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ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

DIVISION OF SUSTAINABLE WASTE MANAGEMENT

Solid Waste, Hazardous Waste, and Recycling Rules; Licensing of Solid and Hazardous Waste Services and Soil and Fill Recycling Services

Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 1.6, 1.7, 2.1, 2.4, 2.7, 2.8, 3.2, 3.6, 3A.16, 3A.27, 3A.38, 3A.39, and 3A.49; 7:26A-1.3, 1.4, 3.9, 3.17, 4.2, 4.5, 4.8, and 9.4; 7:26G-4.2 and 7.2; and 7:26H-1.6, 1.8, and 1.11

Proposed New Rules: N.J.A.C. 7:26N

Proposed Repeals: N.J.A.C. 7:26-16.15 through 16.20 and 16.24; and 16A

Proposed Recodification with Amendments: N.J.A.C. 7:26-16.1 through 16.14 and 16.21, 16.22, and 16.23 as 7:26N-1.1, 1.4, 3.2, 3.4, 3.8, 3.5, 3.6, 4.1, 7.3, 4.4, 4.3, 6.1, 5.2, 4.2, 4.5, 4.6, and 4.7, Respectively

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-1 et seq., and 13:1E-126 et seq.

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

DEP Docket Number: 15-24-12.

Proposal Number: PRN 2025-005.

A public hearing concerning this notice of proposal will be held on Tuesday, February 25, 2025, at 9:00 A.M. The public hearing will be conducted virtually through the Department of Environmental Protection's (Department) video conferencing software, Microsoft Teams. A

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link to the virtual public hearing with telephone call-in option will be provided on the Department's website at <https://dep.nj.gov/rules/notice-of-rule-proposals/>.

If you are interested in providing oral testimony at the virtual public hearing, please email the Department at jill.aspinwall@dep.nj.gov, no later than 5:00 P.M. on Friday, February 21, 2025, with your contact information (name, telephone number, email address, and if applicable, name of organization on whose behalf you are speaking). You must provide a valid email address, so the Department can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer or mobile device that can connect to Microsoft Teams. This hearing will be recorded. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared remarks to the Department through email.

Submit comments by March 22, 2025, electronically at <http://www.nj.gov/dep/rules/comments>. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Attention: DEP Docket No. 15-24-12

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

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PO Box 402

Trenton, New Jersey 08625-0402

This notice of proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5. The Department is proposing to amend the Solid and Hazardous Waste Licensing and Revocation rules (A-901 Rules) at existing N.J.A.C. 7:26-16 to expand the licensing program to the soil and fill recycling industry and incorporate other changes as required pursuant to P.L. 2019, c. 397, commonly referred to as the "Dirty Dirt Law." As the proposed licensing program applies to the solid waste, recycling, and hazardous waste industries that are subject to several chapters (for example, N.J.A.C. 7:26, Solid Waste; 7:26A, Recycling Rules; 7:26G, Hazardous Waste; and 7:26H, Solid Waste Utility Regulations), the Department is proposing to recodify with amendments, existing N.J.A.C. 7:26-16, Solid and Hazardous Waste Licensing and Revocation – Disclosure Statements and Integrity Review, as new N.J.A.C. 7:26N, with its own penalty and enforcement provisions. As a result of this rulemaking, each industry will be subject both to its own chapter, as well as to the proposed A-901 Rules at N.J.A.C. 7:26N. The Department is also proposing to repeal N.J.A.C. 7:26-16A, Special Rules for Submission of Disclosure Statements by Existing Licensees and Applicants Whose Applications Were Pending

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Before the Department Prior to July 2, 1984, because the subchapter sets forth special provisions that were needed to phase in the requirements for certain licensees and applicants when the A-901 licensing program was first passed into law, which provisions are now obsolete.

As part of this rulemaking, the Department is also proposing amendments at N.J.A.C. 7:26, 26A, 26G, and 26H to conform the rules to the proposed new A-901 Rules, as further explained below. In conjunction with the proposed new rules and amendments, the Department proposes to amend the penalty provisions of the Recycling Rules at N.J.A.C. 7:26A-9, Civil Administrative Penalties and Requests for Adjudicatory Hearings.

In developing the proposed rules, in 2021 and 2022, the Department met virtually with stakeholders, including several licensed site remediation professionals, attorneys, and representatives of business concerns handling soil and fill materials. In May 2023, the Department met with various stakeholders, including contracting firms, trade associations, and county officials, to discuss amending the Recycling Rules at N.J.A.C. 7:26A to add requirements for facilities currently managing petroleum-contaminated soils and those who are managing the proposed Class B “recyclable soil and fill material.” Meeting records are available on the Department’s website at <https://dep.nj.gov/workgroups/>.

Licensing Requirements: General

In 1983, P.L. 1983, c. 392, was signed into law and became effective June 11, 1984. The law was proposed as Assembly bill number 901, or “A-901,” which became the common name for the legislation. The A-901 law, N.J.S.A. 13:1E-126 et seq., was adapted from similar

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provisions of the Casino Control Act, N.J.S.A. 5:12-80, and gave the Department and the Office of the Attorney General broad investigative, substantive, and procedural powers to deny or revoke a solid or hazardous waste license, based on a full review of an applicant's reliability, expertise, and competency to operate in the solid or hazardous waste industry. Applicants must submit a full disclosure statement and the Office of the Attorney General is authorized to do a full background investigation and prepare reports for the Department. The law prohibits the Department from issuing a license unless the Department finds that the applicant or permittee has exhibited sufficient integrity, reliability, expertise, and competency to engage in the business of solid or hazardous waste. The law also sets forth specific disqualification criteria. See N.J.S.A. 13:1E-133. The intent of the A-901 law is to eliminate criminal influence and elements in the solid and hazardous waste industries, ensure the reliability of those operating in these industries, and increase public confidence in the industry.

In 1984, the Department adopted its initial rules at existing N.J.A.C. 7:26-16 to establish the requirements for the licensing of persons engaging in or seeking to engage in collecting, transporting, treating, storing, or disposing of solid waste or hazardous waste (hereinafter, "solid or hazardous waste services"). Although the rules have been amended at various times to implement statutory changes as well as to update and clarify the rules, the essential requirements remain the same: generally, any applicant must submit a disclosure statement, which must include a list of key employees, all of whom must be fingerprinted and must submit complete personal history disclosure forms. In accordance with the statute, the rules prohibit the Department from approving a license unless the Department finds that the applicant has

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exhibited or is likely to exhibit sufficient integrity, reliability, expertise, and competency to operate the solid waste or hazardous waste facility.

Recent Statutory Amendments: Soil and Fill Recyclable Materials and Key Employees

In 2019, the statute was amended at P.L. 2019, c. 397, commonly referred to as the “Dirty Dirt Law.” One of the most significant amendments extended the licensing requirements to persons conducting or intending to conduct “soil and fill recycling services,” defined as “services provided by persons engaging in the business of the collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof, of soil and fill recyclable materials.” N.J.S.A. 13:1E-127. The Dirty Dirt Law defines “soil and fill recyclable materials” as “non-putrescible aggregate substitute, including, but not limited to, broken or crushed brick, block, concrete, or other similar manufactured materials; soil or soil that may contain aggregate substitute or other debris or material, generated from land clearing, excavation, demolition, or redevelopment activities that would otherwise be managed as solid waste, and that may be returned to the economic mainstream in the form of raw materials for further processing or for use as fill material.” *Ibid.* However, the definition specifically excludes Class A recyclable material, Class B recyclable material that is shipped to an approved Class B recycling center, approved beneficial use material, and virgin quarry products. *Ibid.*

The Dirty Dirt Law required any business concern that is not already a licensee and that provides soil and fill recycling services to register with the Department by July 14, 2022, and to submit a valid and administratively complete application for a soil and fill recycling license.

N.J.S.A. 13:1E-127.1. Any business concern that seeks to engage in such services after July 14,

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2022, and has not submitted a registration must file an application with the Attorney General.

Ibid. The law prohibits any business concern from engaging in soil and fill recycling services unless it holds a registration or license. N.J.S.A. 13:1E-127.2.

Prior to the Dirty Dirt Law, “key employee” was limited to “any individual employed by the applicant, the permittee, or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern ...” The Dirty Dirt Law expanded the definition of “key employee” to specifically include “any family of an officer, director, partner, or key employee, employed or otherwise engaged by the applicant or permittee; or any broker, consultant or sales person employed or otherwise engaged by, or who do business with, the applicant, permittee, or licensee, with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern,” with exceptions. N.J.S.A. 13:1E-127. The Dirty Dirt Law did not change preexisting requirements that key employees must be identified and must provide fingerprints and submit complete personal history disclosure forms.

The Dirty Dirt Law also included fee and penalty provisions to enhance the effectiveness and operability of the licensing program for providers of solid or hazardous waste services and soil and fill recycling services.

Summary of Proposed Rules to Implement the Statutory Requirements

The Department is proposing amendments to the A-901 licensing program to implement the Dirty Dirt Law. The amendments, which are discussed in more detail below, include:

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- Amending the definition of “broker” and “consultant” to conform with the definition of those terms in the Dirty Dirt Law and to provide additional guidance to the regulated community on the Department’s interpretation of the terms;
- Amending the definition of “key employee” to align it with the amended definition of the term found in the Dirty Dirt Law;
- Adding the definitions “family member,” “sales person,” “soil and fill recyclable material,” and “soil and fill recycling service” to comport with new definitions of the terms found in the Dirty Dirt Law, and a new definition of “engaged in the business,” which is a phrase found in the definition of “soil and fill recycling service”;
- Adding new exclusions from the A-901 licensing requirements for Licensed Site Remediation Professionals and Certified Subsurface Evaluators;
- Adding new exclusions from the A-901 licensing requirements for certain persons handling “non-restricted soil and fill recyclable material,” including those handling *de minimis* quantities of such material. In conjunction with this exclusion, the Department is also proposing to add a new definition of “non-restricted soil and fill recyclable material”;
- Adding new disclosure statement update requirements for unlicensed persons leasing certain vehicles and operators to A-901 licensees;
- Adding new disclosure statement update requirements for A-901 licensees who convert their business concern from one business form to another pursuant to N.J.S.A. 14A:11-1 or 14A:11-2;

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- Adding new fee provisions for the A-901 licensing program; and
- Adding new penalty provisions for the A-901 licensing program.

The proposed rules also amend the Solid Waste rules, N.J.A.C. 7:26, and the Recycling Rules, N.J.A.C. 7:26A, to better clarify the regulatory interaction of soil and fill recyclable material pursuant to the A-901 license rules with the existing solid waste and recycling rules. In certain scenarios, soil and fill recyclable material could be solid waste requiring additional regulatory control pursuant to the solid waste rules or could be a Class B recyclable material, which would be exempt from the A-901 license requirements but require regulatory controls pursuant to N.J.A.C. 7:26A. The Department believes the clarifications will assist entities providing soil and fill recyclable material services in understanding their regulatory obligations with these rules, notwithstanding the A-901 licensing requirements. The clarifications also necessitate restructuring of other existing requirements in the affected sections to ensure consistency and readability.

The proposed amendments to the Solid Waste rules, which are discussed in detail below, include:

- Amending N.J.A.C. 7:26-1.1, Scope of rules, and 1.6, definition of “solid waste,” to simplify and clarify the definition of solid waste and better explain the scope of the Solid Waste rules particularly as to the use or reuse of source separated recyclable soil and fill material; and
- Amending N.J.A.C. 7:26-1.7(g), which sets forth materials that are categorically approved for beneficial use, to better define the circumstances pursuant to which glass

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may be used as a substitute for conventional aggregate in the manufacture of asphalt or concrete applications, contaminated soil may be used or reused at an area of concern undergoing remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and contaminated soil and/or fill material may be used as a base for roads or parking lots; and to categorically approve for beneficial use or reuse, where appropriate, recycled asphalt pavement and steel slag.

The proposed amendments to the Recycling Rules, N.J.A.C. 7:26A, which are discussed in detail below, include:

- Adding “recyclable soil and fill material” as a Class B recyclable material and providing a definition of “recyclable soil and fill material”;
- Adding a definition of the “petroleum contaminated soil,” which is an existing Class B recyclable material;
- Adding an exemption from the requirement to obtain a general or limited recycling approval for persons handling limited quantities of recyclable soil and fill material;
- Adding a requirement that a recycling center that receives recyclable soil and fill material develop and implement a materials acceptance plan;
- Adding recordkeeping and reporting requirements for recycling centers operating pursuant to a general approval;
- Adding operational requirements for compost or mixtures of compost and recyclable soil and fill material produced by Class C recycling centers; and

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- Adding operational design and operational requirements for recycling centers that receive recyclable soil and fill material.

Proposed Amendments to the Solid Waste Rules, N.J.A.C. 7:26

The Department proposes to amend the Solid Waste rules, N.J.A.C. 7:26, to ensure consistency with the new and amended A-901 licensing requirements, as well as to clarify certain provisions.

Scope of the Chapter and Definition of Solid Waste, N.J.A.C. 7:26-1.1 and 1.6

The Department is proposing to amend the definition of “solid waste” at N.J.A.C. 7:26-1.6 and substantially amend N.J.A.C. 7:26-1.1, Scope of rules, to better explain the applicability of the Solid Waste rules. The Department has found that the exclusions from the existing definition of solid waste at N.J.A.C. 7:26-1.6(a)2 and 6 are unclear in application, such that it can be difficult for the regulated community to determine whether certain material is regulated as solid waste or is a recyclable material regulated instead pursuant to the Recycling Rules, N.J.A.C. 7:26A. For the purposes of clarity, the Department also believes that the materials covered by the existing exclusions at N.J.A.C. 7:26-1.6(a) are better designated as materials excluded from the purview of the Solid Waste rules pursuant to N.J.A.C. 7:26-1.1, Scope of rules. Accordingly, with one exception, the Department is proposing to move the exclusions at existing N.J.A.C. 7:26-1.6(a), with modifications, to N.J.A.C. 7:26-1.1. The exception is N.J.A.C. 7:26-1.6(a)3, which excludes from the definition of solid waste, “materials approved

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for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g).”

The Department proposes to retain that provision at N.J.A.C. 7:26-1.6(a).

Existing N.J.A.C. 7:26-1.6(a)1 excludes from the definition of solid waste, “source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms.” The Department proposes to delete this exclusion as duplicative and unnecessary because, pursuant to existing N.J.A.C. 7:26-1.1(a)3, the solid waste rules do not apply to source separated food waste that is fed to livestock in the State as approved by the Department of Agriculture.

N.J.A.C. 7:26-1.6(a)2 excludes from the definition of solid waste, “recyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A.” The Department proposes to delete N.J.A.C. 7:26-1.6(a)2 and to instead exclude such materials from the scope of the Solid Waste rules. See proposed N.J.A.C. 7:26-1.1(a)1i. As proposed at N.J.A.C. 7:26-1.1(a)1i, the purchase, sale, collection, storage, transport, or controlled processing of source-separated, or commingled source-separated, recyclable materials regulated pursuant to N.J.A.C. 7:26A, is excluded from the scope of the Solid Waste rules, except that concrete, brick, block, glass, and clay products or ceramic products intended for use as fill or aggregate substitute are excluded only if the material is broken or crushed or otherwise processed to be unrecognizable as the original product (for example, a glass bottle is crushed into glass shards so it is no longer recognizable as the original product) and meets generally accepted product specifications and standards for similar fill and aggregate substitute. Additionally, pursuant to proposed N.J.A.C. 7:26-1.1(a)ii, stumps, wood, brush, and organic materials processed or composted into usable

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products are excluded from the solid waste rules, provided that the resulting products are not applied to, or placed upon, the land in a manner constituting disposal.

Existing N.J.A.C. 7:26-1.6(a)4 excludes from the definition of solid waste, “spent sulfuric acid that is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated [is] recycled in one year.” The Department proposes to remove the exclusion from N.J.A.C. 7:26-1.6(a) and add it at proposed amended N.J.A.C. 7:26-1.1, with minor clarification and correction. Similarly, the Department proposes to delete N.J.A.C. 7:26-1.6(a)5, which excludes from the definition of solid waste material dredged from New Jersey’s coastal or tidal waters pursuant to relevant New Jersey and Federal statutes, and identify it as outside the scope of the chapter pursuant to proposed amended N.J.A.C. 7:26-1.1. See proposed N.J.A.C. 7:26-1.1(a)4 and 5. As a result, the proposed amended chapter does not apply to either material.

Existing N.J.A.C. 7:26-1.6(a)6 excludes from the definition of solid waste non-water-soluble, non-decomposable, inert solid material such as rock, soil, concrete, glass, and clay/ceramic products that meet more stringent of the Department’s residential or non-residential soil remediation standards. The Department proposes to delete N.J.A.C. 7:26-1.6(a)6 and add the material to the list of materials at N.J.A.C. 7:26-1.1 to which the chapter does not apply. Specifically, the Department is proposing to exclude from the scope of the solid waste rules, sand, rock gravel, and similar non-water-soluble, non-putrescible, non-decomposable, inert solid material, provided those materials that are free from putrescible matter, not mixed with solid waste and otherwise meet the more stringent of the Department’s residential soil remediation

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standards for the soil ingestion-dermal or soil inhalation pathways. See proposed N.J.A.C. 7:26-1.1(a)6.

Also associated with N.J.A.C. 7:26-1.6(a)6 is proposed N.J.A.C. 7:26-1.1(a)1, discussed above; specifically, N.J.A.C. 7:26-1.1(a)1i, which addresses source-separated, or commingled source-separated concrete, brick, block, glass, and clay products or ceramic products. As specified at proposed N.J.A.C. 7:26-1.1(a)1i, such material is excluded from regulation as solid waste when used as fill, but only if it is broken or crushed, or otherwise processed to be unrecognizable as a manufactured product.

Existing N.J.A.C. 7:26-1.6(a)6 (proposed to be deleted) could be interpreted as allowing brick, block, glass, and clay products or ceramic products excluded from solid waste to be used as fill, even if those materials are in their original, manufactured form, provided the materials meet the more stringent of the Department's residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways, or the non-residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways. That was not the Department's intent when it promulgated N.J.A.C. 7:26-1.6(a)6. Concrete, brick, block, glass, and clay products or ceramic products in their manufactured state (that is, not broken or crushed, or otherwise processed to be unrecognizable as a manufactured product), contaminated or not, are not appropriate fill material. Accordingly, the Department is proposing N.J.A.C. 7:26-1.1(a)1i, discussed above, to prevent any misunderstanding as to the use of the material covered by the exclusion at existing N.J.A.C. 7:26-1.6(a)6. If the material is not broken or crushed, or

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otherwise processed to be unrecognizable as a manufactured product, it may not be used as fill, and the Solid Waste rules apply.

In addition to proposing to amend N.J.A.C. 7:26-1.1(a) to include provisions proposed for deletion from N.J.A.C. 7:26-1.6(a), the Department is proposing to recodify existing N.J.A.C. 7:26-1.1(a)1, which excludes from the scope of the Solid Waste rules the use or reuse of a material directly as a product or incorporated into a raw material to manufacture a product. The Department proposes to relocate this exclusion at N.J.A.C. 7:26-1.1(a)2, with amendments to simplify and clarify the materials excluded.

Additionally, the Department is proposing to relocate portions of N.J.A.C. 7:26-1.1(a). Existing N.J.A.C. 7:26-1.1(a)2, which excludes container-pickup facilities from the Solid Waste rules, is relocated to proposed N.J.A.C. 7:26-1.1(a)7. N.J.A.C. 7:26-1.1(a)4, 5, 6, and 7, are proposed for recodification as N.J.A.C. 7:26-1.1(a)8, 9, 10, and 11, respectively. These provisions exclude from the Solid Waste rules recycling depots, convenience centers, the intra-plant and temporary storage of plant-generated waste materials, and any mixture of domestic sewage and other waste discharged into a sewage system to domestic treatment works. Finally, existing N.J.A.C. 7:25-1.1(a)9, which excludes certain small vehicle transfer areas from the Solid Waste rules, is proposed for recodification as N.J.A.C. 7:26-1.1(a)12. The Department is proposing to delete N.J.A.C. 7:26-1.1(a)8, which excludes recycling operations and recycling centers approved and operated pursuant to N.J.A.C. 7:26A from the scope of the Solid Waste rules. Activities related to recyclable material regulated pursuant to N.J.A.C. 7:26A are excluded pursuant to proposed N.J.A.C. 7:26-1.1(a)1; moreover, the existing definition of “solid waste

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facility” at N.J.A.C. 7:26-1.4 excludes a recycling center, making the existing exclusion at paragraph (a)8 redundant.

