedures for the collection and disposal of solid waste.

The proposed amendments and new rules will have no adverse environmental impact because they are focused on a small segment of the solid waste industry and do not relieve any member of the solid waste industry from its obligations to comply with existing environmental regulations. Moreover, the Department retains its oversight function with respect to privately owned sanitary landfills and these facilities must continue to provide disposal services which are safe, proper, and adequate. Therefore, the Department expects the proposed amendments and new rule to have no adverse environmental impact.

Federal Standards Analysis

Executive Order No 27(1994) and P.L. 1995, c.65 require administrative agencies that adopt, readopt or amend any State regulations that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. The current rules, proposed readoption, proposed amendments and new rules

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Jobs Impact

The existing rules represent the Department's effort to effectively monitor the solid waste industry with respect to competition, safe, adequate and proper service. Large national solid waste companies have become more dominant in New Jersey's marketplace since solid waste collector rates were deregulated in 1996. These large firms have purchased numerous collection companies, creating a consolidation in the marketplace in terms of customer base. Employees of companies acquired by large firms generally are retained by the new company. Those employees who have left the solid waste business were generally upper level managers or owners who decided to retire following the sale of the company. The Department believes the existing rules have, therefore, had no significant impact on jobs in the State. In addition, the Department anticipates that readoption of the solid waste utility regulations will have no direct or substantial impact on the creation or loss of jobs in the State. Currently as the large firms expand and experienced workers are displaced, those workers are hired by new startup firms or go into business themselves.

Proposed amendments which reduce regulatory burdens and costs may encourage small companies to enter the solid waste collection industry, thereby increasing opportunities for employment. Many of the proposed amendments and new rules may result in monetary savings for companies as well. Each member of the regulated community will be able to choose its own approach or combination of approaches to use those savings. Examples of such approaches

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include increasing (or increasing the rate of growth of) any of the following: other business expenditures; dividends and other distributions; and compensation to management and other employees. In addition, reduced compliance costs could be passed on in the form of lower prices for goods and services sold by regulated companies. Conceivably, the savings could enable a solid waste utility to increase the number of its employees. Because each member of the regulated community may use its savings in a different way, it is not possible to estimate accurately the extent, if any, to which these proposed amendments will affect employment.

The proposed amendments and new rules reduce the regulatory burden to privately-owned sanitary landfills, as well as all other solid waste disposal utilities, and may result in monetary savings for these facilities as well. Such reduced requirements and savings may enable these facilities to become more competitive in the regional solid waste disposal marketplace. A privately-owned sanitary landfill will choose its own approach or combination of approaches to use those savings. Examples of such approaches include increasing (or increasing the rate of growth of) any of the following: other business expenditures; dividends and other distributions; and compensation to management and other employees. In addition, reduced compliance costs could be passed on in the form of lower prices for the disposal services provided by these facilities. Conceivably, the savings could enable a privately-owned sanitary landfill to increase the number of its employees. This same concept will also have the same result for all facilities with the new definition of “peak rate.” Because it is up to the individual facility to determine how any savings will be used, it is not possible to estimate accurately the extent, if any, to which these proposed amendments will affect employment.

Agriculture Industry Impact

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the rules proposed for readoption and amendment and the new rules and has

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Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14A-16 et seq., small businesses are defined as those that are resident in the State, independently owned and operated, not dominant in their field and which employ fewer than 100 full time employees. Many solid waste collector and disposal utilities are small businesses as defined above. Pursuant to the current rule, the Department requires the submittal of annual utility reports from all collectors, and petitions for approval of transactional filings. Such requirements may necessitate the hiring by a small business of consultants or legal representation. The cost for these services will vary however, depending on the frequency and size of the transactions. As discussed in the Economic Impact Statement above, solid waste utilities also incur costs related to the annual utility assessment and the gathering and submittal of information necessary to petition the Department for approval of a transactional filing. The Department has determined that this proposed readoption will continue to impose these reporting, recordkeeping and compliance requirements on small businesses. Lastly, small businesses will incur the penalties proposed for readoption in these rules only if they are determined to be in violation of them. A small business which is responsible for a violation may avoid a penalty, however, if the violation is minor and corrected within the time provided.

The Department has determined that the proposed amendments and new rule will not impose any additional reporting, record keeping, or other compliance requirements on privately

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Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule 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 proposed readoption with amendments and new rules address economic transactions in the daily operations of disposal utilities and therefore, do not involve land use policies or infrastructure development. The proposed amendments and new rules do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan. Moreover, since the proposed rules will help protect air quality, the proposed rules support the conservation and environmental protection goals and policies underlying the State Plan.

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

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Full text of the proposed amendments and new rules follow (additions indicated in boldface and underline **thus**; deletions indicated in brackets [thus]), with the exception of Subchapter 6 Appendix A, in which additions are indicated in boldface and underline **thus** and deletions are indicated in cursive brackets {thus}:

CHAPTER 26

7:26-4.1 General provisions

(a) [The] **Except as provided in N.J.A.C. 7:26H-8.4, the** fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, requiring licensing and registration with the Department.

(b) through (c) (No change.)