Permit Exemptions; Research, Development and Demonstration (RD & D) Projects; Beneficial Use Projects, N.J.A.C. 7:26-1.7

The Department is proposing to amend N.J.A.C. 7:26-1.7, Exemptions from SWF permitting, to change the heading of the section to “permit exemptions; research, development, and demonstration (RD & D) projects; and beneficial use projects,” which sets forth specific criteria for exempting certain beneficial use projects from the requirement to obtain a certificate of authority to operate a beneficial use project. The proposed amendments impact the A-901 program because, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the Act), and the proposed rules, beneficial use material approved by the Department for transport to an approved and designated destination is excluded from the definition of “soil and fill recyclable materials” in the Dirty Dirt Law. Thus, persons transporting beneficial use materials for use at an approved beneficial use project need not obtain an A-901 license.

Existing N.J.A.C. 7:26-1.7(g)2 approves for beneficial use projects, material produced at a recycling center approved pursuant to N.J.A.C. 7:26A. Existing N.J.A.C. 7:26-1.7(g)3 approves for beneficial use or reuse, material used or reused directly as a product or as a substitute for raw material that incorporated into a product that meets the original product specifications if the material poses no greater risk to human health or the environment than the use of the product or raw material it is replacing. The Department is proposing to delete the two paragraphs because they are duplicative of proposed N.J.A.C. 7:26-1.1(a)1 and 2, which exclude

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from the Solid Waste rules source-separated recyclable materials regulated pursuant to N.J.A.C. 7:26A and materials directly used or reused as a product or raw material.

In addition to the above, the Department is proposing amendments at recodified N.J.A.C. 7:26-1.7(g)2. Pursuant to recodified N.J.A.C. 7:26-1.7(g)2, certain materials are categorically approved for beneficial reuse. The Department is proposing to amend recodified N.J.A.C. 7:26-1.7(g)2ii, which authorizes the use of “uncontaminated” glass as a substitute for conventional aggregate in the manufacture of asphalt or concrete applications. The proposed amended rule does not refer to “uncontaminated” glass. Instead, the proposed rule provides that glass may be used as a substitute for conventional aggregate in the manufacture of asphalt or concrete applications if, among other things, the glass does not contain contaminants in excess of the 75th percentile of the average concentration of the contaminants found in asphalt or concrete mix, and does not contain contaminants in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards, other than those found in asphalt or concrete mix. The Department believes that adding these two preconditions makes the beneficial use of glass in the manufacture of asphalt and concrete applications pursuant to the proposed rule more protective of public health and the environment than pursuant to existing N.J.A.C. 7:26-1.7(g)4ii.

The Department proposes to amend N.J.A.C. 7:26-1.7(g)4iv to delete the categorical approval of beneficial use soils that contain contaminants below the most stringent cleanup levels that the Department has established, except for sites in the Pinelands. The Department proposes to replace this subparagraph to categorically approve for beneficial use, to

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contaminated soil that meets an alternative remediation standard developed pursuant to N.J.A.C. 7:26D or meets the conditions and requirements at N.J.A.C. 7:26E-5.2, as part of a remedial action. By linking the beneficial use to the Department's site remediation rules, proposed N.J.A.C. 7:26-1.7(g)2iv will make clearer than the existing rule the circumstances in which contaminated soil may be used as alternative fill to remediate an area of concern. The proposed rule allows a Licensed Site Remediation Professional (LSRP) to use alternative fill to remediate an area of concern at a contaminated site without obtaining a formal approval from the Department, which could result in a more expeditious remediation of contaminated properties in the State.

The Department is proposing to amend recodified N.J.A.C. 7:26-1.7(g)2v, which categorically approves for beneficial reuse, contaminated soil that has been decontaminated to the satisfaction of the Department. Rather than refer to decontamination to the Department's satisfaction, the Department proposes to categorically approve contaminated soil and/or fill materials that the Department has approved for use or reuse in a manner acceptable to the Department, which would include any required decontamination for the approved use or reuse. By amending this language, the Department does not intend to relax the decontamination requirement, but to more generally refer to the Department's approval of contaminated soil and/or fill material for use or reuse, which would include any requirements and conditions for the use or reuse, including decontamination.

Proposed new N.J.A.C. 7:26-1.7(g)2vi is a new category of approval, for which no further approval or authorization is required. Falling within this new category is contaminated

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soil and/or fill material that is being used as a subbase for roadway construction or a parking lot if the contaminated soil and fill materials meet the criteria established in the proposed rule. The Department has determined that if contaminated soil and/or fill materials are used as provided in the proposed rule, they are, in effect, capped, and have little likelihood of harming public health, safety, or the environment.

The Department is proposing three additional categories at N.J.A.C. 7:26-1.7(g)2. Proposed N.J.A.C. 7:26-1.7(g)2xii applies to the use or reuse of recycled asphalt pavement in conformity with N.J.S.A. 13:1E-99.28a (governing the use of recycled asphalt pavement for roadways, parking lots, and the like) and all applicable New Jersey Department of Transportation road construction requirements. The use or reuse of recycled asphalt pavement through the proposed conditions is a beneficial reuse and, provided the conditions of the cited statute and Department of Transportation requirements are met, does not pose a threat to public health, safety, or the environment. For the same reasons, the Department proposes new N.J.A.C. 7:26-1.7(g)2xiii, which approves as a beneficial use, not needing further Department approval, steel slag that is used or reused in conformity with N.J.S.A. 13:1E-99.28b, which authorizes the conditional, specified use of steel slag as an aggregate in any commercial or industrial development, or at a commercial or industrial site at which remediation is being overseen by an LSRP.

The third additional category is for street sweepings, which are materials such as sand, gravel pieces, stones, asphalt pieces, as well as salt, leaves, broken glass, small pieces of metal, and other litter and debris removed from streets, parking lots, and sidewalks during

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the ordinary and customary cleaning of roadways or parking lots by a municipal or county Department of Public Works (DPW) or the New Jersey Department of Transportation (DOT). Street sweepings can be of environmental concern because they may contain metals and chemical compounds, such as arsenic, copper, lead, zinc, and polycyclic aromatic hydrocarbons (PAHs) associated with asphalt, as well as compounds associated with motor oils. However, this material has been and can continue to be beneficially reused safely and in an environmentally sound manner. These methods are currently being employed by the DOT and DPWs in New Jersey pursuant to previous guidance and policies. Proposed N.J.A.C. 7:26-1.7(g)2xiv categorically approves street sweepings for beneficial use or reuse for landfill cover or closure activities. Also approved is the use of street sweepings as base or sub-base material for roadway and parking lot construction and repair, containment or absorption medium in an emergency situation, or as hot mix additive, provided that garbage, refuse, and litter (that is, materials, such as plastic, paper, and metal products that are discarded by people and collect around storm drains) have been removed from the sweepings and the specified conditions are met. The proposed conditions and methods included at proposed N.J.A.C. 7:26-1.7(g)2xiv do not substantively vary from current practices but codify controls and practices, to ensure the material is managed in a manner that is protective of human health and the environment when beneficially reused, consistently applied, and subject to enforcement in the event of a violation.

Finally, the Department is proposing to amend recodified N.J.A.C. 7:26-1.7(g)3, which sets forth the beneficial use project application requirements for a generator and/or owner to submit an application to and receive a certificate of authority from the Department. The existing

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rule requires the application to include a description of the material, including a contaminant profile compared to the Department's soil cleanup criteria guidance levels. See existing N.J.A.C. 7:26-1.7(g)3iv(1) and (3). The Department is proposing to update the reference to the soil cleanup criteria guidance levels by referring to the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.

Proposed Amendments to the Recycling Rules, N.J.A.C. 7:26A

N.J.A.C. 7:26A, Recycling Rules, governs the operation of recycling centers and the conduct of recyclable materials generators and transporters, and of governing municipalities and counties that have jurisdiction over recyclable materials.

Definitions, N.J.A.C. 7:26A-1.3

The Department is proposing to amend the definition of "Class B recyclable material" to include source separated recyclable soil and fill material and to define "recyclable soil and fill material." Pursuant to the existing rules, source separated petroleum contaminated soil is the only soil or fill material classified as a Class B recyclable material. The Department proposes to expand the class to include source separated recyclable soil and fill material because there is a universe of contaminated soil and fill beyond petroleum contaminated soil that an authorized Class B facility could otherwise appropriately process, with appropriate quality controls. Often Class B facilities accept such contaminated soil despite the limitation in the rules. The Department believes that expanding the definition of "Class B recyclable materials" to include

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source separated recyclable soil and fill material will eliminate any uncertainty as to whether an authorized Class B facility may accept such material and will enhance environmental protection and the public health by providing a degree of quality assurance and quality control regarding contaminant concerns. The proposed amendment will enable the material to provide an economic benefit through its use or reuse as a manufactured product or raw material.

Class B recyclable materials are excluded from the Act's definition of "soil and fill recyclable materials" at N.J.S.A. 13:1E-127.q, and, therefore, from the A-901 licensing requirements, if they are "shipped to a Class B recycling center approved by the Department for receipt, storage, processing, or transfer in accordance with [N.J.S.A. 1E-99.34]." N.J.S.A. 13:1E-127.q. By excluding Class B recyclable materials from A-901 licensing requirements, the Legislature recognized the benefits and protections provided to the public and the environment by the Department's recycling program.

The Department interprets the Class B exclusion as applying to persons generating and transporting Class B recyclable materials, provided the materials are taken to an approved Class B recycling center or a facility operating pursuant to an exemption at N.J.A.C. 7:26A-1.4. Through this interpretation, a person handling exclusively Class B recyclable material that is shipped to an approved Class B recycling center or an exempt facility need not obtain an A-901 license because the person is not providing "soil and fill recycling services" as defined in the Act at N.J.S.A. 13:1E-127.t. By amending the rules to include "source separated recyclable soil and fill material" within the definition of "Class B recyclable materials," the Department is providing more clarity to the regulated community regarding what constitutes "soil and fill recycling

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services” subject to licensing and encouraging the transfer of source separated recyclable soil and fill material to an approved or exempt recycling center and reuse of the material.

The Department is also proposing new definitions of “by-product,” “non-restricted soil and fill recyclable materials,” and “petroleum contaminated soil.” The Department is proposing to add the term “process” to the existing definition of “processing.”

The Department proposes to define “by-product” as “a secondary material other than residue derived from the recycling or recyclable material, such as rebar and metal, that has a legitimate end-use.” The term “by-product” is used at proposed N.J.A.C. 7:26A-3.17(c)3, which requires monthly totals of recyclable product and by-product to be included in an annual report submitted by the holder of a general approval.

“Non-restricted soil and fill material” has the same meaning as the term at proposed new N.J.A.C. 7:26N-1.4, as further discussed below. The term is used at proposed N.J.A.C. 7:26A-4.5(b)3, which precludes a person from giving away or offering for sale as “non-restricted soil and fill recyclable material” any compost that exceeds the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.

Finally, the Department is proposing to define “petroleum contaminated soil” which, as explained above, is an existing Class B recyclable material. As the Department proposes to include material that is not petroleum contaminated soil as part of the definition of recyclable soil and fill material, petroleum contaminated soil should be defined for clarity.

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Activities Exempt from General or Limited Approval, N.J.A.C. 7:26A-1.4

In conjunction with the amendment of the definition of “Class B recyclable material” at N.J.A.C. 7:26A-1.3 to include source separated recyclable soil and fill material within that class, the Department is proposing to amend the Recycling Rules to add, at N.J.A.C. 7:26A-1.4(a)25, an exemption from the requirements to obtain a general or limited recycling approval pursuant to N.J.A.C. 7:26A-3 for persons engaged in the sale, recycling, blending, manufacturing, or any combination thereof, of recyclable soil and fill material.

Pursuant to proposed N.J.A.C. 7:26A-1.4(a)25, a person engaged in the sale, recycling, blending, manufacturing, or any combination thereof, of source separated recyclable soil and fill material (as proposed to be defined) need not obtain a general or limited approval; provided, that the person meets the requirements of the proposed exemption. The conditions include meeting the applicable remediation standard, limits on quantity, storage requirements, quality assurance/quality control procedures, and recordkeeping and reporting requirements.

The Department notes that the recyclable soil and fill material produced pursuant to proposed N.J.A.C. 7:26A-1.4(a)25 must meet the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards. This is a more restrictive standard than that imposed on a recycling center operating pursuant to a general or limited Class B approval. As a condition of its approval, the Class B center must identify planned end markets for materials received, stored, processed, or transferred by the center and evidence of end-market contracts or agreements for loads equal to or greater than 15 cubic yards. Therefore, the Department will

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know the proposed end uses for the recycled soil and fill produced by approved Class B recycling centers, including those end uses that may not require the recycled soil and fill to meet the Department's residential soil remediation standards.

In contrast, the proposed rule does not require an exempted person to identify the end users of the recyclable soil and fill material and limits the quantity of recyclable soil and fill material the person may produce. To ensure that the recycled soil and fill material produced by a person operating pursuant to proposed N.J.A.C. 7:26A-1.4(a)25 is appropriate for environmentally sensitive end uses, the proposed rule requires the material to meet the most stringent of the Department's remediation standards.

The Department is also proposing to amend three existing exemptions in the Recycling Rules. Existing N.J.A.C. 7:26A-1.4(a)1 exempts asphalt manufacturing plants that receive only source separated recyclable asphalt millings or larger pieces and pre-consumer asphalt shingles or other asphalt-based roofing scrap. The Department is proposing to exempt an asphalt manufacturer, rather than an asphalt manufacturing plant, that meets the criteria set forth in the exemption. The Department is also proposing to delete the requirement that asphalt shingles or other asphalt-based roofing scrap be pre-consumer and allow the receipt of any asphalt shingles or scrap. The Department is also proposing to allow the material to be delivered to the plant from an authorized Class B recycling center. While expanding the scope of the material included in this exemption, the Department is proposing to require that the material be stored in designated areas with environmental controls and to limit the volume of raw materials being replaced based on the volume of raw materials replaced in the manufacturing process the prior year. By basing

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the limit on the manufacturer's operation during the prior year, the proposed rule promotes the reuse and recycling of asphalt millings, while ensuring that the manufacturer does not simply accumulate asphalt millings at its site.

Existing N.J.A.C. 7:26A-1.4(a)2 exempts the recycling of source separated recyclable materials that are generated, processed, and reused as a product exclusively at the point of generation. The Department is proposing to amend this exemption to clarify that the material generated at an on-site location can be reused throughout the site, not just at the specific location where the material was physically generated. The Department is also proposing to identify the types of activities that could generate the material for processing and reuse as a product or other purpose, including redevelopment backfill. The existing exemption specifically excludes materials generated off-site and source separated petroleum contaminated soil. As this exemption applies only to material generated, processed, and reused at an on-site location, the Department proposes to delete the off-site material exclusion since this material is not covered by the exemption in the first instance. The Department is retaining the exclusion of petroleum contaminated soil and proposing to additionally exclude recyclable soil and fill material contaminated in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.

The Department is similarly proposing to exclude recyclable soil and fill material contaminated in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D,

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Remediation Standards, from the existing exemption at N.J.A.C. 7:26A-1.4(a)7 for material temporarily stored. Recyclable soil and fill material that does not exceed these standards would be eligible for the exemption. The Department is also proposing to amend and clarify the conditions for the exemption to apply. Pursuant to the existing rules, the exemption applies to a continuing operation that temporarily stores material in roll-off or similar containers or to temporary storage of material by an operation that occurs for up to two 60-day periods in a calendar year. The rules prohibit processing and require proper storage, recordkeeping, and transfer of the material to an approved recycling center. The Department proposes to amend the timeframes and operational criteria for temporary storage to allow storage for up to 120 days on a project-specific basis once during the calendar year, or on a continuing basis with an aggregate volume and pile height limit, as well as transfer of material to an approved Class B recycling center at least every six months. The Department is additionally requiring material to be located at least 25 feet from the property boundary, consistent with minimum buffer zones in other parts of the rules.

The last exemption that the Department is proposing to amend applies to construction companies and contractors that through their construction and demolition activities generate certain source separated material (concrete, asphalt, brick, and block) and reuse the material in their own project, without sale of the material. See N.J.A.C. 7:26A-1.4(a)20. The Department proposes to expand this exemption to apply to any person who generates such material and to include recyclable soil and fill material as one of the types of source separated material. For the exemption to apply, the material must be separated from all other material at the original

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construction or demolition site and be free of putrescible material and not mixed with solid waste. Additionally, the exemption applies only to recyclable soil and fill material that does not contain concentrations of contaminants that exceed the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent. The Department proposes operational criteria and limits on the volume and manner in which the material is stored at the person's own place of business, provided that the place of business is not a residential property.

The Recycling Rules include general requirements that apply to all exemptions. See N.J.A.C. 7:26A-1.4(b). Generally, all persons operating pursuant to an exemption must provide written notice to the Department before beginning operations. The Department proposes to add an exemption from the notice requirement for persons conducting a residential swimming pool demolition who reuse the concrete as backfill or other on-site use. The Department also proposes to add recordkeeping requirements for persons operating pursuant to exemption (a)7, 20, or 25, so that the Department can ensure that the person meets the conditions of the exemption under which they are operating.

Storage of Class B Materials and Class D Materials that are Not Universal Waste, N.J.A.C. 7:26A-3.9

The Department is proposing to amend N.J.A.C. 7:26A-3.9 to require a recycling center that receives recyclable soil and fill material to prepare and implement an Incoming Materials Acceptance Plan (IMAP) for the recyclable soil and fill material. The IMAP documents the volume of recyclable soil and fill material that the recycling center receives, provides for the

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protective storage of the materials, and ensures compliance with all environmental and Occupational Safety and Health Administration (OSHA) regulations. The recycling center must retain the IMAP and make it available to the Department upon request. To assist the regulated community in preparing the IMAP and in appropriately handling and storing recyclable soil and fill material, the Department will make available on its website guidance on how to develop an IMAP, as well as best management practices for recyclable soil and fill material.

Additional Design and Operational Standards for Recycling Centers that Receive, Store, Process, or Transfer Class B Recyclable Materials, N.J.A.C. 7:26A-4.2 and 4.8

The Department proposes to amend N.J.A.C. 7:26A-4.8 to add operational and design requirements for a recycling center that receives source separated recyclable soil and fill material. Stakeholders expressed concern that the proposed amendments to the Class B rules, including the proposed sampling and reporting requirements for facilities handling “recyclable soil and fill material,” will adversely affect the business practices and increase the operating costs of existing facilities accepting “recyclable soil and fill material.” However, the Department believes that the proposed requirements will provide safeguards for the receipt, storage, processing, and sale of recyclable soil and fill material and, as such, are protective of the environment and public health.

The proposed amended rule requires the operator of a Class B recycling center that receives recyclable soil and fill material to comply with the 25-foot buffer zone requirements at N.J.A.C. 7:26-4.8(a), and the design and operational standards for recycling centers that receive

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Class A, B, C, and D recyclable materials at N.J.A.C. 7:26A-4.1. The Department proposes to allow a recycling center to seek Department approval to reduce the buffer zone if the recycling center shows to the Department's satisfaction that the reduction will not adversely impact the adjacent land use activities. Proposed N.J.A.C. 7:26A-4.8(c) requires a recycling center that receives recyclable soil and fill material to process the material in accordance with its general approval, design, and have in place, a quality assurance/quality control (QA/QC) plan, stage the processed material in piles according to expected end-use and with sufficient aisle space to allow for unobstructed movement, sample and analyze each processed pile to ensure that it is appropriate for the intended end use, post signage adjacent to each pile of processed materials identifying the corresponding end use, and provide notice to customers of any restrictions or limitations on use. The Department intends that the QA/QC plan will ensure that each load of recyclable soil and fill material that the recycling center offers meets the requirements for the intended use. The Department will provide guidance on its website for the development of a QA/QC program.

The proposed rule also prohibits the addition of any material to a pile after sampling and analysis and the pile is ready to be offered for sale or distribution. This requirement is intended to ensure the integrity of recyclable soil and fill material offered to a customer or end-user.

A recycling center must be included in the district solid waste management plan before operating. See N.J.A.C. 7:26A-4.2. The Department proposes to amend N.J.A.C. 7:26A-4.2 to add a schedule for existing recycling centers receiving recyclable soil and fill material at new subsection (b). The existing provisions are now proposed to be codified as subsection (a), which

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the Department is proposing to amend to specifically state that the applicant must receive all applicable local, State, and Federal permits or approvals prior to operating.