CHAPTER 26H

7:26H-1.4 Definitions

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

* * *

“Director” means the Director of the Division of [Solid and Hazardous Waste] **County Environmental and Waste Enforcement** or any person designated to act on the Director’s behalf.

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“Division” means the Division of [Solid and Hazardous Waste] County Environmental and Waste Enforcement in the Department.

* * *

“Internal cost of service” means the cost of services produced by the normal operations of an entity (excluding external financing and related debt service).

* * *

“Market-based rates” means the solid waste disposal rates collected by a privately-owned sanitary landfill facility that do not exceed rates charged at other solid waste facilities in this State or at competing out-of-state facilities.

* * *

“Operating margin” means a rate established by determining the reasonableness of known and measurable operating expenses, including debt service and depreciation, and taxes and then including a profit margin calculated as a percentage of these expenses. This margin is then added into the utility's tariff rates.

* * *

“Peak rate” means [the last, permanent Department approved rate for each type of ID waste accepted at a solid waste disposal utility prior to elimination of flow control except that the peak rate can be adjusted following elimination of flow control through petition and full

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

* * *

“Privately-owned sanitary landfill facility” means a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

* * *

“Return on rate base methodology” means a traditional rate-making methodology that establishes a rate base (net utility property plus operating expenses and working capital allowance) and allows a utility to include in its tariff rates a rate of return (profit) on same, which is usually derived via a cost of debt/cost of equity ratio analysis.

* * *

“Tariff” means a tariff filed in the form required by N.J.A.C. 7:26H[4]-4.

* * *

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7:26H-1.5 Office and hours

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

New Jersey Department of Environmental Protection
Division of [Solid Waste and Hazardous Waste] **County Environmental and Waste Enforcement**
Bureau of Solid **and Hazardous** Waste Regulation
401 E. State Street
P.O. Box [414] **422**
Trenton, New Jersey 08625-0414

(b) (No change.)

7:26H-1.9 Issuance of certificate

(a) The procedures for Department review and approval or denial of an application for a certificate shall be in accordance with the following:

1. Upon receipt of an application, the Department shall review the application for completeness. After reviewing the application, the Department shall within 30 calendar days of receipt of the application notify the petitioner, in writing, whether the application is [complete or] incomplete.

2. through 3. (No change.)

(b) through (c) (No change.)

7:26H-1.11 Revocation or suspension of certificate

(a) (No change.)

(b) Any solid waste collector who receives a notice of intent to revoke or suspend a

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Department of Environmental Protection
Office of Legal Affairs
ATTENTION--Adjudicatory Hearing Requests
401 East State Street—P.O. Box 402
Trenton, New Jersey 08625-0402
Division of [Solid and Hazardous Waste] **County Environmental and Waste Enforcement**
401 E. State Street
P.O. Box [414] **422**
Trenton, New Jersey 08625-0414

Department of Law and Public Safety
Division of Law[—Public Utility Section
124 Halsey Street]
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Newark, New Jersey [07101] **08625-0093**

1. through 2. (No change.)
(c) through (d) (No change.)

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(e) Motions for reconsideration of a Department order to suspend or revoke a certification of public convenience and necessity shall be filed in accordance with N.J.A.C.

7:26H-[2.9(a)] **2.7(a)**.

7:26H-1.12 Rates

(a) through (b) (No change.)

(c) Rates for solid waste disposal service which have for their objective the making effective of initial rates or revisions, changes or alterations of existing rates and which do not propose increases in charges above the peak rate to [customer] **customers** shall be filed in accordance with N.J.A.C. 7:26H-3.10.

(d) through (e) (No change.)

(f) Notwithstanding the provisions of any other law, rule or regulation, court decision or order of the Board of Public Utilities or Department to the contrary, the solid waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable if:

1. Those rates are market-based rates; or

2. If the rates exceed the market-based rates authorized pursuant to (f)

above and either:

i. Are designed to stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located; or

ii. Recover sufficient revenues to meet the revenue requirements of the privately-owned sanitary landfill facility.

(g) The internal cost of service or the financial condition of the privately-owned sanitary landfill facility is relevant to the determination of whether the solid waste disposal

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(h) **In a contested case proceeding pursuant to (g) above, the owner (at his/her sole discretion) or operator of the privately-owned sanitary landfill facility, may establish a reasonable profit margin using either:**

- 1. The return on rate base or operating margin methodology; or**
- 2. Any alternative methodology that is consistent with market practices.**

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

(a) through (c) (No change.)

(d) No solid waste disposal utility shall discontinue service to any customer without first [filing a petition with] **notifying** the Department, which [petition] **notice** shall give the reasons for such discontinuance. [Such proposed discontinuance shall not become effective until approved by the Department.]

(e) (No change.)

7:26H-1.16 Sale or transfer of assets; securities; debt issuances

(a) No sale or transfer of assets of a solid waste disposal utility or any change in majority control of such disposal utility shall be consummated without prior authorization of the Department, **unless the solid waste disposal facility is a privately owned sanitary landfill that sells or transfers assets in accordance with N.J.A.C. 7:26H-8.6.** Filings for authority shall be in accordance with N.J.A.C. 7:26H-3.2 (Petitions for the approval of the sale or lease of property) and 3.3 (Petitions for authority to transfer capital stock).