If a recycling center is already receiving material that is recyclable soil and fill material as defined and is operating pursuant to a general approval with a site plan that indicates that the recycling center receives such material, the Department proposes to allow the recycling center 90 calendar days to apply to the county for an administrative amendment to the district solid waste management plan. See proposed N.J.A.C. 7:26A-4.2(b). If the recycling center does not have a general approval, the recycling center has 180 days to apply for inclusion in the district solid waste management plan. Both deadlines are calculated from the effective date of this rulemaking.

After the recycling center is included in the district solid waste management plan, the recycling center has 30 calendar days to submit an administratively complete application to the Department for a general approval in accordance with N.J.A.C. 7:26A-3. If a recycling center is not approved by the county, the recycling center must cease accepting recyclable soil and fill material.

Recordkeeping and Annual Report Requirements, N.J.A.C. 7:26A-3.17

Recordkeeping and annual report requirements for a recycling center with a general approval are set forth at existing N.J.A.C. 7:26A-3.17. The Department proposes to amend N.J.A.C. 7:26A-3.17 to clarify existing requirements and include new recordkeeping and annual reporting requirements for materials received, stored, processed at, or transferred to or from the recycling center.

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Existing N.J.A.C. 7:26A-3.17 requires a daily record of the amounts of each recyclable material by type and municipality of origin that are received, stored, processed, or transferred each day. Amounts may be expressed in cubic yards, cubic feet, or gallons. The Department proposes to list the daily record requirements to clarify that a holder of a general approval must maintain daily records of the volume of material accepted, name and contact information and origin location for each individual load received, the amount of each recyclable material, including unprocessed material, by type stored on-site, the amount of material by type processed, and amount by type transferred from the recycling center. The Department proposes to add record requirements for each individual load of recyclable soil and fill materials received. All information, including analytical data, received from a customer must be retained. Additionally, for each load of concrete, asphalt, brick, block, or recyclable soil and fill material received in excess of 15 cubic yards, the recycling center must also record the location name and address where the material was generated, the name and contact information for the person controlling the generation site, and a description of the site. The proposed recordkeeping requirements will enable the Department to better track all recyclable material transferred to and from a recycling center, from generation to end use. The more specific information about the generation site of recyclable soil and fill material will enable the Department to track sources of material in the event issues arise.

The Department proposes to recodify the existing requirement that amounts expressed in cubic yards shall indicate the conversion ratio to tons to its own provision, applicable to all

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records, as proposed N.J.A.C. 7:26A-3.17(a)7, rather than repeating this requirement in various provisions.

The Department proposes to amend recodified N.J.A.C. 7:26A-3.17(a)5, regarding end-market information, to add a requirement to maintain the email address of the point of contact for each end-market for all recyclable materials transported from the recycling center. The requirements at recodified N.J.A.C. 7:26A-3.17(a)6, regarding residue disposed of are proposed for amendment to include the requirement to maintain the name and address of the facility receiving the solid waste.

The Department proposes to amend N.J.A.C. 7:26A-3.17(b) to require the retention of daily records, rather than refer to information required pursuant to N.J.A.C. 7:26A-3.2(a)16iii, which refers to a recyclable materials receipt form. The three-calendar-year retention requirement remains the same and all records must be made available to the Department upon request. Sampling results and laboratory deliverables must also be retained for three calendar years.

Existing N.J.A.C. 7:26A-3.17(c) sets forth the annual report requirements. The subsection is proposed for amendment to require electronic submission of the annual report, on forms available from the Department. Submission shall be made using NJDEP Online at <https://dep.nj.gov/online/>. The Department also proposes to expand the information required to be submitted on its annual report. The monthly totals of the amount of recyclable material received from each customer must be expressed in tons and cubic yards and include the name and address of each point of origin, the name, address, telephone number, and email address of

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the contact person for each point of origin, a description of each point of origin, as well as the type and source of contamination. See proposed N.J.A.C. 7:26A-3.17(b)1. Other new information to be included in a recycling center's annual report includes monthly totals of the type of recyclable product and by-product transferred to each end market.

Additional Design and Operational Requirements for Recycling Centers that Receive, Store, Process or Transfer Class C Recyclable Materials, N.J.A.C. 7:26A-4.5

Finally, as recyclable soil and fill material could be mixed with compost, which is produced by recycling centers that process Class C recyclable materials, the Department proposes to amend N.J.A.C. 7:26A-4.5(b) to clarify that, for purposes of the section, compost includes any mixture of compost and recyclable soil and fill material. The Department proposes to specifically prohibit a Class C recycling center from distributing or marketing compost that includes any mixture of compost and recyclable soil and fill material exceeding the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards, as “non-restricted soil and fill recyclable material.”

Civil Administrative Penalties, N.J.A.C. 7:26A-9.4

The Department proposes civil administrative penalties for violations of the proposed new requirements at N.J.A.C. 7:26A-3.9 and 4.8, consistent with penalties for similar violations.

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A-901 License Requirements

As explained above, the Department's licensing requirements for the solid and hazardous waste industries are codified at existing N.J.A.C. 7:26-16. The Department proposes to relocate with amendments all sections at N.J.A.C. 7:26-16. The rules governing the licensing of solid and hazardous waste and soil and fill recycling services are all proposed to be codified at new N.J.A.C. 7:26N.

General Provisions, N.J.A.C. 7:26N-1.1, 1.2, and 1.3

The proposed rules at N.J.A.C. 7:26N, as with the existing rules at N.J.A.C. 7:26-16, implement the public policy declared in the Act to ensure the integrity and reliability of the solid waste, hazardous waste, and now the soil and fill recycling industries. The Department is proposing to define "Act" as N.J.S.A. 13:1E-126 et seq.

The Department proposes to recodify N.J.A.C. 7:26-16.1 at 7:26N-1.1 with amendments to explain that the chapter applies to any person providing solid or hazardous waste services or soil and fill recycling services, which generally include subcontractors and prime contractors. The proposed recodified provision further clarifies that the rules apply to any person providing solid or hazardous waste services or soil and fill recycling services rather than to proceedings related to business operations. The Department proposes to define both "solid or hazardous waste service" and "soil and fill recycling service" as explained below.

The recodified rule continues the language of the existing rule that subjects subcontractors and prime contractors to the registration requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Act, and the chapter. See *ibid.*

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As with other Department rules, N.J.A.C. 7:26N is to be liberally construed in accordance with proposed N.J.A.C. 7:26N-1.2, Construction and severability. Pursuant to proposed N.J.A.C. 7:26N-1.2, if a court finds any section, subsection, provision, clause, or portion of the chapter to be invalid or unconstitutional, the remaining rules will remain in effect.

The Department also proposes at new N.J.A.C. 7:26N-1.3, similar to existing N.J.A.C. 7:26-1.13, that in an enforcement action or upon the Department's request, any person claiming that the A-901 licensing requirements do not apply to the person shall demonstrate and provide supporting documentation of the claim.

Solid or Hazardous Waste Service and Soil and Fill Recycling Service; Definitions, N.J.A.C.

7:26N-1.4

The Department proposes to recodify N.J.A.C. 7:26-16.2, Definitions, as 7:26N-1.4 with amendments. As explained above, the A-901 license requirements apply to any person providing solid or hazardous waste services or soil and fill recycling services. The Department proposes to define "solid or hazardous waste service" as the service provided by a person engaging in the business of the collection, transportation, treatment, storage, brokering, transfer, or disposal of solid waste or hazardous waste, which are the solid and hazardous waste activities generally covered by the A-901 license program.

Also as explained above, one of the most significant changes to the A-901 license requirements brought about by the statutory amendments is the inclusion of soil and fill recyclable material and soil and fill recycling service. The Department proposes to define "soil

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and fill recycling service” consistent with the statutory definition at N.J.S.A. 13:1E-127.t, which defines “soil and fill recycling services” as “the services provided by persons engaging in the business of the collection, transportation, processing, brokering, storage, purchase, sale, or disposition, or any combination thereof, of soil and fill recyclable materials.” Rather than use the phrase “or any combination thereof,” the proposed definition at N.J.A.C. 7:26N-1.4 uses “and/or” to indicate that a person performing one or more of the activities listed is covered.

The Department also proposes to define “soil and fill recyclable material” as defined at N.J.S.A. 13:1E-127.q, which includes non-putrescible aggregate substitute, such as broken or crushed brick and block, and soil that may contain aggregate substitute and excludes four categories of materials: Class A recyclable materials, Class B recyclable materials shipped to a Class B facility, beneficial use materials approved by the Department, and virgin quarry products. These definitions are a lynchpin of the A-901 program, as a person handling soil and fill recyclable material is now required to obtain an A-901 license, unless otherwise exempted, as explained below.

As both “solid or hazardous waste service” and “soil and fill recycling service” use the term “engaging in the business,” the Department also proposes to define this phrase. As proposed, “engaging in the business” means deriving any kind of financial or other benefit from the procurement of solid or hazardous waste services or soil and fill recycling services, regardless of whether the services are procured within or outside of New Jersey, either through directly performing those services or securing the performance of those services for, or on behalf of another, through the employment of an A-901-licensed business concern, including an A-901-

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licensed subsidiary or A-901-licensed franchisee. The definition is designed to provide guidance to the regulated community as to the circumstances pursuant to which the Department will consider a person conducting activities that involve solid or hazardous waste services or soil and fill recycling services to be “engaged in the business” of providing those services and thus required to obtain an A-901 license before conducting the services.

Key Employees, N.J.A.C. 7:26N-1.4

Pursuant to the A-901 licensing program, all key employees are required to be identified in an applicant or licensee’s disclosure statement and submit a personal history disclosure form. In the Dirty Dirt Law, the Legislature amended the definition of “key employee” to include any family member of an officer, director, partner, or key employee employed or otherwise engaged by the applicant or permittee, as well as any broker, consultant, or sales person employed or otherwise engaged by, or who does business with, the applicant, permittee, or licensees, with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern. The Legislature further defined “family member,” “broker,” “consultant,” and “sales person.”

The Department proposes to define “family member,” “sales person,” and “key employee” as the terms are defined at N.J.S.A. 13:1E-127. The Department’s proposed definitions of “consultant” and “broker” are explained below.

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Consultant

Stakeholders expressed concern that the definition of “consultant” in the Dirty Dirt Law is overly broad and could encompass persons providing consulting services to a business concern that has no connection with the solid or hazardous waste or soil and fill recycling services offered by the business concern. Stakeholders also requested clarity on who holds a “professional license” for the purpose of being excluded from the definition of “consultant.”

N.J.S.A. 13:1E-127 defines “consultant” to mean a person who performs functions for a business concern that provides solid or hazardous waste or soil and fill recycling services but excludes a person who holds a professional license from the State in order to perform those functions. A “consultant” is a “key employee” as defined at N.J.S.A. 13:1E-127 and required to be identified in an applicant or licensee’s disclosure statement and submit a personal history disclosure form if the consultant is “employed or otherwise engaged by, or [does] business with, [a business concern] with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern.” Considering the statutory definitions of “consultant” and “key employee” together, the Department proposes to define “consultant” as a person retained to give specialized advice to the business concern regarding the provision of solid or hazardous waste or soil and fill recycling services. Additionally, a person with the authority to make discretionary decisions concerning solid or hazardous waste services or soil and fill recycling services who otherwise has not been disclosed as a “key employee” is also considered a “consultant” pursuant to the proposed definition.

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The proposed definition, like the statutory definition, also generally excludes a person required to hold a professional license issued by the State to provide specialized advice to a business concern regarding solid or hazardous waste services or soil and fill recycling services who is hired by a business concern to provide that advice, provided the person acts within the scope of their license and the advice is limited to the matter for which the person was retained. For further clarity, as explained below, the Department is proposing, at N.J.A.C. 7:26N-2.2, to include exemptions for two types of professionals from the A-901 licensing requirements: a Licensed Site Remediation Professional or LSRP and a Certified Subsurface Evaluator or CSE. A “Licensed Site Remediation Professional” or “LSRP” has the same meaning as the terms are defined at N.J.A.C. 7:26I-1.3. A “Certified Subsurface Evaluator” or “CSE” is proposed to mean an individual certified pursuant to N.J.A.C. 7:14B-6 to perform subsurface evaluation of unregulated heating oil tank systems.

Broker

Stakeholders expressed concerns about the statutory definition of “broker” similar to the concerns expressed regarding the definition of “consultant.” Some were concerned that persons who tangentially hired a vendor to provide solid or hazardous waste services or soil and fill recycling services for a client – such as property managers, real estate agents, property preservation companies – would be inappropriately deemed to be a “broker” and, thus, subject to A-901 licensing requirements.

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N.J.S.A. 13:1E-127.n defines “broker” as a person who, for direct or indirect compensation, arranges agreements between the person’s customers and business concern providing such services. The Department is proposing to amend the existing regulatory definition of “broker” to effectuate the statutory definition, while addressing concerns expressed by the regulated community that the statutory definition is overly broad and would reach many entities that only tangentially touch solid or hazardous waste services or soil and fill recycling services.

As proposed, consistent with N.J.S.A. 13:1E-127.n, a broker is defined as a person who, for direct or indirect compensation, arranges agreements between a business concern that provides solid or hazardous waste services or soil and fill recycling services and a customer of those services. The Department proposes to include a list of activities that, if performed within the solid or hazardous waste or soil and fill recycling industries, indicate that the person is acting as a broker. The list of activities is not intended to be exhaustive. For example, a person is a broker if the person solicits, recruits, or recommends a business concern providing solid or hazardous waste services or soil and fill recycling services for a customer in need of such services; informs or advises the customer as to the business concern’s compliance with all licensing, permitting, or other operational requirements; or solicits or recruits customers for a business concern. Soliciting or recruiting could include advertising the services. Another example is if a person participates in negotiations and/or facilitates transactions between a business concern engaged in such services and a customer or person in need of such services. A consultant would be a broker if, for example, the consultant is hired to negotiate a solid or hazardous waste services contract on behalf of a consumer. A person hired by a consumer or

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company to help facilitate hauling or transporting services on behalf of that company would also be a broker.

A person is also a broker if the person operates as a franchisor pursuant to a franchise agreement involving solid or hazardous waste services or soil and fill recycling services and in exchange for financial compensation, the person controls the operations or tariff of the franchisee or provides assistance to the franchisee that enables the franchisee to meet its obligations pursuant to the franchise agreement. The Department proposes to add this example because, in the Department's experience, many business concerns operating as franchisors pursuant to franchise agreements for the provision of solid or hazardous waste services or soil and fill recycling services are brokering those services. As such, the Department believes it is important to clearly describe the circumstances through which a business concern would be considered a "broker" of solid or hazardous waste services or soil and fill recycling services when operating as a franchisor.

Proposed Exemptions, N.J.A.C. 7:26N-2

Scope and Existing Exemptions, N.J.A.C. 7:26N-2.1 and 2.2

Pursuant to the existing rules, N.J.A.C. 7:26-16.3(d) identifies persons who are exempt from the disclosure statement requirement. For clarity, the Department proposes to set forth, at new N.J.A.C. 7:26N-2, the persons who are exempt from the A-901 license requirements and any applicable conditions for the exemption to apply. Those persons who are currently exempt

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will continue to be exempt, subject to minor amendments to the existing provision. See proposed N.J.A.C. 7:26N-2.2. Proposed N.J.A.C. 7:26N-2.2(a)1, which exempts various Federal, State, and local government entities from the chapter's disclosure requirements, has been amended to track the language of the statutory exemption at N.J.S.A. 13:1E-127.g(1). Also, at proposed N.J.A.C. 7:26N-2.2(a), the Department is proposing to modify the language of existing N.J.A.C. 7:26-16.3(d)2 through 6 to refer to a person's "permit" for the specific activity identified at N.J.A.C. 7:26N-2.2(a)2 through 6. As set forth at proposed N.J.A.C. 7:26N-2.2(a), for purposes of paragraph (a)2 "permit" has the meaning provided at N.J.A.C. 7:26-1.4 for solid waste activities. For hazardous waste activities, "permit" has the meaning set forth at N.J.A.C. 7:26G-4.2. Thus, "any person whose permit application or permit" is for any of the activities set forth at N.J.A.C. 7:26N-2.2(d)2 through 6 is exempt from the disclosure statement requirements of the proposed rules.

Additional Exemptions, N.J.A.C. 7:26N-2.2

The Department is proposing to add certain Licensed Site Remediation Professionals (LSRPs) and Certified Subsurface Evaluators (CSE) to the list of exempt persons. The Department is also proposing to exempt, at proposed N.J.A.C. 7:26N-2.3, a person handling non-restricted soil and fill recyclable materials, provided the conditions set forth are met. These proposed exemptions are in response to stakeholder concerns about the broad definition of "soil and fill recyclable material," particularly with respect to soil. Stakeholders also felt that many small generators of soil, such as pool contractors and landscapers, would be unduly impacted by

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the new licensing requirements. Stakeholders urged the Department to establish a *de minimis* standard for small quantity generators of “soil and fill recyclable materials.”

Several stakeholders also expressed the need for an appropriate standard for excluding “clean” fill materials from the licensing requirements; otherwise, it would be difficult for persons handling what they believe to be clean material to determine whether the Dirty Dirt Law applies to their operations. LSRPs noted that the broad statutory definition of “soil and fill recyclable materials” includes “alternative fill” and “clean fill” covered by the Site Remediation Program’s fill material guidance, and expressed a concern that the remediation of hazardous discharge sites would be adversely impacted if the licensing requirements were applied to those in the chain of remediating such sites. Therefore, LSRPs generally argued for a blanket exclusion from the requirements of A-901, as it relates to both solid and hazardous waste services and soil and fill recycling services.

Licensed Site Remediation Professionals and Certified Subsurface Evaluators, N.J.A.C. 7:26N-2.2

Pursuant to proposed N.J.A.C. 7:26N-2.2(b)8, a Licensed Site Remediation Professional may provide solid or hazardous waste services or soil and fill recycling services without an A-901 license when retained to remediate a specific contaminated site. The LSRP exception also applies to persons employed by the same firm as the LSRP who are performing remediation at the site pursuant to the direction and management of the LSRP, as well as the firm employing the LSRP. The exception is effective only for the remediation of the contaminated site for which the

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LSRP has been retained, provided that the LSRP complies with Regulations of the Site Remediation Professional Licensing Board, N.J.A.C. 7:26I, and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C (ARRCS Rules).

A similar exception is provided for a CSE at proposed N.J.A.C. 7:26N-2.2(b)9. A CSE is an individual who is certified pursuant to N.J.A.C. 7:14B-16 to perform subsurface an evaluation of an unregulated heating oil tank system. See proposed definition at N.J.A.C. 7:26N-1.4.

Pursuant to proposed N.J.A.C. 7:26N-2.2(b), a CSE retained pursuant to the Heating Oil Tank System Rules, N.J.A.C. 7:26F, to remediate a discharge from one or more unregulated heating oil tank systems at a specific site may provide solid or hazardous waste services or soil and fill recycling services without an A-901 license during the remediation. Persons working with the CSE at the same firm to remediate the site and the firm at which the CSE is employed are also exempt. As with the exception for LSRPs, the proposed exception only operates if the remediation is conducted in conformity with the ARRCS Rules. The Department believes these exemptions comport with the Dirty Dirt Law in that the law defines “consultant” to exempt a person who performs functions for a business concern and holds a professional license from the State to perform those functions. See N.J.S.A. 13:1E-127.o.

The proposed LSRP exception and the CSE exception apply only to those entities during a properly conducted remediation. Should it become necessary to hire a transporter to haul solid or hazardous waste or soil and fill recyclable materials generated during the remediation, the LSRP and CSE must use an A-901-licensed carrier to transport those materials.

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Non-Restricted Soil and Fill Recyclable Materials, N.J.A.C. 7:26N-2.3

The Department proposes to also exempt from the A-901 licensing requirements certain persons handling only “non-restricted soil and fill recyclable material,” which the Department proposes to define at N.J.A.C. 7:26N-1.4 as non-water soluble, non-putrescible, non-decomposable inert solid material, such as rock, soil, sand and gravel, and source-separated recyclable material like concrete and brick that have been processed to be unrecognizable as a manufactured product, provided the material is not mixed with solid waste and does not exceed the more stringent of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, as set forth at N.J.A.C. 7:26D, Remediation Standards. As these materials must meet the more stringent of these remediation standards, the materials do not pose the risk to the environment and public health safety that soil and fill from untested, unknown sources pose. Additionally, as these materials have inherent value, there is less likelihood of fraudulent or criminal activity often associated with waste materials being sold, proffered, or disguised as clean product.