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(b) No solid waste disposal utility shall issue any stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior authorization of the Department, **unless that solid waste disposal utility is a privately owned sanitary landfill that issues stocks, bonds, notes or other evidence of indebtedness or issues a mortgage in accordance with N.J.A.C. 7:26H-8.6.** Petitions **by all solid waste disposal utilities other than privately-owned sanitary landfills** for authority to issue stock, bonds, notes, other evidence of indebtedness or to execute mortgages shall be filed in accordance with N.J.A.C. 7:26H-3.5 (Petitions for authority to issue stocks, bonds, notes or other indebtedness or to execute mortgages).

(c) through (d) (No change.)

7:26H-1.17 Approval of consolidations, mergers or dissolutions

(a) No solid waste disposal utility shall be consolidated or merged with another solid waste disposal or solid waste collection utility or be dissolved without prior approval of the Department, **unless that solid waste disposal utility is a privately-owned sanitary landfill that is consolidated, merged or dissolved in accordance with N.J.A.C. 7:26H-8.7.** Filings should be in accordance with N.J.A.C. 7:26H-3.4 (Petitions for approval of a merger or consolidation).

(b) (No change.)

7:26H-1.19 Filing of annual reports

Every utility engaged in **the** solid waste **industry** [disposal] shall file on or before the due date established by the Department each year an annual report summarizing its ownership, financial condition, contractual arrangements, and operations for the preceding calendar year on forms prescribed and furnished by the Department, **unless the utility is a privately-owned sanitary landfill.** Such reports shall also contain a statement of income and expenses for a calendar year period. The due

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date for submission of the annual report shall be set by the Department, by notice to all solid waste utilities, at least 30 days before issuing the annual report forms for completion. **In accordance with N.J.S.A. 48:2-16.3, any utility that does not file the annual report on the due date shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed. A privately-owned sanitary landfill is required to file a certification of gross operating revenues in accordance with N.J.A.C. 7:26H-8.4.**

7:26H-2.1 Scope

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

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

(a) through (c) (No change.)

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

(e) (No change.)

7:26H-3.5 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:3-7 and 48:3-9 and N.J.A.C. 7:26H-2 et seq. to the

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extent applicable, and shall in the body thereof or in attached exhibits provide the following information:

1. through 6. (No change.)

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a solid waste utility, the petition must contain the following:

i. through v. (No change.)

vi. The name of the municipality and the street and number therein:

(1) through (2) (No change.)

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:3-7.8 are to be kept and the name, place of residence within this State, and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Department may be served. [The books of account must be kept in conformity with the Uniform System of Accounts prescribed by the Department.] These books and records must be kept within this State unless authority to do otherwise is obtained from the Department;

vii. through x. (No change.)

7:26H-3.10 Tariff filings which do not propose increases in charges to customers; solid waste disposal utilities

(a) through (c) (No change.)

(d) Tariff filings and rate adjustment filings for privately-owned sanitary landfills are not subject to the requirements of this section, but are governed by N.J.A.C. 7:26H-8.2 and 8.3.

7:26H-3.11 Tariff filings or petitions which propose increases in charges to customers above the

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peak rate; solid waste disposal utilities

(a) through (e) (No change.)

(f) Tariff filings and rate adjustment filings for privately-owned sanitary landfills are not subject to the requirements of this section, but are governed by N.J.A.C. 7:26H-8.2 and 8.3.

7:26H-4.2 General

(a) (No change.)

(b) All **of the highest** solid waste disposal utility [tariffs] **tariff rates** on file with and approved by the Department as of [the date of the final disposition of Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County, Civil Action No. 93-cv-02669 (D.N.J., May 1, 1997) case by the United States Supreme Court,] November 10, 1997, shall constitute the peak rates for each solid waste type, [accepted at each facility] **statewide,** **except that the peak rates for privately owned sanitary landfill facilities shall be adjusted in accordance with N.J.A.C. 7:26H-8.3.**

7:26H-4.3 Collector and disposal facility tariffs

(a) (No change.)

(b) In addition to the requirements of (a)1 and 2 above, each disposal tariff form filed with the Department shall contain a set of rate schedules in accordance with the following:

1. All rates for solid waste disposal services shall be included in a single tariff. Within each class of service, the rates for each waste type [collected] **accepted** shall be filed as a separate schedule and shall whenever feasible and practicable begin on a separate sheet.

2. through 3. (No change.)

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

(a) (No change.)

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

1. (No change.)

2. If the collector does not utilize advanced billing, residential, commercial and industrial solid waste collection billings are to be made with payment due in 30 days. At least 10 days' time for payment shall be allowed after sending a bill. If payment has not been received after 10 days past the date the bill was payable, then the collector may discontinue service to the customer upon providing [seven] **ten** days written notice in accordance with (a)[10]**9** above.

3. through 4. (No change.)