To be exempt pursuant to proposed N.J.A.C. 7:26N-2.3(a), a person handling “non-restricted soil and fill recyclable material” must annually file a certification with the Department, in a form prescribed by the Department. A person handling “non-restricted soil and fill recyclable material” in excess of *de minimis* limits must certify that the materials they are handling qualify as “non-restricted soil and fill recyclable material,” that they are handling such material to the exclusion of other “soil and fill recyclable material,” that they have a quality control/quality assurance program in place to ensure that each load of material qualifies as “non-

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restricted soil and fill recyclable material,” and that they will maintain all relevant records concerning their handling of the materials. Such a person must also acknowledge that they have the burden of proving that the materials they are handling are in fact “non-restricted soil and fill recyclable materials,” that they have an obligation to remove any non-compliant material, and the potential for civil and criminal penalties for handling non-compliant material without an A-901 license. The Department will evaluate the certification program on an ongoing basis to determine whether compliance and enforcement issues warrant removing the exemption or otherwise revising the certification requirements.

The Department also proposes to allow a person handling *de minimis* quantities of non-restricted soil and fill recyclable materials to do so without an A-901 license or submitting a certification. See proposed N.J.A.C. 7:26N-2.3(b). Similar to other exemptions for small or temporary operations in the recycling and solid waste rules, the Department is proposing to exempt a person who generates less than 15 cubic yards (the volume that a smaller dump truck can transport) of the materials each day, stores less than 100 cubic yards of the materials at any one time, transports the materials using a truck/trailer with a capacity of less than 15 cubic yards, and possesses any necessary contractor or trade license. See proposed N.J.A.C. 7:26N-2.3(b).

Licensure and Applications, N.J.A.C. 7:26N-3

Proposed Subchapter 3 sets forth the application procedures and requirements that apply to any person seeking or holding an A-901 license, as well as the application review procedures. These provisions include application submission and fingerprinting requirements, requirements for lessors, and requirements to report information changes. The proposed rules provide

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requirements for disclosure statements and annual updates, as well as provisions for a temporary A-901 license. The rules also include a licensee's duty to cooperate and provide information and prohibited transactions with other business concerns. Many of these provisions remain the same or similar to those at existing N.J.A.C. 7:26-16, and N.J.A.C. 7:26-16.3, 16.4, 16.5, 16.6, and 16.7 are proposed to be recodified as N.J.A.C. 7:26N-3.2, 3.4, 3.8, 3.5, and 3.6, respectively, with amendments to clarify, correct grammar, and delete redundancies and obsolete provisions. Other provisions are new to implement the statutory amendments.

Application and Licensure, General, and Definition of A-901 License, N.J.A.C.

7:26N-1.4 and 3.1

Proposed N.J.A.C. 7:26N-3.1 recites the purpose of the subchapter and makes clear that the application procedures and requirements apply to any person seeking or holding an A-901 license. Further, a person providing or intending to provide solid or hazardous waste services or soil and fill recycling services must obtain an A-901 license and comply with all terms and conditions of the license. Proposed N.J.A.C. 7:26N-3.1(b), relocated from existing N.J.A.C. 7:26-16.8(k), states that an approved license is nontransferable and shall be valid only for the length of time for which it is given.

As proposed N.J.A.C. 7:26N sets forth the requirements for a license pursuant to the Act, the Department is proposing to define "A-901 license" to mean a license issued by the Department pursuant to the Act after the background investigation has been completed by the Office of the Attorney General. See proposed N.J.A.C. 7:26N-1.4. An A-901 license is an

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approval that a business concern needs to provide solid or hazardous waste services and must be obtained before the Department will approve a solid or hazardous waste facility permit, a certificate of public convenience and necessity, or a transporter registration.

Although the Act separately defines the terms “license” and “soil and fill recycling license,” the former relating to solid or hazardous waste services and the latter concerning soil and fill recycling services, for simplicity, the Department proposes to define A-901 license to refer to a license for either type of service since the licensing procedure is the same. The definition of “A-901 license” is proposed to replace the existing regulatory definition of “license,” which refers to solid waste and hazardous waste registration statements and engineering design approvals that were in existence in 1983 at the time of the first licensing act, P.L. 1983, c. 392, and are no longer applicable.

As explained above, N.J.S.A. 13:1E-127.1 requires a business concern that is not already a licensee and that was providing soil and fill recycling services when the law was amended to have registered by July 14, 2022. The statute requires each registrant to submit an A-901 license application within 30 days of the promulgation of final rules to implement the statutory amendments. The Department is proposing to define “registrant” as a business concern that submitted a registration form and was issued a soil and fill recycling registration as required by law. See proposed N.J.A.C. 7:26N-1.4. “Soil and fill recycling registration” is defined as a registration issued by the Department to a business concern pursuant to N.J.S.A. 13:1E-127.1. The Department is also proposing to add the statutory deadline for a registrant to file an A-901 license application at proposed N.J.A.C. 7:26N-3.2(c), which is 30 days after the effective date

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of this rulemaking, unless the registrant requests, and receives, an extension. Consistent with the statute, the rules provide that a soil and fill recycling registration shall automatically expire and become invalid upon the registrant's failure to timely submit an application or a final decision on the A-901 license application is issued.

*Application Submission and Review, Investigative Report, and Temporary License,
N.J.A.C. 7:26N-3.2 and 3.8*

The application procedure is set forth at proposed N.J.A.C. 7:26N-3.2, which is recodified with amendments from N.J.A.C. 7:26-16.3, Licensure; filing of disclosure statement. The Department proposes to amend the existing definition of "application" to specifically include the disclosure statement, instead of generally referring to "forms and accompanying documents." The definition of "disclosure statement" is the same as the definition of the term at existing N.J.A.C. 7:26-16.2 with updated cross-references. The required content of a disclosure statement, which includes personal history disclosure forms, is found at proposed N.J.A.C. 7:26N-3.4, Content of Disclosure Statement, discussed below.

Proposed N.J.A.C. 7:26N-3.2 sets forth the mechanics for the filing of an application and certain exemptions from the filing requirements. Proposed N.J.A.C. 7:26N-3.2(a) provides directions for filing an application with the Office of the Attorney General. Those are largely the same as those at N.J.A.C. 7:26-16.3(b), with an additional electronic mail filing option. Proposed N.J.A.C. 7:26N-3.2(b) sets forth certain fingerprint requirements. The fingerprinting requirements at N.J.A.C. 7:26-16.3(c)1, 2, and 3 have been deleted and replaced with a statement

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directing persons seeking to be fingerprinted to follow the instructions on the Department's website. See proposed N.J.A.C. 7:26N-3.2(b).

Proposed N.J.A.C. 7:26N-3.2(c) sets forth the filing options for groups of commonly owned or managed applicants, permittees, or licensees, with minor clarifying amendments.

The Department also proposes to add the application review procedures at N.J.A.C. 7:26N-3.2. The Office of the Attorney General will review the disclosure statement and advise the applicant if it is incomplete on its face. If the applicant does not timely respond with the requested information, the application will be administratively closed and no fees will be refunded or credited. If an application is complete, the Office of the Attorney General will commence its review and upon completion of its review, provide an investigative report and recommendation to the Department. As in the existing procedure (see existing N.J.A.C. 7:26-16.5), the Department will not issue an A-901 license until it has received and reviewed the investigative report and recommendation from the Office of the Attorney General, unless the Department determines that a temporary license is warranted, as explained below. See existing N.J.A.C. 7:26-16.5 and proposed 7:26N-3.1(d). After review of the application, investigative report and recommendation, the Department will approve and issue a license or send a notice denying the application. The applicant may request an adjudicatory hearing to contest a denial in accordance with N.J.A.C. 7:26N-7.3, discussed below.

If an applicant withdraws an application during the review process, the State will not provide a refund or credit for fees paid if an application is administratively closed or withdrawn. See proposed N.J.A.C. 7:26N-3.2(g).

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Pursuant to the existing rules, the Department will not issue an A-901 license until it has received and reviewed the investigative report by the Office of the Attorney General. The exception is for a temporary A-901 license if necessary to prevent or alleviate a hazard to public health, safety, or the environment, or prevent economic hardship to a public body, or otherwise serve a public interest. See existing N.J.A.C. 7:26-16.5. The Department proposes to retain these provisions by including at N.J.A.C. 7:26N-3.1(d) that except as otherwise provided at N.J.A.C. 7:26N-3.8 governing a temporary A-901 license, the Department will not issue an A-901 license until it has reviewed the investigative report. The Department proposes to recodify the provisions for a temporary A-901 license at existing N.J.A.C. 7:26-16.5 as N.J.A.C. 7:26N-3.8.

Lessors and Disclosure Statements, N.J.A.C. 7:26N-3.3

Pursuant to the existing rules, if a permittee or licensee leases a certain number of solid waste vehicles and operators from a single lessor that is not a permittee or licensee, the permittee or licensee is required to file, or cause the lessor to file, a disclosure statement and personal history disclosure statements for directors, officers, key employees, partners, and equity holders of the lessor. See existing N.J.A.C. 7:26-16.6(i) and (j). The statements must be filed within 30 days of entering the lease. If the lessor is an applicant, the lessee may provide written notice within 10 days.

The Department proposes to include, at proposed N.J.A.C. 7:26N-3.3(a), a lessor's obligation to file a disclosure statement when entering into a lease with a licensee. A "lessor" is

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proposed to be defined as a person required to file a disclosure statement pursuant to N.J.A.C.

7:26N-3.3. As proposed, a lessee no longer has the option of filing a disclosure statement on the lessor's behalf. Rather, the lessor has the sole responsibility for filing a disclosure statement because the lessor, by virtue of the lease, is a person with a beneficial interest in the lessee's business for the provision of solid or hazardous waste services and/or soil and fill recycling services. See existing N.J.A.C. 7:26-16.6(j) and (k) and proposed N.J.A.C. 7:26N-3.3(b). A lessor need file only a disclosure statement (including any required personal history disclosure forms); the lessor is not required to hold an A-901 license if the lessor is only leasing vehicles and/or operators.

In most respects, the provisions of proposed N.J.A.C. 7:26N-3.3(a) are the same as the provisions at N.J.A.C. 7:26-16.6(i) and (j), except the proposed requirements include leases for soil and fill recyclable material vehicles and/or operators. The disclosure requirements for lessors continue to apply to leases for 10 or more of a lessor's vehicles and operators; leases for 20 or more of a lessor's operators; and leases for vehicles representing 20 percent or more of the licensee's fleet of vehicles. Proposed N.J.A.C. 7:26N-3.3(a) adds one category of lease not subject to the existing disclosure requirements at N.J.A.C. 7:26-16.6: specifically, an exclusive lease for all of a lessor's vehicles or operators. An unlicensed lessor that falls into any of the foregoing categories is required to file a disclosure statement, which includes personal history disclosure forms for directors, officers, key employees, partners, and equity holders of the business concern, within 30 days of executing the respective lease.

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Existing N.J.A.C. 7:26-16.6(k) provides that permittees and licensees who have 10 or fewer vehicles/operators in their fleet are exempt from the business concern disclosure statement requirements. The categories of lessors subject to the disclosure requirements are set forth at proposed N.J.A.C. 7:26N-3.3(a). As permittees and licensees with 10 or fewer vehicles/operators in their fleet are not included at proposed N.J.A.C. 7:26N-3.3(a), they are not subject to the disclosure requirements. The Department, therefore, is not proposing to include the express exemption for these permittees and licensees since such an exemption is unnecessary.

Content of Disclosure Statement, N.J.A.C. 7:26N-3.4

Existing N.J.A.C. 7:26-16.4, Content of disclosure statement, lists the information that must be provided in a disclosure statement. The Department proposes to recodify N.J.A.C. 7:26-16.4 as 7:26N-3.4, with clarifying amendments. The existing rule applies to an applicant, permittee, or licensee. The proposed rule also applies to a lessor because, as discussed above, certain lessors have disclosure statement obligations.

Proposed N.J.A.C. 7:26N-3.4(a)1i, ii, iii, and iv require the disclosure of contact information and personal identifiers for the applicant, permittee, licensee, or lessor, as well as for officers, directors, partners, key employees of the applicant, permittee, licensee, or lessor, and for all persons holding any equity in or debt liability of the applicant, permittee, licensee, or lessor. If the applicant, permittee, licensee, or lessor is a publicly traded corporation, the applicant, permittee, licensee, or lessor must disclose the same information for all persons holding more than five percent of the equity or debt liability of the applicant, permittee, licensee,

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or lessor, except where the holder of the equity or debt interest is an institutional investor. In that case, the applicant, permittee, licensee, or lessor need disclose only the name and business address of the investor and the basis upon which the investor qualifies as an institutional investor. For chartered lending institutions, the applicant, permittee, licensee, or lessor need only disclose the name and business address of the lending institution. The Department proposes to define “institutional investor” and “publicly traded corporation” as the terms are defined in the Act.

Proposed N.J.A.C. 7:26N-3.4(a)2 is the counterpart to existing N.J.A.C. 7:26-16.4(a)2. N.J.A.C. 7:26N-3.4(a)2 requires an applicant, permittee, licensee, or lessor, as applicable, to supply contact information and personal identifiers for personnel employed, or otherwise engaged, by a business concern identified in a disclosure statement, including officers, directors or partners, family members, consultants, sales persons, and key employees. The definition of “business concern” is the same as the existing definition at N.J.A.C. 7:26-16.2.

The proposed rule provides an exception for a business concern that is a publicly traded corporation, which is proposed to be defined as it is defined at N.J.S.A. 13:1E-127.m. In that instance, the applicant, permittee, licensee, or lessor, need only supply the name and address of the business concern and a copy of the business concern’s annual filings with the Securities and Exchange Commission.

Proposed N.J.A.C. 7:26N-3.4(a)2 differs from existing N.J.A.C. 7:26-16.4(a)2 in that the applicant, permittee, licensee, or lessor must provide contact information and personal identifiers for key employees of the business concern, and family members, consultants, and sales persons

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employed or otherwise engaged by the business concern, in addition to the business concern's officers, directors, or partners. The Department has taken this step because the Dirty Dirt Law requires the disclosure of key employees, including family members, consultants, and sales persons. The Department believes that disclosure of information about those persons is critical for the effective administration of the A-901 program, much as it is for information about the officers, directors, or partners of the applicant, permittee, licensee, or lessor business concern.

Proposed N.J.A.C. 7:26N-3.4(a)3, similar to existing N.J.A.C. 7:26-16.4(a)9, requires an applicant, permittee, licensee, or lessor to submit contact information and personal identifiers for persons employed by the applicant, permittee, licensee, or lessor in solid or hazardous waste or soil and fill recycling operations in New Jersey not otherwise disclosed. Proposed N.J.A.C. 7:26N-3.4(a)3 also requires an applicant, permittee, licensee, or lessor to disclose any person not previously disclosed if required by the Department or the Office of the Attorney General.

The provisions at proposed N.J.A.C. 7:26N-3.4(a)4 through 9 are identical to existing N.J.A.C. 7:26-16.4(a)3 through 8 from which they are recodified, except that proposed N.J.A.C. 7:26N-3.4(a)2 substitutes the term "business concern" for "company," and N.J.A.C. 7:26N-3.2(a)3, 4, and 7 add "soil and recycling services" to their provisions to conform to the expansion of the A-901 program to include those services. Additionally, proposed N.J.A.C. 7:26N-3.4(a)2, 3, 4, and 7 use the new term "solid or hazardous waste service," rather than "collection, transportation, treatment, processing, brokering, storage, transfer, disposition of solid waste or hazardous waste," which the existing rule uses.

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Proposed N.J.A.C. 7:26N-3.4(a)10 and 11 are new. The provisions were added to the Act by the Dirty Dirt Law. Proposed N.J.A.C. 7:26N-3.4(a)10 requires the disclosure of the name and business address of any individual or business concern that leases real property or equipment used for the provision of solid or hazardous waste services, or the provision of soil and fill recycling services. Proposed N.J.A.C. 7:26N-3.4(a)11 requires a listing and explanation of any civil litigation pending between the applicant, permittee, licensee, or lessor, or any key employee, officer, director, or partner thereof, and any other person engaged in the provision of solid or hazardous waste services, or the provision of soil and fill recycling services, related to the provision of solid waste, hazardous waste services, or soil and fill recycling services. Proposed N.J.A.C. 7:26N-3.4(a)12 is identical to N.J.A.C. 7:26-16.4(a)11. Pursuant to proposed N.J.A.C. 7:26N-3.4(a)12, an applicant, permittee, licensee, or lessor is required to provide any other information the Attorney General deems relevant as to the competency, reliability, honesty, integrity, or good character of the applicant, permittee, licensee, or lessor.

Existing N.J.A.C. 7:26-16.4(a)10 requires the disclosure statement to include a completed personal history disclosure form for every person required to be listed in the disclosure statement with specific exceptions. As personal history disclosure forms are separate forms required to be submitted along with the business concern disclosure statement, the Department proposes to move the personal history disclosure form requirement to N.J.A.C. 7:26N-3.4(b). As set forth at proposed N.J.A.C. 7:26N-3.4(b), the disclosure statement shall include a completed personal history disclosure form for all individuals required to be disclosed pursuant to N.J.A.C. 7:26N-3.4(a)1, 2, and 3, except for holders of debt liability and non-supervisory employees required to

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be listed pursuant to N.J.A.C. 7:26N-3.4(a)3i, unless otherwise required by the Attorney General. The Department is proposing to add a new definition of “personal history disclosure form” to the proposed rules to clarify that an applicant’s or licensee’s disclosure statement includes a personal history disclosure form for each key employee of the business concern, as well as any other individual required to be listed in the disclosure statement. Pursuant to the proposed definition of “personal history disclosure form” at N.J.A.C. 7:26N-1.4, a “personal history disclosure form” means the form required to be filed with the disclosure statement pursuant to N.J.A.C. 7:26N-3.4(b), which sets forth information about the individuals required to be listed in the business concern disclosure statement, including their family, education, and employment history.

The requirement at existing N.J.A.C. 7:26-16.4(d) that a personal history disclosure form be signed by the individual described thereon has been incorporated into proposed N.J.A.C. 7:26N-3.4(b). Proposed N.J.A.C. 7:26N-3.4(c) is the counterpart to N.J.A.C. 7:26-16.4(b). Proposed N.J.A.C. 7:26N-3.4(c) requires that an applicant, permittee, licensee, or lessor attest to the truthfulness of the information provided in the disclosure statement, which attestation shall be affirmed and subscribed before a person authorized to take oaths and affirmations. Personal history disclosure forms shall be similarly sworn and subscribed.

Proposed N.J.A.C. 7:26N-3.4(d), which has been modified from the provisions at existing N.J.A.C. 7:26-16.4(c), sets forth the respective capacities through which a signatory to a disclosure statement may sign for corporations, limited liability companies, partnerships, sole proprietorships, and natural persons. Pursuant to proposed N.J.A.C. 7:26N-3.4(d), the signature of a responsible individual is required on disclosure statements submitted to the Department by a

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corporation, limited liability company, or a partnership. For a corporation, the signatory is a responsible corporate officer, that is, a person possessing policy or decision-making authority, such as a president, secretary, or treasurer. For a limited liability company, the signatory is a company official possessing the authority to bind the company, such as a member or manager. For a partnership, the signatory is each partner, or for a limited partnership, each general partner. For a sole proprietorship, the signature of the proprietor is required. Also, for a natural person, the required signature is that of the person.

Pursuant to proposed N.J.A.C. 7:26N-3.4(e), original documents must all be signed and dated, with photocopied, stamped, typed, or printed signatures being acceptable on copies. The Department is deleting the requirement that documents be signed in ink to allow for electronic signatures.

Change of Information on a Disclosure Statement, N.J.A.C. 7:26N-3.5

N.J.A.C. 7:26-16.6, Change of information on disclosure statement; sales or transfers of ownership, is proposed to be recodified with amendments as proposed N.J.A.C. 7:26N-3.5. This section sets forth the requirements for reporting changes to the information initially divulged in a disclosure statement or when there has been a sale or transfer of licensee, applicant, or permittee.

Proposed N.J.A.C. 7:26N-3.5 sets forth many of the same provisions of N.J.A.C. 7:26-16.6. The requirement to provide 30 days' notice of a change remains the same. See N.J.A.C. 7:26-16.6(a) and (b) and proposed N.J.A.C. 7:26N-3.5(a) and (b). The requirements on how to file information changes are also the same, that is, on amendment forms supplied by the Office

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of the Attorney General and available on the Department's website,

<https://www.nj.gov/dep/dshw/a901/a901frms.htm>, by submission of an original and one

conformed copy to the Department, and the affirmation requirement. See proposed N.J.A.C.

7:26N-3.5(e) and (f). As at existing N.J.A.C. 7:26-16.6(h), the Department has the discretion to

require the filing of a new disclosure statement if there have been multiple amendments to a

disclosure statement, the information has been substantially changed, or the disclosure statement

on file with the Office of the Attorney General is more than five years old. See proposed

N.J.A.C. 7:26N-3.5(g).

The Department proposes to maintain at N.J.A.C. 7:26N-3.5(b), the existing types of information changes at N.J.A.C. 7:26-16.6(b) that must be reported by a licensee, with one amendment and one new information type, discussed below. If the change includes listing a new person in the disclosure statement, that person is subject to the same disclosure requirements set forth at N.J.A.C. 7:26N-3.5. Although this is not a new requirement, the Department proposes to include this provision to make clear the obligations of a newly listed person. As provided at existing N.J.A.C. 7:26-16.13(d), the applicant, permittee, licensee, or lessor is required to pay the applicable fee for listing a new person. See proposed N.J.A.C. 7:26N-3.5(h).

The requirements for reporting changes in a lessor's disclosure statement remain the same, but the Department proposes to amend the rule to apply to the lessor, rather than the licensee or permittee. See proposed N.J.A.C. 7:26N-3.5(c). These amendments are consistent with the proposed amendments regarding a lessor's obligation to file a disclosure statement, as discussed above.

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The Department also proposes a new requirement for a licensee who converts their business concern to a domestic (New Jersey) corporation from another business form or otherwise converts their business form pursuant to N.J.S.A. 14A:11A-1, 14A:11A-2, and 14A:11A-6.1 to provide information on the conversion. See proposed N.J.A.C. 7:26N-3.5(d)1. While the domestication or conversion of business forms has been authorized in other jurisdictions such as Delaware for some time, the ability to convert or domesticate a business entity in New Jersey became effective on November 4, 2023, with the enactment of P.L. 2023, c. 3.

Additional Information: Duty to Cooperate, N.J.A.C. 7:26N-3.6

The Department proposes to recodify N.J.A.C. 7:26-16.7 as N.J.A.C. 7:26N-3.6 with amendments to include lessors and to make minor clarifying amendments. Consistent with N.J.S.A. 13:1E-128.b, recodified N.J.A.C. 7:26N-3.6 specifies that all applicants, permittees, licensees, and lessors have a continuing duty to assist or provide information to the Department or Attorney General and to cooperate in any investigation, inquiry, or hearing conducted by State agencies. If an applicant or licensee fails to cooperate, the Department may deny an application or revoke an A-901 license (see recodified N.J.A.C. 7:26N-3.6(a)). Pursuant to proposed N.J.A.C. 7:26N-3.6(b), an applicant, permittee, licensee, or lessor is required to supply all evidence, physical or otherwise, requested by the Department or the Office of the Attorney General.

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Annual Update, N.J.A.C. 7:26N-3.7

The existing rules require the filing of annual updates, which must include all changes of information reported on a 30-day notice in accordance with the change of information provisions. See N.J.A.C. 7:26-16.6(e). The existing rules also include a section on annual renewal and fees. See N.J.A.C. 7:26-16.13. For clarification, the Department proposes to combine the provisions regarding annual updates at proposed new N.J.A.C. 7:26N-3.7, Annual update, and provide a cross-reference to N.J.A.C. 7:26N-3.5, Change of information on disclosure statement, to make clear that an applicant, permittee, licensee, and lessor must provide changes of information within 30 days of the change and on any subsequent annual update.

As set forth at proposed N.J.A.C. 7:26N-3.7(a), an applicant, permittee, licensee, and lessor shall annually update the disclosure statement and personal history disclosure forms for A-901 licenses and the annual update shall include all changes of information required to be reported pursuant to N.J.A.C. 7:26N-3.5. The annual update must be filed with the Office of the Attorney General by June 1 each year, with the payment of applicable fees at N.J.A.C. 7:26N-6, explained below. As in the existing rules (N.J.A.C. 7:26-16.6(c)), personal history disclosure forms need not be updated, except to reflect new criminal or disorderly person convictions or charges, unless otherwise requested by the Department or the Office of the Attorney General. Failure to submit a timely annual update may result in the revocation of the A-901 license.

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Prohibited Transactions with Other Business Concerns, N.J.A.C. 7:26N-3.9

At proposed new N.J.A.C. 7:26N-3.9(a), as at existing N.J.A.C. 7:26-16.6(l), the Department proposes to prohibit a licensee from entering into an agreement with a business concern where the business concern assumes management and control of the licensee's solid waste activities, which would undermine the Act. The Department proposes to add a prohibition at proposed N.J.A.C. 7:26N-3.9(b) to prohibit a licensee from doing business with an unlicensed broker, unlicensed franchisor, or other unlicensed business concern for the provision of solid or hazardous waste services or soil and fill recycling services. The A-901 licensing program requires a person who provides solid or hazardous waste services or soil and fill recycling services to hold an A-901 license, unless otherwise exempted. Therefore, this prohibition is intended to ensure that a licensee does not do business with a person who is required to hold an A-901 license authorizing the person to conduct the services in question, but does not hold such a license.

Disqualification, License Denial and Revocation, N.J.A.C. 7:26N-4

Provisions governing disqualification, license revocation, severance of disqualifying individuals, and convicted persons are at existing N.J.A.C. 7:26-16.8, 16.9, 16.11, 16.12, and 16.21. The Department proposes to recodify these provisions with amendments as N.J.A.C. 7:26N-4.1, 4.2, 4.4, 4.3, and 4.6, respectively.

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Disqualification Criteria, N.J.A.C. 7:26N-4.1

The Act sets forth specific disqualification criteria and prohibits the Department from approving an A-901 license if certain persons related to or involved in the applicant or licensee's business are disqualified. The Dirty Dirt Law amended the disqualification provisions as follows.

Prior to the Dirty Dirt Law amendments, the Department was prohibited from approving an A-901 license if any person required to be listed in the disclosure statement or any person shown to have a beneficial interest in the business of the applicant, permittee, or licensee met any of the disqualification criteria. As explained above, the Dirty Dirt Law expanded the A-901 license requirements to the soil and fill recycling industry; the disqualification criteria are similarly extended to a business concern providing these services. The Dirty Dirt Law also added any person shown to have rented or leased to an applicant, permittee, licensee, or business concern with a license to provide soil and fill recycling services real property, vehicles, or other equipment used to provide solid or hazardous waste services or soil and fill recycling services. N.J.S.A. 13:1E-133.

The disqualification criteria remain the same as in the existing rules, but with two additions. First, the Dirty Dirt Law added aggravated assault to the list of crimes that disqualify an applicant or permittee from obtaining or possessing a license or permit. See N.J.S.A. 13:1E-133.b(23). Second, if any of the persons has been barred from providing solid or hazardous waste services or soil and fill recycling services, the Department is prohibited from approving the A-901 license. See N.J.S.A. 13:1E-133.

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The existing rules at N.J.A.C. 7:26-16.6 include the disqualification criteria. The Department proposes to recodify N.J.A.C. 7:26-16.6 as 7:26N-4.1, with amendments to incorporate the statutory amendments explained above.

The Dirty Dirt Law also added a provision that the Department may issue an A-901 license subject to conditions, restrictions, limitations, or covenants as the Department determines necessary to accomplish the Act's goals. N.J.S.A. 13:1E-133. Although the Department believes this authority already exists, for clarity the Department proposes to include this provision at N.J.A.C. 7:26N-4.1(j).

Cause for License Denial or Revocation, N.J.A.C. 7:26N-4.2

Existing N.J.A.C. 7:26-16.9, Cause for license revocation, sets forth the additional causes for which any license may be revoked. The Department proposes to recodify N.J.A.C. 7:26-16.9 as 7:26N-4.2, with amendments, and to change the heading to better reflect the contents of the section. The causes for license revocation also apply to the denial of an A-901 license application since the reasons for denying an A-901 license in the first instance would be consistent with those for revoking a license.

The Department proposes to add three reasons for denial or revocation based on the licensee's or applicant's failure to comply with various requirements set forth at proposed N.J.A.C. 7:26N. As proposed at N.J.A.C. 7:26N-4.2(a)3, the Department may deny or revoke an A-901 license for the failure to cooperate with any investigation or provide information as required at proposed N.J.A.C. 7:26N-3.6. Proposed N.J.A.C. 7:26N-4.2(a)12 and 13,

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respectively, authorize the Department to deny or revoke an A-901 license for failure to update a disclosure statement or failure to pay all fees and penalties due under law. The Department believes these grounds for denial or revocation are consistent with the Act's purpose of ensuring that only those with the requisite reliability, expertise, and competence participate in the regulated industries.

The Department also proposes to add as cause for denial or revocation of an A-901 license the termination of a solid or hazardous waste permit, the revocation of a solid or hazardous waste transporter registration, or the revocation of a Certificate of Public Convenience and Necessity, each of which would be based on cause.

License Denial or Revocation; Ineligibility for Reapplication, N.J.A.C. 7:26N-4.3

Existing N.J.A.C. 7:26-16.2 provides a five-year ineligibility period for any person whose application has been denied or license revoked. This section also provides that a business concern whose management structure includes a person who was the cause of the original disqualification is considered the same person and ineligible for five years. The Department proposes to recodify N.J.A.C. 7:26-16.12 as 7:26N-4.3, with amendments. As an A-901 license is issued to a business concern, the Department proposes to refer to a business concern rather than a person. The Department also proposes to state that the business concern may apply for an A-901 license after the five years expire. See proposed N.J.A.C. 7:26N-4.3(a). A business concern is also barred for five years if the management of the business concern includes the person or persons who were the cause of the denial or revocation. The Department proposes to

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amend the section heading to include license denial or revocation since the section includes denial.

Severance of Disqualifying Individuals, N.J.A.C. 7:26N-4.4

Proposed N.J.A.C. 7:26N-4.4 is a recodification of N.J.A.C. 7:26-16.11, Severance of disqualifying individuals, with amendments. The section describes the circumstances where the Department may issue or renew an A-901 license to an applicant or licensee where the application for a license or license renewal would be otherwise denied because of the disqualification of an individual pursuant to N.J.A.C. 7:26N-4.1 or 4.2.

Pursuant to proposed N.J.A.C. 7:26N-4.4(a), if the applicant, permittee, or licensee, severs its association with the individual disqualified pursuant to N.J.A.C. 7:26N-4.1 or 4.2 (the disqualifying individual), the Department may issue or renew the A-901 license. The Department may debar the individual from participating in the solid or hazardous waste or soil and fill recycling industries, consistent with the Dirty Dirt Law. See N.J.S.A. 13:1E-135.a(1).

The other provisions at proposed N.J.A.C. 7:26N-4.4 are substantively the same as those at existing N.J.A.C. 7:26-16.11. When the disqualifying individual holds an equity or debt liability interest in the applicant, permittee, or licensee, and the immediate divestiture of that interest would work a hardship on that individual, the Department may allow for the divestiture over time, not to exceed one year. See proposed N.J.A.C. 7:26N-4.4(b). As at existing N.J.A.C. 7:26-16.11(c), blind trusts may be used to facilitate divestiture, provided the trustee is obligated to sell the disqualifying individual's interest within two years. See proposed N.J.A.C. 7:26N-

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4.4(b)2. When a disqualifying individual severs their association with an applicant, permittee, or licensee, the chief executive officer of the business concern must attest to and describe the terms and conditions of the severance before the Department will issue or renew the license. See recodified N.J.A.C. 7:26N-4.4(c).

Debarred and Convicted Persons, Generally, N.J.A.C. 7:26N-4.6

Proposed N.J.A.C. 7:26N-4.6, Debarred and convicted persons, generally, governs the licensing of persons convicted of the crimes set forth at proposed N.J.A.C. 7:26N-4.1(b). The section is recodified from N.J.A.C. 7:26-16.21, Convicted persons generally, with a few clarifying amendments and an amended heading to better reflect the section's contents. The section also generally refers to debarred persons, as well as convicted persons, pursuant to the Act. See N.J.S.A. 13:1E-133.1.

Pursuant to proposed N.J.A.C. 7:26N-4.6(a), an applicant, permittee, or licensee is prohibited from knowingly hiring a person who has been debarred or has been convicted of any of the crimes enumerated at proposed N.J.A.C. 7:26N-4.1(b), or knowingly allowing such a person to acquire an equity interest or debt liability interest in the applicant, permittee, or licensee, without obtaining the approval of the Department. Should an applicant, permittee, or licensee desire to hire a convicted person or allow such a person to acquire an equity or debt liability interest in the applicant, permittee, or licensee, proposed N.J.A.C. 7:26N-4.6(b) requires the applicant, permittee, or licensee to file amended disclosure statement with the Department and the Attorney General that includes evidence demonstrating the person's rehabilitation.

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Upon receipt of the amended disclosure statement, the Department will request a recommendation from the Attorney General as to whether the person has demonstrated rehabilitation. The Department will consider the factors set forth at proposed N.J.A.C. 7:26N-4.1(c) in determining whether to allow the person to be employed by, or acquire an interest in, the applicant, permittee, or licensee. The Department may revoke an application for an A-901 license or revoke an A-901 license if an applicant, permittee, or licensee hires a convicted person or allows such person to acquire an interest in the applicant, permittee, or licensee without the prior approval of the Department. See proposed N.J.A.C. 7:26N-4.6(d).

Persons Convicted of Environmental Crime or Debarred for Environmental Violation, N.J.A.C. 7:26N-4.7

While proposed N.J.A.C. 7:26N-4.6 concerns the licensing of persons debarred or convicted of any of the crimes listed at proposed N.J.A.C. 7:26N-4.1(b), proposed N.J.A.C. 7:26N-4.7, Persons convicted of environmental crime or debarred for environmental violation, governs the licensing of persons convicted of environmental crimes. Proposed N.J.A.C. 7:26N-4.7 is recodified from N.J.A.C. 7:26-16.22, Persons convicted of environmental crimes, with minor and conforming amendments. The proposed heading of the section reflects the addition of debarment as a basis for the Department to find that a person has not be rehabilitated for purposes of denial or revocation of an A-901 license. As at proposed N.J.A.C. 7:26N-4.6, this section also generally refers to debarred persons, as well as convicted persons, pursuant to the Act. See N.J.S.A. 13:1E-133.1.

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Pursuant to proposed N.J.A.C. 7:26N-4.7(a), as at existing N.J.A.C. 7:26-16.22(a), a person convicted of, or debarred for, violating the criminal provisions of a State or Federal environmental law, rule, or regulation, or any crime involving those laws, rules, or regulations, must make a reasonable effort to clean up or mitigate any environmental damage resulting from the violation, and make a reasonable effort to make restitution to those injured thereby, to be considered rehabilitated for the purposes of being licensed pursuant to this chapter. A person convicted of or debarred for an environmental crime less than or equal to 10 years prior to filing an application for an A-901 license or notice of intent to revoke will be considered as lacking the requisite reliability to engage in solid or hazardous waste services or soil and fill recycling services unless the person demonstrates by clear and convincing evidence otherwise. See proposed N.J.A.C. 7:26N-4.7(b). A conviction or debarment older than 10 years may disqualify a person from being licensed pursuant to this chapter unless the person has demonstrated by clear and convincing evidence that they have been rehabilitated. See proposed N.J.A.C. 7:26N-4.7(c).

Independent Contractors, N.J.A.C. 7:26N-4.8

Proposed N.J.A.C. 7:26N-4.8, Independent contractors, is recodified with amendments from N.J.A.C. 7:26-16.23, “Independent contractors,” or “consultants.” Existing N.J.A.C. 7:26-16.23 provides that the Department will look beyond the designation of a person as a “consultant” or “independent contractor” when determining if that person is a “key employee” for the purposes of the Act and its disclosure requirements. As explained above, in accordance with the Dirty Dirt Law, the Department proposes to define “consultant” and amend the

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definition of “key employee” to include a consultant. Therefore, proposed N.J.A.C. 7:26N-4.8 does not need to enumerate criteria for determining whether a consultant is a key employee; the consultant is a key employee by definition. The heading of the section reflects this change. The proposed section does, however, continue to establish criteria for determining whether an independent contractor or other person is a key employee. Regardless of a person’s designation, the Department will regard a person as a key employee if the Department finds that a person designated as an independent contractor or similar term meets the definition of key employee or is compensated in such a way that indicates the person is a key employee. The Department may deny an application for an A-901 license or revoke an A-901 license if an applicant, permittee, or licensee attempts to avoid disqualification pursuant to the proposed rules by contracting with a person to act as an independent contractor or similar arrangement. See proposed N.J.A.C. 7:26N-4.8(b).

Confidential Information, N.J.A.C. 7:26N-5

Proposed new N.J.A.C. 7:26N-5, Confidential Information, sets forth the provisions from existing N.J.A.C. 7:26-16 that relate to confidentiality. The Department proposes to recodify existing N.J.A.C. 7:26-16.14 as 7:26N-5.2, Confidential information, with amendments. To the extent that the existing section sets forth definitions, those definitions are proposed separately as N.J.A.C. 7:26N-5.1, Definitions. The terms “authorized personnel,” “confidential information,” and “secure storage facility” are defined as they are at existing N.J.A.C. 7:26-16.14(a), with minor amendments for grammar and clarity.

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Recodified N.J.A.C. 7:26N-5.2(g) and (i) pertain to the storage and protection of confidential information in the Department's possession. As the Office of the Attorney General may also hold confidential information, the proposed subsection includes the Office of the Attorney General in the protections. The Department and the Office of the Attorney General (which includes the Division of Law) will retain all confidential information obtained by the Department in furtherance of an A-901 license in a secure facility, handle confidential information according to the established procedures, and restrict access to that information to authorized personnel of the Department of Environmental Protection and the Office of the Attorney General.

The release provisions at existing N.J.A.C. 7:26-16.14(k) are proposed to be relocated to N.J.A.C. 7:26N-5.3, Release or disclosure. This section maintains the existing prohibition against the disclosure of confidential information except upon issuance of a court order, when necessary for the administration of the Act, upon approval of the Attorney General, to the person who provided the confidential information, or upon written request, to a person authorized by the person who provided the confidential information. The Department is proposing to add the Office of the Attorney General at N.J.A.C. 7:26N-5.3(a) and (d) because as explained above, the Office of the Attorney General may also hold confidential information subject to the confidentiality provisions.

If confidential information is disclosed to a person other than through the circumstances set forth at proposed N.J.A.C. 7:26N-5.3, when possible, written notice containing the name and address of the person to whom the disclosure was made, a description of the information

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disclosed and the date of the disclosure, shall be given to the person affected by the disclosure prior to the disclosure. See proposed N.J.A.C. 7:26N-5.3(b). This provision is the same as at existing N.J.A.C. 7:26-16.14(l). Any confidential information properly disclosed during the administration of the A-901 program or during a judicial proceeding pursuant to a court order is no longer confidential if the record of the proceeding is a public record and the confidential information is included as part of the public record. See proposed N.J.A.C. 7:26N-5.3(c). This provision is the same as at existing N.J.A.C. 7:26-16.14(m) with language to clarify that only the confidential information included as part of the public record will cease to be confidential.

The knowing or willful unauthorized disclosure of confidential information by Department or Office of the Attorney General personnel may subject the violator to fines and penalties, including criminal penalties, as well as disciplinary action, including suspension or termination of employment. See existing N.J.A.C. 7:26-16.14(n) and recodified N.J.A.C. 7:26N-5.3(d).