5. If credit has not been established, the collector may request a reasonable deposit. The initial deposit will be equal to the estimated average bill of the customer for a given billing period. In determining the amount of the deposit, there shall be excluded from the average bill such portion thereof, if any, for which payment is received in advance. If the actual bills of the customer subsequently rendered prove the deposit is either insufficient or excessive, the deposit may be adjusted in accordance with the facts. Failure to tender the required deposit, shall result in the discontinuance of service in accordance with (a)[10]**9** above.

i. Customers who have defaulted in payment of bills may be required to furnish a deposit or increase an existing deposit in an amount sufficient to secure payment of future bills. The amount of such deposit shall be reasonably related to the probable charge for service during a billing period, this period to include the average time required for collection after bills are rendered. If a customer fails to make the required deposit, the [disposal facility] **collector** may discontinue service in accordance with (a)[10]**9** above.

ii. through iv. (No change.)

6. through 7. (No change.)

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7:26H-5.5 Definitions

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

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

* * *

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

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

1. through 2. (No change.)

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

i. through iii. (No change.)

4. through 5. (No change.)

(b) (No change.)

(c) The following pertain to failures or refusals to provide collection services:

1. (No change.)

2. Should the Department order any solid waste collector to provide collection

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services pursuant to (c) above, the solid waste collector shall file [Uniform Tariff] **tariff** adjustments in accordance with the provisions of N.J.A.C. 7:26H-[5.9(d)]**3.10**. After the transition period the rates and charges for the extended solid waste collection services shall be determined by the collector ordered to extend the services.

3. (No change.)

7:26H-5.12 Customer bill of rights

(a) through (b) (No change.)

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

1. through 3. (No change.)

4. A statement that the solid waste collector's tariff showing terms and conditions is available for review at the Department and that a complete list of solid waste collectors registered to provide service in their service territory is available from the [Division of Solid and Hazardous Waste] **Bureau of Solid and Hazardous Waste Regulation**;

5. through 6. (No change.)

7. The solid waste collector shall notify its customers in writing at least 10 days prior to any increase [or decrease] in [rates] **the service component of its rate**;

8. through 17. (No change.)

(d) (No change.)

7:26H-5.15 Sanctions for non-compliance

(a) The Department may assess a penalty pursuant to N.J.S.A. 48:13A-12 when the Department determines that a solid waste collector has violated any provision of the [Solid Waste Utility Control Act, N.J.S.A. 48:13-1 et seq. or the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq.] **Acts**, including any violation of any rule or any administrative order adopted pursuant thereto.

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(b) Any person who violates any provision of the [Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.) **Acts**, or any rule, regulation or administrative order issued pursuant thereto, or who engages in the solid waste collection business or solid waste disposal business without having been issued a Certificate of Public Convenience and Necessity, shall be liable to pay a penalty of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense.

(c) Any person or any officer or agent thereof who knowingly violates any of the provisions of [this Act] **the Acts** or aids or advises in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a crime of the fourth degree and may be punished by imprisonment for not more than 18 months or by a fine of not more than \$50,000 or both; and if a corporation, by a fine of not more than \$100,000.

(d) through (e) (No change.)

(f) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the **Acts**. Specifically, and in addition to any other cause set forth in this chapter, the Department may revoke or suspend a solid waste collector's Certificate of Public Convenience and Necessity for any of the following causes:

1. Refusal or failure to maintain and file an annual report or any other business record requested pursuant to N.J.A.C. 7:26H-5.11, which may include but not be limited to the following: annual reports, [customer list updates,] customer lists, financial or operational information, contracts, books, accounts and records.

2. through 4. (No change.)

(g) (No change.)

7:26H-5.16 Procedures for assessment and payment of penalties

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(a) In order to assess a penalty under the Acts, for violation of the Acts, or any rule promulgated, any administrative order, permit, license or other operating authority issued **thereunder**, the Department shall, by means of notice of penalty assessment notify the violator by certified mail (return receipt requested) or by personal service. The Department may, in its discretion, assess a penalty for more than one violation in a single notice of penalty assessment or in multiple notices of penalty assessment. This notice of penalty assessment shall:

1. Identify the section of the Acts, rule, administrative order, permit, license violated;
2. through 4. (No change.)

(b) (No change.)

7:26H-5.18. Penalties for violation of rules adopted pursuant to the Acts

(a) through (e) (No change.)

(f) The rule summary in this subsection, which summarizes certain provisions in this chapter, is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in this chapter, then the provision in this chapter shall prevail.

1. The violations of N.J.A.C. 7:26H-1, General Requirements, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

Citation (N.J.A.C.)	<u>Summary</u>	Base <u>Penalty</u>	Type of <u>Violation</u>	Grace Period (days)
* * *				
7:26H-1.14(d)	Failure of collection utility to	\$2,500	NM	

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	[file a petition with] notify the Department prior to discontinuing service to a customer, which [petition] notification shall give the reasons for such discontinuance.			
* * *				

2. through 3. (No change.)

4. The violations of N.J.A.C. 7:26H-5, Solid Waste Collection Regulatory Reform, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation are as set forth in the following table.

<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base</u> <u>Penalty</u>	<u>Type of</u> <u>Violation</u>	<u>Grace Period</u> (days)
* * *				
7:26H-5.6(a)	Failure of solid waste utility to pay annual utility fee <u>or annual assessment.</u>	\$2,000	M	30
* * *				
7:26H-5.12(c)7	Failure of the solid waste collector to notify its customers in writing at least 10 days prior to any increase [or decrease in rates] <u>in the service portion of its rate.</u>	\$2,000	M	30

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<u>Citation</u> (N.J.A.C.)	<u>Summary</u>	<u>Base</u> Penalty	<u>Type of</u> Violation	<u>Grace Period</u> (days)
* * *				

5. (No change.)

7:26H-5.19 Matrix penalty determination

(a) (No change.)

(b) Each violation of the Acts, or any rule promulgated, any administrative order, permit, license or other operating authority issued **thereunder** shall constitute an additional, separate and distinct violation.

(c) (No change.)

(d) Where any requirement of the Acts, or any rule promulgated, any administrative order, permit, license or other operating authority issued **thereunder** may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(e) (No change.)

(f) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which:

i. (No change.)

ii. Seriously deviates from the requirements of the [Act] Acts or any rule promulgated, any administrative order, permit, license or other operating authority issued [; serious] **thereunder. Serious** deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

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2. Moderate seriousness shall apply to any violation which:

i. (No change.)

ii. Substantially deviates from the requirements of the Acts, or any rule promulgated, any administrative order, permit, license or other operating authority issued [; substantial] **thereunder. Substantial** deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. (No change.)

(g) through (i) (No change.)

7:26H-5.20 Penalty for submitting inaccurate or false information

(a) The Department may assess a penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the Acts or any rule promulgated, any administrative order, permit, license or other operating authority issued [pursuant to the Act] **issued thereunder**.

(b) through (e) (No change.)

7:26H-5.21 Penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the [Act] **Acts**.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the Acts, shall be an

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additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section except as adjusted pursuant to (d) below as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the Acts, the penalty shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

2. (No change.)

(d) through (e) (No change.)

7:26H-6.3 Definitions

For the purposes of this subchapter, all of the terms defined in N.J.A.C. 7:26-1.4 are hereby incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

* * *

"Multi-family home" means any housing in which four or more units of dwelling space are occupied, or are intended to be occupied, by [three] **four** or more persons who live independently of one another.

* * *

7:26H-6.4 General instructions

(a) (No change.)

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(b) All advertisements for bids shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but not less than [30] **60** days prior to that date. The advertisement shall designate the manner of submitting and the method of receiving bids and the time and place at which the bids will be received.

(c) (No change.)

(d) Notice of revisions or addenda to advertisements or bid documents relating to bids shall be published in a legal newspaper circulating in the county or municipality, and in at least one newspaper of general circulation published in the State, no later than [5] **7** days, Saturdays, Sundays and holidays excepted, prior to the date of acceptance of bids.

7:26H-6.5 Bidding requirements

(a) through (b) (No change.)

(c) The bidder shall deliver, **by hand carry, courier service or mail**, the bid proposal in a sealed envelope with the name and address of the bidder and the name of the project written clearly on the outside of the envelope in accordance with the contracting unit's instructions. The receiving official shall stamp the bid proposal with the date and time of delivery.

(d) (No change.)

(e) Whenever the **contracting unit's** work specifications identify a brand name, trade name, or a manufacturer's name, such designations are to be used for classification or descriptive purposes only, and the bidder may [substitute] **provide** an [equal] **equivalent** product, subject to the approval of the contracting unit.

(f) through (h) (No change.)

7:26H-6.8 Lowest responsible bidder

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(a) through (b) (No change.)

(c) The governing body may reject an otherwise complete bid proposal when the bidder has [a history of intentional noncompliance with mandatory terms and conditions of similar collection contracts with any contracting unit or has] failed to fully perform a prior collection contract with the contracting unit.

7:26H-6.12 Work specifications

(a) through (f) (No change.)

(g) All bid specifications [should] **shall** include the following information describing the service area:

1. through 4. (No change.)

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

6. through 7. (No change.)

7:26H-6.16 Invoice and payment procedures

(a) through (c) (No change.)

(d) All invoices for reimbursement for the costs of disposal shall include the information listed above at (c) and in addition shall contain the following or be deemed defective:

1. The number and type of vehicle used for collection in the [governing body] **contracting unit** for that billing month;

2. through 3. (No change.)

(e) (No change.)

7:26H-6.18 Recycling

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(a) The contracting unit may, at its option, request bid proposals for the collection of recyclable materials together with its request for proposals for solid waste collection and disposal services. **Notwithstanding this option, the contracting unit must comply with the requirements of N.J.S.A. 13:1E-99.11 et seq. and the Recycling Rules at N.J.A.C. 7:26A.**

(b) (No change.)

APPENDIX A

Wording of the Uniform Bid Specifications

(a) The requirements concerning the wording of the uniform bid specifications are as follows:

1. (No change.)

2. The forms provided are mandatory, all other forms shall be provided by the contracting unit in accordance with the provisions of this subchapter.

[CONTRACTING UNIT]

UNIFORM BID SPECIFICATIONS

SOLID WASTE

[AND RECYCLABLE]

COLLECTION SERVICE

1. INSTRUCTIONS TO BIDDERS

1.1. (No change.)