Fees, N.J.A.C. 7:26N-6

Existing N.J.A.C. 7:26-16.13, Annual solid waste license approval renewal; fees, establishes annual fees that are to be submitted to the Division of Law. As explained below, the Department is proposing a new fee schedule at N.J.A.C. 7:26N-6, Fees, with fees to be submitted to the Department, pursuant to N.J.S.A. 13:1E-135.1. The proposed fees include one-time application and license fees for applicants and lessors required to submit a disclosure statement. The proposed one-time fees apply to lessors because, as explained above, pursuant to the proposed rules, a lessor, rather than the lessee, is required to submit a disclosure statement that

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must be reviewed by the Department and the Office of the Attorney General. The proposed fees also include annual fees for every business concern required to file a disclosure statement. As set forth at proposed N.J.A.C. 7:26N-6.1, General, the fees are intended to defray the Department's and other State agencies' cost of administering the A-901 program, including the cost of reviewing license applications and the cost of investigation, monitoring, and enforcement activities. See N.J.S.A. 13:1E-135.1. This is consistent with existing N.J.A.C. 7:26-16.13(a), which requires a business concern to submit an annual fee to the Attorney General to cover expenses incurred by State agencies in implementing and enforcing the licensing program.

Application and License Fees; Applicant or Lessor, N.J.A.C. 7:26N-6.2

Pursuant to existing N.J.A.C. 7:26-16.13(a)1 through 4, a business concern pays an annual per company fee based on the number of individuals required to be listed. Proposed N.J.A.C. 7:26N-6.2(a) establishes a one-time application and licensing fee that, like the existing annual fee, is based on the number of key employees disclosed in the applicant's or lessor's disclosure statement. However, the Department proposes this fee to be a one-time fee rather than an annual fee.

The Department will calculate the fee based on the information in an administratively complete A-901 license application, or disclosure statement, as applicable, and invoice the company. See N.J.A.C. 7:26N-6.2(b). A business concern disclosing a single key employee pays a one-time application fee of \$100.00 for the key employee and a one-time licensing fee per company of \$500.00. See proposed N.J.A.C. 7:26N-6.2(a)1. A business concern disclosing two

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key employees pays a one-time application fee of \$100.00 for each key employee and a one-time licensing fee per company of \$1,000. See proposed N.J.A.C. 7:26N-6.2(a)2. A business concern disclosing three to seven key employees pays a one-time application fee of \$100.00 for each key employee and a one-time licensing fee per company of \$3,000. See proposed N.J.A.C. 7:26N-6.2(a)3. A business concern disclosing more than seven key employees shall pay a one-time application fee of \$100.00 for each key employee and a one-time licensing fee per company of \$9,000. See proposed N.J.A.C. 7:26N-6.2(a)4. If the applicant or lessor fails to timely pay the fee, the Department will suspend its review of the applicant's application or the lessor's disclosure statement and the applicant or lessor may be subject to penalties. The proposed one-time application and licensing fees are similar in structure to the existing annual fee schedule and are intended to lessen the burden on small companies and more proportionately spread out the costs among the regulated community.

Pursuant to recodified N.J.A.C. 7:26N-6.2(c), as at existing N.J.A.C. 7:26-16.13(f), fees for business concerns filing disclosure statements concurrently as a group are based on the number of individuals required to be listed in the disclosure statements filed by members of the group.

Annual Fees, N.J.A.C. 7:26N-6.3

The annual fee at proposed new N.J.A.C. 7:26N-6.3, Annual fees, replaces the annual fee at existing N.J.A.C. 7:26-16.13. The Department proposes the fee schedule in accordance with

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N.J.S.A. 13:1E-135.1, which provides that the Department “shall establish application and license fees, annual fees, and any other fees” that are necessary to defray the costs of administering the program, including reviewing applications, investigating, monitoring, enforcing, and related activities. Pursuant to N.J.S.A. 13:1E-135.1, fees are also to be used “to reimburse any State agency for expenses incurred by the agency in the performance of pre-licensing investigations, post-licensing compliance monitoring, or any other related activities.” The costs associated with the review of an A-901 license are spread throughout multiple State agencies, including the Department, the State Police, and the Office of the Attorney General. The proposed fee structure is intended to cover State costs of administering the program and designed to provide consistency and fairness in the pricing structure.

As explained in the Economic Impact statement, the new annual fee structure is modeled after a similar structure mandated by the Solid Waste Utility Control Act for solid waste entities that hold a Certificate of Public Convenience and Necessity. See N.J.S.A. 48:2-60. Based on anticipated expenditures by multiple State agencies to oversee and enforce the A-901 licensing program, the Department proposes an annual fee for each licensee or permittee, which fee will be the greater of \$600.00 or one-sixth of one percent of the licensee’s gross annual revenue derived from intrastate operations relating to the brokering, collection, transportation, and disposal of solid or hazardous waste, the provision of soil and fill recycling services, or both, during the preceding calendar year. The Department will issue an invoice for the annual fee to the licensee upon receipt of an administratively complete annual update. Failure to pay may subject the licensee or permittee to penalties, as well as revocation of its A-901 license. As the Act requires,

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the Department will deposit the annual fees in a special account dedicated to covering the costs associated with administering the provision of the Act. See N.J.S.A. 13:1E-135.1.a.

Additional Fees, N.J.A.C. 7:26N-6.4 and 6.5

Existing N.J.A.C. 7:26-16.3(c) through (d) set forth the additional fee payments due if the State's investigation shows that a person not listed on the disclosure statement should have been listed, or if a business concern files a change of information with an additional individual listed. These additional fee provisions are proposed at N.J.A.C. 7:26N-6.4, Additional fees based on investigation or information change (in particular at N.J.A.C. 7:26N-6.4(a) and (b)), which provides that the Department may require the payment of additional fees and personal history disclosure forms for any undisclosed person otherwise required to be listed on a disclosure statement.

If an applicant, permittee, licensee, or lessor files a change of information form pursuant to proposed N.J.A.C. 7:26N-3.5 and discloses a business concern or an individual not listed on its initial application, as amended, the applicant, permittee, licensee, or lessor must file a disclosure statement, personal history disclosure form for each individual, or, if required, both. Upon receipt of an invoice, the business concern shall pay \$100.00 for each additional key employee disclosed unless the number of additional key employees disclosed requires the business concern to pay a higher one-time business concern fee pursuant to N.J.A.C. 7:26N-6.2. If the additional key employees disclosed result in a higher one-time application and licensing fee, the business concern shall pay an adjusted fee in the amount of \$600.00 for each additional

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key employee disclosed, other than a non-supervisory employee listed at N.J.A.C. 7:26N-3.4(a)1vi, and if the number of additional key employees requires the applicant, permittee, licensee, or lessor to pay a higher business concern fee pursuant to N.J.A.C. 7:26N-6.2(a)2, 3, or 4, the difference between the business concern fee initially paid and the higher business concern fee. An applicant, permittee, licensee, or lessor that initially paid the \$9,000 business concern fee pursuant to N.J.A.C. 7:26N-6.4(a)4 need only pay \$600.00 for each additional key employee disclosed. These additional fee provisions for a business concern whose additional disclosure results in a higher business concern fee are the same as at existing N.J.A.C. 7:26-16.13(d).

The Department proposes to codify the provisions at existing N.J.A.C. 7:26-16.13(e) as 7:26N-6.4(c). Pursuant to the new and existing rule an individual or business concern holding an equity or debt interest in the original business concern filing the disclosure statement is considered an additional person for the purpose of fee calculations.

Proposed N.J.A.C. 7:26N-6.5, Other fees, sets forth fees that the Department may assess to an applicant, permittee, licensee, and lessors, in addition to the fees identified at N.J.A.C. 7:26N-6.2, 6.3, and 6.4. More particularly, proposed N.J.A.C. 7:26N-6.5(a) authorizes the Department to assess fees to an applicant, permittee, or licensee wishing to change its name or corporate structure and to a business concern seeking to acquire a controlling interest in a licensee. An applicant, permittee, or licensee that wishes to change its name or corporate structure must submit a request to the Department and, upon receipt of an invoice from the Department, pay a \$200.00 fee for each requested change. A business concern seeking to acquire a controlling interest in a licensee, either directly or indirectly, must provide the

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Department with 30 days' notice of closing of the transaction through which the interest will be acquired, and upon receipt of an invoice from the Department, pay a fee of \$1,000. See proposed N.J.A.C. 7:26N-6.5(b). These fees are intended to cover the Department's costs of reviewing the requested change(s).

Civil Administrative Penalties and Requests for Adjudicatory Hearing, N.J.A.C. 7:26N-7

Prior to the enactment of the Dirty Dirt Law, the Department enforced the rules implementing the A-901 program in accordance with existing N.J.A.C. 7:26-5, Civil Administrative Penalties and Requests for Adjudicatory Hearings, through the Solid Waste Management Act. See N.J.S.A. 13:1E-9. The Dirty Dirt Law at N.J.S.A. 13:1E-135.5 separately gives the Department enforcement authority and authorizes the Department to adopt rules establishing a schedule of civil administrative penalties for violations of the Act. Accordingly, the Department is proposing civil administrative penalty provisions at proposed N.J.A.C. 7:26N-7, which follow the penalty provisions at existing N.J.A.C. 7:26-5 with amendments for clarity or grammar. The penalty provisions are consistent with the penalty provisions at N.J.S.A. 13:1E-135.5.

Proposed N.J.A.C. 7:26N-7.1 sets forth the scope of the subchapter.

Proposed N.J.A.C. 7:26N-7.2, Procedures for issuance of orders and assessment and payment of civil administrative penalties, is the counterpart to existing N.J.A.C. 7:26-5.2, Procedures for assessment and payment of civil administrative penalties, and is tailored to the proposed new chapter. The procedures in the two rules for the Department to assess a civil

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administrative penalty and payment are the same, except the proposed new rule authorizes the Department to assess a penalty against more than one violator in a single administrative order and notice of civil administrative penalty assessment. In such a case, each violator seeking a hearing must request a hearing pursuant to the procedures at N.J.A.C. 7:26N-7.3, Procedures to request an adjudicatory hearing; requests.

The hearing request and hearing conduct procedures at existing N.J.A.C. 7:26-16.10 are recodified with amendments as N.J.A.C. 7:26N-7.3, Procedures to request an adjudicatory hearing; requests. The heading of the section is amended for clarity and to use the term “adjudicatory hearing,” as is used elsewhere in the Department’s rules, such as at existing N.J.A.C. 7:26-5.3, Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings, which is applicable to the Solid Waste rules, generally. The Department proposes to update the addresses and procedure for requesting a hearing – in essence, the proposed rule is a combination of existing N.J.A.C. 7:26-5.3 and 16.10. New to the recodified section is the provision that if the Department issues an order or administrative order and notice of civil administrative penalty assessment against more than one violator, each violator that seeks to request a hearing must submit a timely completed Adjudicatory Hearing Request Checklist and Tracking form.

At N.J.A.C. 7:26N-7.4, Civil administrative penalties for violation of rules adopted pursuant to the Act, the Department proposes new civil administrative penalties for violations of proposed new N.J.A.C. 7:26N. Although, as explained above, many of the requirements at

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proposed new N.J.A.C. 7:26N are the same as at existing N.J.A.C. 7:26-16 (proposed to be repealed or recodified), the Department's existing rules at N.J.A.C. 7:26-5.4(g) do not include base penalties for violations of existing N.J.A.C. 7:26-16. Instead, the Department assesses penalties pursuant to existing N.J.A.C. 7:26-5.5. The Department proposes to include base penalties at N.J.A.C. 7:26N-7.4(f) for violations of proposed N.J.A.C. 7:26N. The Department's proposed penalties are consistent with penalties for similar violations of the Solid Waste Management Act rules.

Proposed N.J.A.C. 7:26N-7.5, Civil administrative penalty determination, 7.6, Civil administrative penalty for submitting inaccurate or false information, 7.7, Civil administrative penalty for failure to allow lawful entry and inspection, and 7.8, Civil administrative penalty for failure to pay a fee, are comparable to the same provisions at existing N.J.A.C. 7:26. Differences between the provisions in the two chapters are attributable to non-substantive grammar and punctuation changes.

Finally, at proposed N.J.A.C. 7:26N-7.9, the Department proposes to include grace period procedures. The procedures follow the existing grace period procedures at N.J.A.C. 7:26-5.10 and list the seven statutory conditions that must be met for a violation to be categorized as minor and eligible for a grace period.

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Proposed Repeal of N.J.A.C. 7:26-16.20 and 16A; Conforming Amendments

The Department proposes to repeal N.J.A.C. 7:26-16.20, Policies on disqualification, because the provisions are unnecessary. The Department also proposes to repeal N.J.A.C. 7:26-16A because the provisions are obsolete. The Department promulgated N.J.A.C. 7:26-16A to provide deadlines for applicants and licensees who were required to submit a disclosure statement or who had applications pending at the time the Act was originally enacted. These deadlines have passed and the provisions are no longer relevant.

The Department is, therefore, proposing to repeal N.J.A.C. 7:26-16A and replace the cross-references to their provisions and the provisions at N.J.A.C. 7:26-16 that have been recodified at N.J.A.C. 7:26-1.4, 1.7, 2.1, 2.4, 2.7, 2.8, 3.2, 3.6, 3A.16, 3A.27, 3A.38, 3A.39, and 3A.49, 7:26G-4.2 and 7.2, and 7:26H-1.6, 1.8, and 1.11. The Department also proposes conforming amendments at N.J.A.C. 7:26-3.2 to replace references to an updated disclosure statement with references to an annual update, to conform the submission deadline to the June 1 deadline at N.J.A.C. 7:26N-3.7, and to replace a reference to a disclosure statement that should refer to a personal history disclosure form.

Miscellaneous Amendments, N.J.A.C. 7:26A-9.4

The Department proposes to correct cross-references and typographical errors in the civil administrative penalty tables at N.J.A.C. 7:26A-9.4(g), and correct grammar and punctuation throughout the rules. In addition, the Department is rewording some language for common sense purposes, without changing the substance of the rule.

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Social Impact

The Department anticipates that the proposed rulemaking will have a positive social impact. With the Dirty Dirt Law, the Legislature extended the existing licensing requirements applicable to the solid and hazardous waste industries to the soil and fill recycling industry and expanded certain requirements to brokers and consultants for solid or hazardous waste or soil and fill recycling services. The licensing requirements include submitting a disclosure statement and undergoing a background investigation by the Office of the Attorney General. If the investigation reveals a disqualifying factor, the Department may deny or revoke a license. The proposed rules at N.J.A.C. 7:26N codify and clarify these statutory amendments, which are expected to have a positive impact on residents, as well as on providers of solid waste, hazardous waste, and soil and fill recycling services in the State, by further eliminating influences detrimental to the industry and ensuring confidence and trust in the credibility and integrity of the industry. The Department believes that the proposed rules appropriately balance the public interest in ensuring that only those businesses and individuals with the requisite integrity, reliability, expertise, and competence to engage in solid waste, hazardous waste, and/or soil and fill recycling services with the concern of casting too wide of a net and unnecessarily disrupting these important services.

Although the proposed rules largely codify the statute as amended, the Department has proposed to include definitions and clarify requirements to implement the law, such as the

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definitions of broker and consultant. To the extent that members of the public seek services from businesses and individuals who are required to be licensed, these customers may be impacted. Nevertheless, as the proposed rules fulfill the statutory goals to ensure that businesses and individuals in the industry are qualified, the Department expects the proposed rules to have a positive social impact.

The Department similarly expects that the proposed amendments to the solid waste and recycling rules will have a positive social impact. The proposed amendments related to the management of recyclable soil and fill material ensure that the quality of the material sold by recycling centers is appropriate for the end-use, thereby reducing the public's exposure to contaminated material and the potential cost to the public of removing material that is inappropriately used. The proposed amendments also allow expanded use of recycled soil, which could reduce the amount that would otherwise be disposed of as solid waste.

Economic Impact

The Department anticipates that the proposed rulemaking will have an economic impact. The proposed rulemaking codifies the elements of the Dirty Dirt Law into new N.J.A.C. 7:26N, including new licensing requirements for the soil and fill recycling service industry. These newly regulated entities will be subject to the same A-901 requirements to which those in the solid and hazardous waste industries are subject pursuant to the existing rules. The proposed rules also incorporate statutory amendments that expand the definition of key employee. As part of the rulemaking, the Department is proposing to amend the existing annual fees and add a new

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schedule for application and licensing fees consistent with the statute. See N.J.S.A. 13:1E-135.1.

The Department is also proposing amendments to the existing solid waste and recycling rules for consistency with the new rules pertaining to the A-901 licensing requirements. Each of these categories will result in an economic impact on the regulated community.

N.J.S.A. 13:1E-127.1 requires any business concern that does not hold an A-901 license and that actively engages in or provides soil and fill recycling services to register with the Department. The statutory deadline for registration was originally 90 days from the effective date of the law, but was extended until July 14, 2022, due to the onset of the COVID-19 pandemic. N.J.S.A. 13:1E-127.1 also requires a registrant to submit an A-901 application 30 days after the Department's adoption of rules, unless the registrant requests and receives an extension of up to 90 days from the Office of the Attorney General.

The Department expects some economic impact on a business that seeks to engage in solid or hazardous waste or soil and fill recycling services but does not hold an A-901 license. These businesses must apply for and receive an A-901 license. The application includes a disclosure statement for the business concern and a personal history disclosure form for each individual required to be listed in the disclosure statement. Additional disclosure statements may be required for business concerns related to the applicant, as well as personal history forms for persons identified in those disclosure statements. Certain lessors supplying soil and fill recyclable materials or solid or hazardous waste equipment, operators, or vehicles to A-901 licensees are also required to submit disclosure statements and personal history disclosure forms. The Department is unable to estimate the cost to file an application, which depends upon the

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complexity of the business concern filing the disclosure statement and the number of key employees disclosed in the statement. That cost may include attorney and consultant's fees, in addition to the in-house time and expense of assembling the information necessary for the disclosure statement and personal history disclosure forms.

In addition to the cost of preparing an A-901 application, a business concern will be required to pay a one-time application and licensing fee based on the number of key employees, as well as an annual fee based on operating revenue. The existing rules include an annual fee of \$600.00 for each individual required to be listed in the disclosure statement with some exceptions, as well as a per-company fee based on the number of listed individuals. The annual per-company fee ranges from \$635.00 (one individual) to \$15,650 (more than seven individuals).

The Department proposes to replace the existing annual fee schedule with an annual fee based on operating revenue, pursuant to the statute, with a minimum annual fee of \$600.00. As explained in the Summary above, the new annual fee structure is modeled after a similar structure mandated by the Solid Waste Utility Control Act for solid waste entities that hold a Certificate of Public Convenience and Necessity. See N.J.S.A. 48:2-60. Based on anticipated expenditures by multiple State agencies to oversee and enforce the A-901 licensing program, the Department calculated an annual fee equal to 1/6 of one percent of the gross operating revenue derived from applicants' and licensees' intrastate soil and fill or solid or hazardous waste operations or \$600.00, whichever is greater, as explained further below. The Department also proposes to include one-time application and licensing fees that are similar in structure to the existing annual fee schedule. The proposed application fees include a \$100.00 one-time fee for

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each key employee disclosed in the applicant or lessor's disclosure statement, and a one-time business concern fee ranging from \$500.00 to \$9,000 based on the number of key employees disclosed. The Department believes that the proposed fee schedules will lessen the burden on small companies and more proportionately spread out the costs among the regulated community.

As explained in the Summary above, the proposed fee schedule is in accordance with N.J.S.A. 13:1E-135.1, which provides that the Department "shall establish application and license fees, annual fees, and any other fees" that are necessary to defray the costs of administering the program, including reviewing applications, investigating, monitoring, enforcing, and related activities. Fees are also to be used "to reimburse any State agency for expenses incurred by the agency in the performance of pre-licensing investigations, post-licensing compliance monitoring, or any other related activities." N.J.S.A. 13:1E-135.1. Multiple State agencies are involved with implementing the A-901 program, including the Department, the State Police, and the Office of the Attorney General. As explained in the Summary above, the proposed fee structure is intended to cover State costs of administering the program and designed to provide consistency and fairness in the pricing structure.

The Department calculated the annual fees based on the overall cost to operate the program Statewide, which is roughly \$7 million annually. Currently, the Department has received 780 soil and fill registrations, and estimates that 90 percent of these will apply for an A-901 license (702 new licenses). Including other new applications from companies wishing to engage in solid and hazardous waste industries adds another 122 estimated new licensees, for a total of 824. Currently, there are 1,411 A-901 licensees, for an anticipated overall total number

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of licenses of 2,235. The statutory mandate is to charge an annual fee based on gross operating revenues for intrastate operations for each licensee. To determine the percentage that would enable \$7 million in expenditures, the Department used annual assessments for solid waste companies that hold a Certificate of Public Convenience and Necessity (CPCN), which is equal to 0.25 percent of each company's gross operating revenue. This was then adjusted to a fee equal to 0.16 percent of gross operating revenue, with a minimum of \$600.00 per year. This has an anticipated yield of \$7.65 million, but since the majority of fees are being sourced from small operators with relatively low fees, the Department anticipates a lower revenue figure of approximately \$7 million.