1.2. CHANGES TO THE BID SPECIFICATIONS

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Notice of revisions or addenda to advertisements or bid documents relating to bids will, no later than {five} **{seven}** days, Saturdays, Sundays and holidays excepted, prior to the date for acceptance of bids, be published in the [NAME OF LEGAL NEWSPAPER CIRCULATING IN THE COUNTY OR MUNICIPALITY], and in the [NAME OF NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE STATE].

1.3. (No change.)

1.4. DOCUMENTS TO BE SUBMITTED

The following documents shall be submitted by every bidder at the time and date specified in the public notice to prospective bidders:

1. {Certified Photo-copies} **{A photocopy}** of the bidder's certificate of public convenience and necessity and an approval letter issued in conformance with N.J.S.A. 13:1E-126.

2. through 5. (No change.)

6. Certificate of surety; {and}

7. Bid Proposal{.} **{; and}**

{8. A Business Registration Certificate (BRC).}

All of the foregoing shall be submitted in accordance with the instructions hereinafter contained. The division of the Bid Specifications into parts is merely for convenience and ready reference; all parts of the Bid Specifications constitute a single document.

2. DEFINITIONS

* * *

"Contract administrator" is the person authorized by the contracting unit to {procure and} administer contracts for solid waste collection services.

* * *

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3. BID SUBMISSION REQUIREMENTS

3.1. through 3.3 (No change.)

3.4. {"OR EQUAL" SUBSTITUTIONS} {"**BRAND NAME OR EQUIVALENT**"}

Whenever the Work Specifications identify a brand name, trade name or a manufacturer's name, this designation is used for classification or descriptive purposes only, and the bidder may {substitute} {**provide**} an {equal} {**equivalent**} product, subject to the approval of the {GOVERNING BODY} {**CONTRACTING UNIT**}.

3.5. through 3.7. (No change.)

4. AWARD OF CONTRACT

4.1. through 4.2. (No change.)

4.3. RESPONSIBLE BIDDER

The [CONTRACTING UNIT] shall determine whether a bidder is "responsible" in accordance with N.J.S.A. 40A:11-~~{6.1}~~{**2**} and N.J.A.C. 7:26H-6.8. The Bid Proposal of any bidder that is deemed not to be "responsible" shall be rejected.

4.4. (No change.)

4.5. AFFIRMATIVE ACTION REQUIREMENTS

A. (No change.)

{B. Within seven days after receipt of notification of the [GOVERNING BODY'S] intent to award any contract the contractor must submit one of the following to the contracting unit:

1. If the Contractor has a federal affirmative action plan approval which consists of a valid letter from the Office of Federal Contract Compliance Programs, the Contractor should submit a photo copy of its letter of approval.

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2. If the Contractor has a certificate of employee information report, the Contractor shall submit a photo copy of the certificate.

3. If the Contractor has none of the above, the contracting unit shall provide the Contractor with an (A.A.302) affirmative action employee information report.

C. If the Contractor does not submit the affirmative action document within the required time period the [CONTRACTING UNIT] may extend the deadline by a maximum of the fourteen calendar days. Failure to submit the affirmative action document by the fourteenth calendar day shall be cause for the [CONTRACTING UNIT] to declare the Contractor to be non-responsive and to award the contract to the next lowest bidder. }

4.6. through 4.7. (No change.)

5. WORK SPECIFICATIONS

[THE NUMBER OF COLLECTION OPTIONS THAT MAY BE LISTED IN THE WORK SPECIFICATIONS IS UNLIMITED. EACH COLLECTION OPTION SHALL BE CONSECUTIVELY NUMBERED AND SHALL SPECIFY EACH SERVICE THAT MUST BE BID AS PART OF THAT OPTION. BE SPECIFIC. IF THE SERVICE AREA IS DIVIDED INTO ZONES, SPECIFY THE DAYS AND THE COLLECTION SERVICES TO BE PROVIDED TO EACH ZONE. IF RECYCLABLE MATERIALS WILL BE BID AS PART OF THE SOLID WASTE COLLECTION CONTRACT, THE SERVICE MAY BE DESCRIBED HEREIN.]

5.1. through 5.11. (No change.)

5.12. SOLICITATION OF GRATUITIES

The Contractor shall ensure that no agent or employee shall solicit or receive gratuities of any kind for any of the work or services provided in connection with the contract. {The Contractor shall be subject to the Liquidated Damage clause herein contained for breach hereof. }

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5.13. through 5.17 (No change.)

5.18. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the [CONTRACTING UNIT] from and against all claims, damages, losses, and expenses including all reasonable expenses incurred by the [CONTRACTING UNIT] on any of the aforesaid claims that may result or arise directly or indirectly, from or by reason of the performance of the contract or {form} **{from}** any act or omission by the Contractor, its agents, servants, employees or subcontractors and that results in any loss of life or property or in any injury or damage to persons or property.

6. BIDDING DOCUMENTS

6.1. BIDDING DOCUMENTS CHECKLIST

- | | |
|--------------------------|--|
| {... 6.2.}{ (a) } | Photo-copies of bidder's certificate of public convenience and necessity and an approval letter issued in conformance with N.J.S.A. 13:1E-126. |
| {... 6.3.}{ (b) } | Statement of bidder's qualifications, experience and financial ability. |
| {... 6.4.}{ (c) } | A bid guarantee in the form of a bid bond, certified check or cashier's check in the |

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proper amount made
payable to the
[CONTRACTING UNIT].

{... 6.5.}{**(d)**} Stockholder statement of
ownership.

{... 6.6.}{**(e)**} Non-collusion affidavit.

{... 6.7.}{**(f)**} Consent of surety.

{... 6.8.}{**(g)**} Proposal.

{**(h)**} **{ Business Registration
Certificate (BRC) issued by
the New Jersey Division of
Revenue. }**

Name of Firm or Individual

Title

.....

.....

Signature

Date

6.2. through 6.3. (No change.)

6.4. BID GUARANTY

[FORM SUPPLIED BY { CONTRACTING UNIT } { **CONTRACTOR** }

6.5. through 6.6. (No change.)

6.7. CONSENT OF SURETY

[FORM { SUPPLIED BY THE CONTRACTING UNIT } { **HELD BY THE CONTRACT
UNIT** }]

7. CONTRACT DOCUMENTS

7.1. through 7.2. (No change.)

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7.3. VEHICLE DEDICATION AFFIDAVIT

AFFIDAVIT

STATE OF NEW JERSEY .
COUNTY OF . SS: [PROJECT NAME]

I, [NAME OF AFFIANT], am the [IDENTIFY RELATIONSHIP TO BIDDER: OWNER, PARTNER, PRESIDENT, OR OTHER CORPORATE OFFICER] of the [NAME OF BIDDER], and being duly sworn, I depose and say:

All statements contained in this affidavit are true and correct and made with full knowledge that the State of New Jersey and the [GOVERNING BODY] rely upon the truth of the statements contained in this affidavit and in said Bid Proposal in signing the contract for the said project.

At all times during the performance of the collection contract, I agree to commit, for use only {in the} in the [CONTRACTING UNIT], the number of collection vehicles reasonably calculated to ensure safe, adequate and proper service. I further warrant that in the event that dedication of vehicles for use only in the [CONTRACTING UNIT] is not feasible, that the [CONTRACTING UNIT] will not be responsible for disposal costs for waste generated outside the [CONTRACTING UNIT].

I also understand and agree that failure to comply with the representations {container} {**contained**} herein shall be cause for breach of contract and will entitle the [CONTRACTING UNIT] to damages arising therefrom.

.....
Name of Firm or Individual Title
.....
Signature Date

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Subscribed and sworn to before me this

..... day of, {19}{**20**}...

.....

Notary Public of

My Commission expires, {19}{**20**}...

7.4. (No change.)

7.5. AFFIRMATIVE ACTION AFFIDAVIT

STATE OF NEW JERSEY .

COUNTY OF . SS: [PROJECT NAME]

I, [NAME OF AFFIANT] , of the City of in the State [Commonwealth] of being of full age and duly sworn according to law, on my oath depose and say that:

I am employed by the firm of [NAME OF BIDDER], the bidder submitting the Bid Proposal for the above named project, in the capacity of [TITLE OF AFFIANT], and I have executed the Bid Proposal with full authority to do so. Further, the bidder will comply with the provisions of Public Law 1975, Chapter 127, and shall require all subcontractors to comply with the provisions of Public Law 1975, Chapter 127.

.....

Name of Firm or Individual

.....

Title

.....

Signature

.....

Date

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Subscribed and sworn to before me this

..... day of, {19}{20}...

.....

Notary Public of

My Commission expires, {19}{20}...

{ATTACHMENT #1

Procurement and Service Contract--Mandatory Language

P.L. 1975, C.127 (N.J.A.C. 17:27)

MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

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The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

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The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).}

ATTACHMENT #2 Recodify as ATTACHMENT #1 (No change in text.)

SUBCHAPTER 8. PRIVATELY-OWNED SANITARY LANDFILLS

7:26H-8.1 Purpose

The purpose of this subchapter is to establish requirements for privately-owned sanitary landfill facilities in accordance with the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq., and the amendments to the General Public Utilities Statute at N.J.S.A. 48:3-7 and 9.

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7:26H-8.2 Certificate of public convenience and necessity; tariff filings

(a) No person shall own or operate a privately-owned sanitary landfill facility unless such person holds a certificate of public convenience and necessity issued by the Department pursuant to N.J.A.C. 7:26H-1.6 through 1.10.

(b) Prior to commencing operations, the owner or operator of a privately-owned sanitary landfill facility shall file a tariff with the Department in which the terms and conditions of solid waste disposal services of the facility are set forth pursuant to N.J.A.C. 7:26H, Subchapter 4.

(c) The owner or operator of a privately-owned sanitary landfill facility shall file a tariff amendment with the Department within ten days of the deletion or addition of any solid waste disposal service pursuant to N.J.A.C. 7:26H-3.10.