The Department also expects some economic impact on the regulated community as a result of the proposed amendments to the existing solid waste and recycling rules. The proposed amendments to the solid waste rules at N.J.A.C. 7:26-1.1 and 1.6 will clarify when a spent or discarded material, or a material that is no longer suitable for its original use, may be recycled and used for another purpose instead of being managed as a solid waste. The Department believes that the regulated community will economically benefit from the proposed amendments through the creation of new industries and the enhancement of old ones, as enterprising individuals find new uses for recycled materials.

The Department is also proposing to amend the definition of "Class B recyclable material" in the recycling rules at N.J.A.C. 7:26A-1.3 to include "recyclable soil and fill material." As explained in the Summary above, the law defines "soil and fill recyclable materials" to exclude Class B recyclable material that is shipped to an approved Class B

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recycling center. N.J.S.A. 13:1E-127.q. Accordingly, a person handling Class B recyclable material that is transported to a Class B recycling center is not required to obtain an A-901 license.

The proposed amendments to the recycling rules add “recyclable soil and fill material” as a Class B material. This enables approved and exempt recycling centers that accept Class B recyclable materials to accept the material, subject to additional recordkeeping and sampling requirements. A facility that accepts recyclable soil and fill material must apply for a change to the solid waste management plan in accordance with N.J.A.C. 7:26. Although these are new requirements, many facilities are already handling recyclable soil and fill material and, therefore, have material management, acceptance, sampling, and recordkeeping protocols in place. Some facilities already in the business of managing recyclable soil and fill may need to amend their business practices in order to achieve compliance with the proposed rules, which could result in additional costs for enhanced recordkeeping and material management practices. These facilities may pass these increased costs off to their customers, resulting in higher prices for the consumer. However, pursuant to the proposed amendments, these businesses are not required to obtain an A-901 license. Similarly, pursuant to the proposed amendments, hauling companies transporting recyclable soil and fill material to or from approved or exempted recycling centers that accept Class B recyclable materials are not required to obtain an A-901 license.

N.J.A.C. 7:26A-1.4 sets forth the activities that are exempt from having to obtain approval to operate a recycling center. The Department is proposing to add an exemption for small-scale recyclable soil and fill material operations, which exemption includes rules for

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material management. The proposed exemption should provide business opportunities for operators who do not have the financial ability or space required for an approved recycling center. The Department is also proposing to amend N.J.A.C. 7:26A-1.4 to include requirements for the proper management of recyclable soil and fill material at existing exempt facilities that may be already managing this material. The proposed requirements could lead to increased costs for establishing a quality assurance plan to sample the recyclable soil and fill material. However, the facility will not incur costs to obtain an A-901 license because the licensing requirements do not apply.

The Department's existing rules at N.J.A.C. 7:26-1.7 include a list of materials categorically approved for beneficial use, which require no approval or authorization for use or reuse. The Department is proposing to add the following materials and uses to the categorically approved beneficial use materials list: 1) contaminated soil and fill for conditional use as road base; 2) recycled asphalt for conditional use as pavement for roadways, parking lots, and the like; 3) steel slag for conditional use as an aggregate in any commercial or industrial development or at a commercial or industrial site undergoing remediation by a Licensed Site Remediation Professional; and 4) street sweepings generated by a county or municipal department of public works or the NJDOT for specified use or reuse. The use or reuse of these materials instead of virgin, higher-cost materials may result in substantial savings in roadway and parking lot construction and commercial and industrial development and remediation and may reduce project delays, as the materials could be used without prior Department approval. Additionally, because beneficial use materials approved by the Department that are transported

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to an approved destination are excluded from the definition of “soil and fill recyclable material,” a person handling these materials from generation to disposition will not be engaging in “soil and fill recycling services” and, thus, will not need to obtain an A-901 license and incur the associated costs.

Environmental Impact

The Department anticipates that the proposed rulemaking will continue to provide for the environmentally sound management of solid waste, hazardous waste, and recyclable materials (specifically soil and fill) and, therefore, will continue to have a positive environmental impact. The proposed rulemaking implements the statutory amendments extending the licensing requirements to the soil and fill recycling industry, as well as to brokers. Although the law has been in effect since 2020, the proposed rulemaking includes specific provisions that tailor the scope of the requirements to meet the statutory goals and obtain the environmental and public health benefits of proper waste and materials management. By continuing to ensure that businesses and individuals in the solid waste, hazardous waste, and soil and fill recycling industries have the requisite reliability, expertise, and competence, the proposed rulemaking will ensure the proper handling and disposal of regulated waste and materials.

The proposed rulemaking adds requirements for the proper management of recyclable soil and fill material to help prevent the placement of soil with low levels of contamination in areas that have high value natural resources and areas that could present a threat to public health

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and the environment. The rulemaking also encourages the recycling of soil and fill material in a manner that minimizes the risks to the environment and reduces the time needed to dispose of the material as solid waste. The Department is proposing changes to prevent excessive storage of recyclable soil and fill material at exempt facilities handling recyclable soil and fill material. The enhanced recordkeeping requirements will improve the enforceability of the rules in this rulemaking that are designed to protect human health and the environment.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed rulemaking is not promulgated pursuant to the authority of, or in order to, implement, comply with, or participate in any program established pursuant to Federal law, or a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, no Federal standards analysis is required.

Jobs Impact

The Department anticipates that the proposed rulemaking could have an impact on job retention and creation in the State. The Dirty Dirt Law's expansion of the type of businesses and individuals required to obtain an A-901 license may cause some job loss if businesses opt not to obtain a license and instead cease operations, or reduce staff due to an increase in costs associated with licensing. However, the proposed rulemaking includes limited exemptions to the

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A-901 soil and fill licensing requirements, and allows approved or exempted recycling centers that accept Class B recyclable materials to accept recyclable soil and fill material, which may result in some job growth in the soil and fill recycling industry. Individuals and businesses who do not qualify for licensure will be unable to obtain a license, pursuant to the statutory goals of ensuring that only those with sufficient integrity, reliability, expertise, and competence are licensed to operate in the State, and, thus, may suffer job loss. Any job loss resulting from the disqualification of businesses or individuals may be offset by the additional opportunities available to qualified businesses and individuals.

Agriculture Industry Impact

The Department anticipates that the proposed rulemaking will have an impact on the State's agricultural industry to the extent that they impact the environment and public in general by continuing to provide for proper waste and materials management. If the agricultural industry employees, consultants, or brokers to transport soil and fill materials and the consultant or broker now needs a license to operate, the agricultural industry like the rest of the State may be impacted by the requirement to hire a licensed business.

Regulatory Flexibility Analysis

As required pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed rulemaking would impose on small businesses. The Regulatory

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Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” N.J.S.A. 52:14B-17. To the extent that the proposed rulemaking impacts a “small business” as defined, the various compliance requirements, associated costs, and other impacts are discussed in the Summary and the Economic Impact statements above. However, the proposed rulemaking excludes from the A-901 licensing requirements certain businesses that handle only *de minimis* quantities of non-restricted soil and fill material. Many of those businesses, such as landscapers, contractors, pool companies, home remodeling companies, plumbers, and electricians, are likely to be small businesses. The proposed rulemaking additionally allows persons handling non-restricted soil and fill recyclable materials in quantities that exceed *de minimis* amounts to do so without a license if they handle only non-restricted soil and fill recyclable material, file an annual certification attesting to that fact, and comply with all the term and conditions of the certification.

Housing Affordability Impact Analysis

Pursuant to the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing. The proposed rulemaking governs the licensing of persons collecting, transporting, treating, storing, or disposing of solid waste, hazardous waste, or soil and fill recyclable material. The proposed amendments to the recycling rules govern the operation and management of recycling facilities. The proposed amendments to the solid waste rules govern the use or reuse of

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material that would otherwise become solid waste, including the recycling of materials for use as fill material, aggregate substitute, fuel substitute, or landfill cover. Accordingly, the Department has determined that the proposed rulemaking is unlikely to impact housing affordability or the average costs of housing in the State.

Smart Growth Development Impact

In accordance with the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules to determine the impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. As the proposed rulemaking applies to solid waste, hazardous waste, and soil and fill recycling industries, the rules are unlikely to evoke a change in housing production in Planning Areas 1 or 2, or within designated centers.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

In accordance with N.J.S.A. 52:14B-4(a)(2) and 2C:48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26-16.15 through 16.20, 16.24, and 16A.

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Full text of the proposed amendments, recodifications, and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 26

SOLID WASTE

SUBCHAPTER 1. GENERAL PROVISIONS

7:26-1.1 Scope of rules; **applicability**

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection that govern the registration, operation, maintenance, and closure of sanitary landfills and other solid waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for services provided by the Department to solid waste facilities, generators, and transporters; and the assessment of civil administrative penalties. These rules shall not apply to the following:

1. The purchase, sale, collection, storage, transport, or controlled processing of source separated or commingled source separated, recyclable[, recycled, or secondary nonhazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted

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are solid waste materials (including fuel and reusable energy), or thermal destruction facilities.

These rules shall not apply only if the conditions in (a)1i or ii below are met.

i. The use or reuse of material, which would otherwise become solid waste under this chapter, directly as a product or incorporated into any form of raw material to be used in the manufacturing of a product shall meet the generally accepted product specifications and standards for similar manufactured products or raw materials. The used or reused material shall not present a greater risk to human health or the environment than the use of the product or raw material it is replacing.

ii. The use or reuse of materials that would otherwise become solid waste pursuant to this chapter as fill material, aggregate substitute, fuel substitute, or landfill cover shall be approved as beneficial use pursuant to N.J.A.C. 7:26-1.7.

iii. Specifically not exempt are those used or reuses of materials which, if released to the environment through transport, storage or other handling will cause pollution of the surface or ground water of this State or which may pose a substantial or material threat to the public health, safety or welfare in the environment.

2. Container-pickup facilities as herein defined at N.J.A.C. 7:26-1.4;] **material regulated pursuant to N.J.A.C. 7:26A, including, but not limited to, concrete, brick, block, clay products and ceramic products, stumps, wood, brush, and organic material, provided that:**

i. Concrete, brick, block, glass, clay products, or ceramic products recycled, individually or collectively, for use as fill or aggregate substitute are broken,

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crushed, or otherwise processed to be unrecognizable as a discrete manufactured product and meet the generally accepted product specifications and standards for similar fill and aggregate substitute; and

ii. Stumps, wood, brush, and organic materials processed or composted into a usable product are not applied on the land, placed on the land, or contained in products that are applied to, or placed on, the land in a manner constituting disposal;

2. The direct use or reuse of a material as a product or as a raw material used in the manufacturing of a product, provided such material:

i. Is free from putrescible matter and not mixed with solid waste;

ii. Is not used as a fuel and thermally destroyed to generate reusable energy;

iii. Meets the generally accepted product specifications and standards for a similar manufactured product or raw material;

iv. Does not present a greater risk to human health or the environment than the use of the product or raw material it is replacing; and

v. Does not cause or have the potential to cause pollution of the soil, sediment, surface water, or ground water of the State or pose or have the potential to pose a substantial or material threat to public health, safety, welfare, or the environment.

3. (No change.)

4. Spent sulfuric acid that is used to produce virgin sulfuric acid, provided at least 75 percent of the spent sulfuric acid is recycled into virgin sulfuric acid within one year;

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5. Dredged material, from New Jersey’s coastal or tidal waters, that is regulated pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3 et seq., Riparian Interests, N.J.S.A. 12:3-1 et seq., and 18:56-1 et seq., Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251, Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., or other applicable statutes and implementing rules and regulations;

6. Use or reuse of non-water-soluble, non-putrescible, non-decomposable, inert solids, such as rock, soil, and gravel, that are free from putrescible waste, are not mixed with solid waste, and do not contain concentrations of one or more contaminants that exceed the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards;

7. A container-pickup facility;

[4.] **8. [Recycling] A recycling depot[s]** as defined at N.J.A.C. 7:26A-1.3 [where individuals or organizations deposit separate materials such as newsprint, bottles, cans, and so forth, prior to transport to the secondary materials industry];

[5. Convenience centers as defined at N.J.A.C. 7:26-1.4;]

9. A convenience center;

[6.] **10.** The intra-plant transport, temporary storage, or other handling of plant generated waste material[s]. Specifically not exempt are those materials to be, or [which] **that** are, deposited on or in the lands of this State for periods exceeding six months, or which through

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transport, storage, or other handling will cause pollution of the **soil or** surface or ground waters of [this] **the** State[,] or [which] may pose a substantial or material threat to the public health, safety, or welfare;

[7.] **11.** Any [discharge of a] mixture of domestic sewage and other waste [that are] discharged into a sewer system to a domestic treatment works, as defined [in] **at** N.J.A.C. 7:14A, [which] **that** is authorized in accordance with N.J.A.C. 7:14A and local ordinances. [i.] This exemption does not include transport or discharge by **a solid or hazardous** waste transporter[s];

[8. Recycling operations and recycling centers approved and operated pursuant to N.J.A.C. 7:26A; and]

[9.] **12.** A small vehicle transfer area [meeting the following requirements] **where:**

i.-ii. (No change.)

iii. All **solid** waste collected at the small vehicle transfer area [shall be] **is** removed by the end of each operating day (or next operating day if collected on a weekend or holiday);

iv. [Waste] **Solid waste** received in the area [shall not be] **is not** processed, segregated, sorted, or handled in any fashion other than direct transfer from the collection vehicle not exceeding 16,000 pounds gross vehicle weight into the registered collection vehicle [or other collection container];

v. [Area operations shall] **The operation does** not result in the generation of odors, litter, dust, leachate, or any other negative environmental impact[s]; **and**

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vi. [Small] **The small** vehicle transfer area[s shall] receives approval from the municipality in which [they are] **it is** located prior to commencing transfer operations[. In addition, operators of small vehicle transfer areas shall notify] **and notifies** the Department, in writing, and the respective county health department following municipal approval and prior to commencing operations[; and].

[vii. The operator of a small vehicle transfer area is subject to compliance with all other applicable solid waste regulations.]

[(b) In addition to the rules in this chapter, all solid waste landfill facilities are required to obtain a permit pursuant to the New Jersey “Water Pollution Control Act”, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated thereunder, “Regulations Concerning the New Jersey Pollutant Discharge Elimination System”, N.J.A.C. 7:14A.]

[(c)] **(b)** The exemptions set [out] **forth** at (a)1 through [9] **12** above are not applicable to activities associated with hazardous waste **regulated pursuant to N.J.A.C. 7:26G** or [regulated] medical waste **regulated pursuant to N.J.A.C. 7:26-3A.**

(c) Any person providing a “solid or hazardous waste service” or “soil and fill recycling service” as defined at N.J.A.C. 7:26N-1.3 shall comply with N.J.A.C. 7:26N.

7:26-1.4 Definitions

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

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...

“Exempt transporter” shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. [7:26-16.3(d)] **7:26N-2.2**.

...

“Licensee” shall, for **the** purposes of N.J.A.C. 7:26-3.2, be defined as set forth [in] **at** N.J.S.A. 13:1E-[127i]**127.h**.

...

“Solid waste facility permit” or “SWF permit” means a certificate of approved registration and engineering design approval for a nonhazardous solid waste facility. [For the purposes of N.J.A.C. 7:26-16 and 16A, a solid waste facility permit shall mean a license as that term is defined at N.J.A.C. 7:26-16.2.]

...

“Street sweepings” means litter and debris, such as sand, gravel pieces, stones, asphalt pieces, salt, leaves, broken glass, and small pieces of metal generated during the ordinary and customary cleaning of roadways or parking lots. Street sweepings do not include material generated during the cleanup of a spill, material generated during, or mixed with material from, the cleanup of structures associated with a roadway, such as catch basins, or material classified as a hazardous waste pursuant to N.J.A.C. 7:26G, or material mixed with a hazardous waste.

...

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7:26-1.6 Definition of solid waste

(a) A solid waste is any garbage, refuse, sludge, processed or unprocessed mixed construction and demolition debris, including, but not limited to, wallboard, plastic, wood, or metal, or any other waste material except it shall not include [the following:] **material approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g), approved by a Licensed Site Remediation Professional retained pursuant to N.J.A.C. 7:26C to remediate a specific Area of Concern (AOC) within a site undergoing remediation, provided such exclusion is limited to only that material necessary to remediate such AOC, or approved for use at a solid waste facility in accordance with the solid waste facility permit.**

[1. Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms;

2. Recyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A;

3. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g);

4. Spent sulfuric acid that is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year;

5. Dredged material, from New Jersey's coastal or tidal waters, which is regulated under the provisions of the following statutes: New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), Waterfront Development Law (N.J.S.A. 12:5-3 et seq.), Riparian Interests

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(N.J.S.A. 12:3-1 et seq. and 18:56-1 et seq.), Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. § 1251), and Federal Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.), and/or other relevant statutes and implementing regulations; or

6. Non-water-soluble, non-decomposable, inert solid, such as rock, soil, gravel, concrete, glass, and/or clay or ceramic products that do not contain concentrations of one or more contaminants that exceed the residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways or non-residential soil remediation standards for the soil ingestion-dermal and soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.]

(b)-(d) (No change.)

7:26-1.7 [Exemption from SWF permitting] Permit exemptions; research, development, and demonstration (RD&D) projects; beneficial use projects

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

(e) This subsection sets forth the specific criteria for exempting transfer stations.

1. A certificate of authority to operate shall be granted to a transfer station facility provided that:

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to

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demonstrate sufficient integrity, expertise, and competence to operate a transfer station facility in compliance with the Solid Waste Management Act and the certificate of authority to operate. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. [7:26-16.5(c)] **7:26N-3.8**, the certificate of authority to operate shall not be issued for a period exceeding six months and may, in the Department's discretion, be renewed for one additional consecutive six-month period;

ii.-iv. (No change.)

2. Notwithstanding any other provision of this chapter, the proposed owner or operator of the facility shall submit the following in application for a certificate of authority to operate a transfer station:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1E-126 et seq., and N.J.A.C. [7:26-16] **7:26N** on such forms as the Department requires. The disclosure statement, where appropriate, should be accompanied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. [7:26-16.5(c)] **7:26N-3.8**.

ii.-iii. (No change.)

3.- 4. (No change.)

(f) (No change.)

(g) This subsection sets forth the specific criteria for exempting beneficial use projects.

1. (No change.)

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[2. This subsection is not applicable to materials produced by a recycling center as approved pursuant to N.J.A.C. 7:26A. The materials produced at a permitted recycling center as regulated pursuant to N.J.A.C. 7:26A are deemed to be approved for beneficial use provided the recycled product is used or reused directly as a product or as a substitute for raw material that is incorporated into a product that meets the generally accepted product specifications and standards for a similar manufactured product or raw material, and poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.

3. This subsection is not applicable to materials and provided the recycled product used or reused directly as a product or as a substitute for raw material which is incorporated into a product that meets the original product specifications, provided the material poses no greater risk to human health or the environment than the use of the product or raw material it is replacing.]

[4.] 2. The following materials are categorically approved for beneficial use and require no future approval or authorization for use or reuse provided they are used or reused in a manner consistent with N.J.A.C. 7:26-1.1, **7:26C, and 7:26E**:

i. (No change.)

ii. [Uncontaminated glass] **Glass** used as a substitute for conventional aggregate in the manufacture of asphalt or concrete applications, **provided the glass:**

(1) Does not contain contaminants in excess of the 75th percentile of the average concentration of the contaminants found in asphalt or concrete mix;

(2) Does not contain contaminants in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways,

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whichever is more stringent, as set forth at N.J.A.C. 7:26D-4, other than those found in asphalt or concrete mix;

(3) Is free from putrescible waste and not mixed with more than one percent by volume of visual solid waste or any liquid waste;

(4) If used in a road construction application, complies with all applicable New Jersey Department of Transportation requirements and specifications; and

(5) Is not used in a manner constituting disposal.

iii. (No change.)