7:26H-8.3 Adjustment of Rates

(a) A privately-owned sanitary landfill facility may adjust its solid waste disposal service rates only if it:

1. Provides its current customers with 30 days' advance written notice of its intent to change its rates, including the amount of the proposed rate change and its effective date;

2. Publishes a notice of its intent to change its rates, including the amount of the proposed rate change and its effective date, in a newspaper of general circulation in its service area. The notice shall appear once a week for two consecutive weeks, with the first notice being published 30 days in advance of the effective date of the rate change, and;

3. Posts the new rates in a prominent location at the entrance to the facility on the first day that the new rate takes effect and each subsequent day thereafter until such time as the rate is changed pursuant to this subsection.

(b) The owner or operator of the privately-owned sanitary landfill shall file with the

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Department a copy of the notice of solid waste disposal rate adjustments and proof of publication of the notice pursuant to (a) above within three days after the effective date of the rate change.

7:26H-8.4 Annual fee

(a) On or before May 1 of each year, every privately-owned sanitary landfill facility shall file with the Department a certification of gross operating revenues received from interstate utility services during the preceding calendar year, and a copy of the annual assessment charged to it by the Board of Public Utility Commissioners pursuant to N.J.S.A. 48:2-59 et seq.

(b) The Department shall annually assess each privately-owned sanitary landfill a fee as follows:

1. The fee shall be equal to the amount of the annual assessment for the corresponding calendar year, as evidenced in the documents filed pursuant to (a) above; and

2. The Department shall use the fees collected pursuant to this subsection to offset the Department's costs of supervising privately-owned sanitary landfill facilities.

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

1. Payments must be received by the Department no later than 30 days after the billing date;

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

**New Jersey Department of Environmental Protection,
Bureau of Solid and Hazardous Waste Regulation,
P.O. Box 422,**

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Trenton, New Jersey 08625.

(d) The annual fee assessed pursuant to this section shall be in addition to any fees that may be due and payable to the Department pursuant to N.J.A.C. 7:26, Subchapter 4.

7:26H-8.5 Contested case proceedings

(a) The Department may initiate contested case proceedings in the Office of Administrative Law whenever, on the basis of available information, the Department has reasonable grounds to believe that the solid waste disposal rates collected by a privately-owned sanitary landfill facility are not the market-based rates as authorized in N.J.A.C. 7:26H-1.12.

(b) At least 30 days prior to transmittal of the contested case to the Office of Administrative Law pursuant to (a) above, the Department shall serve a notice on the owner or operator of the affected facility that contains the following information:

1. The solid waste disposal rate or rates at issue;
2. A description of the evidence relied upon, including copies of relevant documents, by the Department in its determination that the rates are not market-based rates; and
3. A statement informing the owner or operator that he or she will have an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. on the rates at issue.

(c) Within 30 days after the close of the hearing at the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the Department order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill to bring the rates into compliance with the market-based rates authorized in N.J.A.C. 7:26H-1.12, if the Department shows that the solid waste disposal rates are:

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1. Not in compliance with the market-based rates authorized in N.J.A.C.

7:26H-1.12 and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows; or

2. Needed to meet the revenue requirements of the privately-owned sanitary landfill facility.

(d) The administrative law judge's initial decision shall be simultaneously served on the Department and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the Department shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which are contrary to those set forth in the initial decision.

(e) An opportunity shall be afforded each party of record to file exceptions, objections, and replies as set forth in the Administrative Procedure Act at N.J.S.A. 52:14(b)10, and the Uniform Administrative Procedure Rules at N.J.S.A. 1:1 et seq., with respect to any initial decision issued by the Administrative Law Judge in (d) above.

(f) For good cause shown, in accordance with the provisions of the Administrative Procedure Act at N.J.S.A. 52:14(b)10 and the Uniform Administrative Procedure Rules at N.J.S.A. 1:1 et seq., the time limits stated herein may be subject to extension.

(g) If the Department does not act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge shall be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the Department thereafter shall be of no effect.

(h) Except to the extent expressly modified herein, the contested case proceeding authorized pursuant to this section shall be conducted in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, including rules applicable to summary

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7:26H-8.6 Sale or disposal of assets of privately-owned sanitary landfills

(a) Except as provided in (b) below, the owner or operator of a privately-owned sanitary landfill may sell or otherwise dispose of its assets without the prior approval of the Department.

(b) The owner or operator of a privately-owned sanitary landfill facility shall obtain the approval of the Department prior to:

1. Selling any assets associated with the privately-owned sanitary landfill facility or a portion thereof sufficient to transfer the operation of the privately-owned sanitary landfill facility to a new owner or operator;

2. Selling a controlling ownership interest in the privately-owned sanitary landfill facility; or

3. Merging or consolidating the property of a privately-owned sanitary landfill facility with that of any other person, whether or not that person or business concern is engaged in the business of solid waste disposal pursuant to the provisions of the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1, et seq.), or any other act.

(c) An owner or operator seeking approval for a transaction under (b) above shall file with the Department a petition in accordance with N.J.A.C 7:26H-3.

1. The Department shall review a petition filed pursuant to this section and shall request any additional information necessary for purposes of its review, within 30 days following the receipt of a petition.

2. The Department shall issue, in writing, an approval or denial of the petition within 60 days of receipt of all requested information. In the event that the Department does not issue its decision on the petition for approval within the 60-day

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