[iv. Soils for on-site reuse that contain contaminants at levels below the most stringent site clean-up levels established by the Department for a specific site, except for sites located in the Pinelands Area;]

iv. Contaminated soil that:

(1) Meets an alternative remediation standard developed in accordance with N.J.A.C. 7:26D-8 or the conditions and requirements set forth at N.J.A.C. 7:26E-5.2(b), (c), or (d), as applicable; and

(2) Is approved by the LSRP or the Department for use as alternative fill at a specific site or area of concern as defined at N.J.A.C. 7:26E-1.8;

v. Contaminated [soils that has been decontaminated to the satisfaction of the Department and is used or reused] **soil and/or fill material approved by the Department for use or reuse** in a manner acceptable to the Department;

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vi. Contaminated soil and/or fill material for use or reuse as base for a road or parking lot, if the contaminated soil and/or fill material:

- (1) Is sealed with either a concrete slab or asphalt pavement;**
- (2) Does not contain contaminants in excess of the 75th percentile of the average concentration of contaminants found in the concrete slab or asphalt pavement at (g)2vi(1) above;**
- (3) Does not contain contaminants in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards, other than those found in the concrete slab or asphalt pavement at (g)2vi(1) above;**
- (4) Is free from putrescible matter and not mixed with more than one percent by volume of visual solid waste;**
- (5) Is applied at no greater thickness, depth, or height than necessary to support the overlying road or parking lot, as certified by a New Jersey licensed professional engineer;**
- (6) Complies with any applicable New Jersey Department of Transportation road-construction requirements and specifications; and**
- (7) Is not used in a manner constituting disposal.**

Recodify existing vi.-viii. as **vii.-ix.** (No change in text.)

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[ix.] **x.** Coal combustion fly ash, coal combustion bottom ash, or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as a cement or aggregate substitute in structural concrete, structural concrete products, or a raw feedstock in the manufacture of cement or as a cement substitute for structural grade products, or subbase in roadway construction; [or]

[x.] **xi.** Coal combustion fly ash, coal combustion bottom ash, or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused to serve as an aggregate substitute in structural asphalt product[.];

xii. Recycled asphalt pavement used or reused in accordance with N.J.S.A. 13:1E-99.28a and all applicable New Jersey Department of Transportation road construction requirements and specifications;

xiii. Steel slag used or reused in accordance with N.J.S.A. 13:1E-99.28b; or

xiv. Street sweepings generated by a municipal or county department of public works (DPW) or the New Jersey Department of Transportation (NJDOT), as provided in this subparagraph:

(1) The street sweepings are used or reused as follows:

(A) As alternative daily cover, intermediate cover, or for closure activities at an approved landfill in accordance with the landfill's solid waste facility permit or closure plan;

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(B) As base or sub-base material for the construction of roadways and parking lots in accordance with applicable engineering designs or for pothole or emergency road repair of such roadways and parking lots, in accordance with existing road specifications, provided all garbage, refuse, and litter have been removed from the street sweepings, the street sweepings are paved over with hot mix asphalt or concrete within 72 hours, and the activities meet any applicable NJDOT requirements and specifications;

(C) As a containment or absorption medium to contain or absorb spills of hazardous material in an emergency situation and to mitigate runoff and flow to storm drains, provided all garbage, refuse, and litter have been removed from the street sweepings, the street sweepings are properly disposed of as solid waste immediately after use or if characterized as a hazardous waste pursuant to N.J.A.C. 7:26G, are immediately handled in accordance with all requirements for the disposal of hazardous waste, and precautions are taken to ensure that the street sweepings do not drain into any surface waters; or

(D) As hot mix additive as replacement for raw materials in concrete or asphalt pavement materials, provided all garbage, refuse, and litter have been removed from the street sweepings, all

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requirements for hot mix asphalt manufacture and use of the product are met, and the activities meet any applicable NJDOT requirements and specifications.

(2) The street sweepings for use or reuse are stored:

(A) Only at a municipal or county DPW or NJDOT yard;

(B) Using best management practices to prevent a public nuisance and dust, erosion, and off-site migration;

(C) At least 50 feet away from any boundary of a wetland or wetland resource area, including any vegetative wetland and riverfront area;

(D) In volumes not to exceed 2,500 cubic yards at any time and for a period not to exceed six months, unless otherwise approved by the Department; and

(E) In accordance with all applicable Federal, State, and local laws, rules, ordinance, permits, and approvals.

[5.] **3.** The generator and/or owner who originally produced the material under consideration for use in a beneficial use project in the State of New Jersey shall submit an application to and receive a certificate of authority from the Department prior to any sale, distribution, shipment of the material to any person, or implementation of the beneficial use project. The application shall include the following:

i.-iii. (No change.)

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iv. A description of the material, including a contaminant profile including, but not limited to, the following:

(1) An evaluation of the general quality of the material including a contaminant profile of the material in relation to current [Department soil cleanup criteria (SCC) guidance levels] **residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards**, and other standards as specified by the Department on a case-by-case basis, and in accordance with the sampling, quality assurance, analytical and other technical requirements of N.J.A.C. 7:26E, and/or other guidance as specified by the Department;

(2) (No change.)

(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current [Department SCC guidance levels,] **residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards**, or as specified by the Department pursuant to [(g)5iv(1)] **(g)3iv(1)** above, sampled and analyzed in accordance with N.J.A.C. 7:26E or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-

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excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4)-(6) (No change.)

v.-ix. (No change.)

Recodify existing 6.-11. as **4.-9.** (No change in text.)

SUBCHAPTER 2. DISPOSAL

7:26-2.1 Scope and applicability

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

(c) This subsection sets forth the specific criteria for exempting rail carriers:

1. (No change.)

2. Rail carriers engaged in the business of solid waste transportation by rail or the transfer of containerized solid waste to or from rail cars, but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:1E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit a disclosure statement pursuant to N.J.A.C. [7:26-16.3] **7:26N-2.2.**

3. (No change.)

(d) A rail carrier as defined at (c)1 above that transfers noncontainerized solid waste to or from rail cars [that is] in compliance with N.J.A.C. 7:26-2D.1 as of November 2, 2009, shall submit the following documents by May 1, 2010:

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1. The disclosure statements required [under] **pursuant to** N.J.A.C. [7:26-16] **7:26N**; and
2. (No change.)

7:26-2.4 Application procedures for a solid waste facility permit

(a) (No change.)

(b) A complete application for an SWF permit, except for small-scale facilities identified at (c)1 and 2 below, shall include the following:

1.-2. (No change.)

3. The disclosure statement described [in] **at** N.J.A.C. [7:26-16] **7:26N**. The requirement of a disclosure statement shall not apply to any person specifically exempted [under] **pursuant to** N.J.A.C. [7:26-16.3(d)] **7:26N-2.2**;

4.-8. (No change.)

(c) A complete application for an SWF permit for a small-scale solid waste facility identified [in] **at** (c)1 or 2 below shall include the following:

1. For a small-scale thermal destruction facility:

i.-iv. (No change.)

v. The disclosure statement described [in] **at** N.J.A.C. [7:26-16] **7:26N**. The requirement of a disclosure statement shall not apply to any person specifically exempted [under] **pursuant to** N.J.A.C. [7:26-16.3(d)] **7:26N-2.2**; and

vi.-vii. (No change.)

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2. For a small scale materials recovery facility or transfer station:

i.-v. (No change.)

vi. The disclosure statement described [in] **at** N.J.A.C. [7:26-16] **7:26N**. The requirement of a disclosure statement shall not apply to any person specifically exempted as set forth at N.J.A.C. [7:26-16.3(d)] **7:26N-2.2**; and

vii. (No change.)

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

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

(a) (No change.)

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

1. (No change.)

2. The permittee, owner, or operator shall submit all fees required [by] **pursuant to** N.J.A.C. 7:26-4 and the following materials to the Department, if needed to update the facility's operations, as an application to renew the SWF permit for that facility:

i.-iii. (No change.)

iv. An amendment to the disclosure statement as required pursuant to N.J.A.C.

[7:26-16.6] **7:26N-3.5**;

v. (No change.)

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3.-8. (No change.)

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

(e) A permittee shall not transfer the SWF permit directly to a new owner or operator without the Department's approval.

1. Any transfer of a permit must be preapproved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of a facility. The request for approval shall include the following:

i. (No change.)

ii. A disclosure statement as required [by] **pursuant to** N.J.A.C. [7:26-16.4]

7:26N-3.4 completed by the proposed transferee;

iii.-iv. (No change.)

2.-4. (No change.)

7:26-2.8 Registration and general prohibitions

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

(e) No person shall engage or continue to engage, unless exempt [by] **pursuant to** N.J.A.C.

7:26-[1.1,1.7]**1.1, 1.7,** or 1.8 in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

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1. No person shall be issued an approved registration or a SWF permit if that person is disqualified for any of the reasons set forth [in] **at** N.J.A.C. [7:26-16.8] **7:26N-4.1**.

(f)-(s) (No change.)

SUBCHAPTER 3. TRANSPORTATION

7:26-3.2 Registration

(a) (No change.)

(b) [After July 2, 1984, any] **Any** person who files an application for approval of a registration statement shall submit with the application the disclosure statement described [in] **at** N.J.A.C.

[7:26-16.4] **7:26N-3.4 and any disclosure statement filed by a lessor pursuant to N.J.A.C.**

7:26N-3.3. The requirement of a disclosure statement shall not apply to any person specifically exempted [under] **pursuant to** N.J.A.C. [7:26-16.3(d) and/or 16.6(k), but shall apply in the case of a licensee or permittee which must file a disclosure statement for any lessor which holds a beneficial interest in the licensee or permittee pursuant to N.J.A.C. 7:26-16.6(i) or (j)] **7:26N-2.**

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

(f) The failure to submit an updated registration statement and all applicable fees (see N.J.A.C. 7:26-4) on or before May 1 in each registration period or such other date as the Department may establish or the failure to submit an [updated disclosure statement] **annual update** pursuant to N.J.A.C. [7:26-16] **7:26N-3.7** and all applicable fees on or before [March] **June** 1 of each

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calendar year, shall be sufficient cause for the Department to revoke the approved registration of a solid waste transporter or to declare it expired.

1. The Department shall withhold the registration certificates and solid waste decals of any registrant who fails to submit the updated registration statement, the [updated disclosure statement] **annual update** and the applicable fees (see N.J.A.C. 7:26-4 and [16] **7:26N-3.7 and 6**) in accordance with (f) above. Any registrant who receives a notice of intent to revoke or declare an approved registration expired shall have 15 days from receipt of the notice to submit to the Department a request for a hearing pursuant to N.J.A.C. 7:26-5.3.

2. (No change.)

(g) No person shall be issued an approved registration if that person is disqualified for any of the reasons set forth [in] **at** N.J.A.C. [7:26-16.8] **7:26N-4.1**.

(h) (No change.)

(i) A permittee, licensee, or exempt transporter who, files a lease in connection with the registration statement for a solid waste vehicle, which the permittee, licensee, or exempt transporter will operate, shall ensure that such lease is signed and dated by the parties thereto, provides for the exclusive use, control, and possession of such equipment by the permittee, licensee, or exempt transporter during the lease and also includes:

1.-6. (No change.)

7. The lease shall be submitted along with an affidavit or certification by the president, chief executive officer, managing partner [or], sole proprietor, or other appropriate

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officer or key employee of the permittee or licensee for whom a **personal history** disclosure [statement] **form** has been filed in accordance with N.J.A.C. [7:26-16.4(a)10] **7:26N-3.4(a)viii**, or if an exempt transporter, by the president, chief executive officer, managing partner [or], sole proprietor, or other appropriate officer or official, or key employee of the exempt transporter.

The following statement shall immediately precede the signature of the affiant or certifier:

1.-4. (No change.)

(j)-(l) (No change.)

(m) The Department, after notice and opportunity for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., **52:14F-1 et seq.**, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the registration of a solid waste transporter for the following:

1. Any of the disqualifying reasons set forth [in] **at** N.J.A.C. [7:26-16.8 and 16.9] **7:26N-4.1 or 4.2**;

2.-3. (No change.)

7:26-3.6 Intermodal container facility

(a) (No change.)

(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3[, 16 and 16A] **and 7:26N** to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three

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copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified [in] **at** (c) below, and at the same time one copy each to the host municipality and district solid waste plan implementation agency:

1. (No change.)

2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3[, 16 and 16A] **and 7:26N**;

3.-18. (No change.)

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

(h) An intermodal container facility operator shall maintain the following records at the facility site at all times and shall file reports as follows:

1.-3. (No change.)

4. Records that document all incidents in which a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3[, 16 and 16A] **and 7:26N**, or container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the type of solid waste in the container. These incidents shall also be reported within 24 hours to the DEP Emergency Response 24-hour Hot Line at 1-877-WARNDEP.

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

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(k) Any authorized intermodal container facility that accepts containerized solid waste from a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3[, 16 and 16A] **and 7:26N** shall be subject to penalties for violation **of the** New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter, registration, certification and licensing, and revocation of intermodal container facility authorization.

(l)-(o) (No change.)

SUBCHAPTER 3A. REGULATED MEDICAL WASTE

7:26-3A.16 General requirements for regulated medical waste generators, transporters, collection facilities, intermediate handlers, and destination facilities

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

(g) Any generator generating regulated medical waste in the ordinary course of business and operating a noncommercial collection facility, an intermediate handler facility, or a destination facility registered pursuant to this chapter, is not subject to the requirements at N.J.A.C. [7:26-16 or 16A] **7:26N**.

(h)-(j) (No change.)

7:26-3A.27 Transporters

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

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(c) No person shall engage or continue to engage in transportation of regulated medical waste in New Jersey unless:

1. (No change.)

2. They register as a solid waste transporter in accordance with N.J.A.C. 7:26-3.2, pay fees in accordance with N.J.A.C. 7:26-4, and comply with the requirements [of] **at** N.J.A.C. 7:26-3.1, 3.4, **and** 3.7, and [16] **7:26N**; and

3. (No change.)

(d)-(h) (No change.)

(i) Regulated medical waste transporters registered with the Department pursuant to N.J.A.C. 7:26-3[,], **and** 3A[, 16 and 16A] **and 7:26N** that transport regulated medical waste of New Jersey origin may retain regulated medical waste in a transportation vehicle for up to 14 consecutive calendar days provided the waste does not become putrescent or emit any odors. If the regulated medical waste becomes putrescent, or emits any odors, the transporter shall dispose of the waste immediately.

(j)-(k) (No change.)

7:26-3A.38 Temporary authorization to operate a regulated medical waste incinerator

(a) (No change.)

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(b) Notwithstanding the requirements [of] **at** N.J.A.C. 7:26-2 and 2B, but subject to the requirements [of] **at** N.J.A.C. [7:26-16] **7:26N**, the owner or operator of an incinerator shall be authorized to operate that incinerator if the following requirements are met:

1.-17. (No change.)

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

(a) (No change.)

(b) Any registered regulated medical waste generator that conducts activities as a collection facility and that generates regulated medical waste in the ordinary course of business at the same site, such as a doctor or hospital, that operates on a noncommercial basis and accepts only medical wastes in quantities greater than 2,000 pounds per year from other generators registered pursuant to N.J.A.C. 7:26-3A.8 and home self-care medical wastes in accordance with N.J.A.C. 7:26-3A.16(h) for collection for transportation off-site for treatment and/or disposal in accordance with this subchapter shall operate as a noncommercial collection facility and shall comply with the requirements at (b)1 through 3 below and at (i) and (k)4 below.

1.-2. (No change.)

3. The boundaries of noncommercial collection facilities shall be limited to the site for which the owner and/or operator of the facility is registered as a regulated medical waste generator pursuant to N.J.A.C. 7:26-3A.8 or as an exempted transporter pursuant to N.J.A.C.

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7:26-3A.27(e), including buildings on the site and vehicles registered pursuant to N.J.A.C. 7:26-3[,] **and** 3A[, 16 and 16A] **and 7:26N** at the site for the purpose of transporting medical wastes.

(c) (No change.)

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

1. (No change.)

2. A photocopy of the applicant's authorized registration as a regulated medical waste transporter obtained pursuant to N.J.A.C. 7:26-3[,] **and** 3A[, 16 and 16A] **and 7:26N**;

3.-15. (No change.)

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

(i) The operating standards for collection facilities are as follows:

1.- 4. (No change.)

5. Collection facilities shall allow only collection and transportation vehicles registered in accordance with this subchapter and N.J.A.C. 7:26-2[, 16, 16A] and 27[,] **and 7:26N** and

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operated in accordance with N.J.A.C. 7:26-3 and this subchapter to transport regulated medical waste to and from the facility.

6.-18. (No change.)

(j)-(m) (No change.)

(n) Any authorized commercial collection facility that accepts regulated medical waste from a transporter not registered and licensed pursuant to this subchapter and N.J.A.C. 7:26-3[, 16 and 16A] **and 7:26N** shall be subject to penalties for violation of New Jersey solid waste planning rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter registration, certification and licensing, and revocation of collection facility authorization.

(o)-(r) (No change.)

7:26-3A.49 Duration of the letter of authorization; letter of authorization renewal requirements; continuation of an expiring letter of authorization and transfer of an existing letter of authorization for commercial collection facilities

(a) (No change.)

(b) Commercial collection facility letter of authorization renewal submission requirements and procedures shall be as follows:

1. (No change.)

2. As an application to renew the letter of authorization for a commercial collection facility, the bearer of the letter of authorization for the facility, or the owner or operator of the

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facility shall submit all fees required [by] **pursuant to** N.J.A.C. 7:26-3A.8(d)2, a letter requesting renewal of the letter of authorization for the facility and the following additional documents, if necessary to update the facility's operations:

i.-iii. (No change.)

iv. An amendment to the disclosure statement as required pursuant to N.J.A.C.

[7:26-16.6] **7:26N-3.5 and 3.7.**

3.-4. (No change.)

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

(e) A bearer of a letter of authorization shall not transfer the letter of authorization directly to a new owner or operator without the Department's approval.

1. Any transfer of a letter of authorization shall be pre-approved by the Department and a written request for permission to allow such transfer shall be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of the facility.

The request for approval shall include the following:

i. (No change.)

ii. A disclosure statement as required [by] **pursuant to** N.J.A.C. [7:26-16.4]

7:26N-3.4 completed by the proposed transferee;

iii. (No change.)

2.-4. (No change.)

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SUBCHAPTER 16. [SOLID AND HAZARDOUS WASTE LICENSING AND
REVOCATION—DISCLOSURE STATEMENTS AND INTEGRITY REVIEW]

(RESERVED)

(Agency Note: N.J.A.C. 7:26-16.1 through 16.14, 16.21, 16.22, and 16.23 are proposed for recodification with amendments as N.J.A.C. 7:26N-1.1, 1.4, 3.2, 3.4, 3.8, 3.5, 3.6, 4.1, 4.2, 7.3, 4.4, 4.3, 6.1, and 5.2, 4.5, 4.6, and 4.7, respectively.)

CHAPTER 26A

RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the meanings set forth below. All terms [which] **that** are used in this chapter and [which] are not defined herein but [which] are defined [in] **at** N.J.A.C. 7:26 shall have the same meanings as in that chapter. If any of the words or terms defined below or at N.J.A.C. 7:26 are defined differently at N.J.A.C. 7:26A-13.2, the definitions at N.J.A.C. 7:26A-13.2 shall apply to the use of those words or terms [in] **at** N.J.A.C. 7:26A-13.

...

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“By-product” means a secondary material, other than residue derived from the recycling of recyclable material, such as rebar or metal, that has a legitimate end-use.

...

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

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

2. Source separated, non-putrescible[, waste] materials other than metal, glass, paper, plastic containers, corrugated and other cardboard resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements, and other structures;

3. Source separated whole trees, tree trunks, tree parts, tree stumps, brush, and leaves, provided [that] they are not composted;

4. Source separated scrap tires; [and]

5. Source separated petroleum contaminated soil[.]; **and**

6. Source separated recyclable soil and fill material.

...

“Non-restricted soil and fill recyclable material” shall have the same meaning as the term is defined at N.J.A.C. 7:26N-1.4.

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...

“Petroleum contaminated soil” or “PCS” means soil, sediment, and other earthen material that is not a hazardous waste pursuant to N.J.A.C. 7:26G, and that is contaminated solely with gasoline, diesel fuel, kerosene, jet fuel, numbers 1 through 6 fuel oil, used oil, or any combination thereof.

...

[“Processing”] **“Process” or “processing”** means the treatment or transformation of source separated recyclable materials so as to conform to end-market specifications, including, but not limited to, separating material by type, grade, or color, crushing, grinding, shredding or bailing, or removing contaminants. (See also, “used oil processing” below.)

“Recyclable soil and fill material” means non-water-soluble, non-putrescible, non-decomposable, inert solids, including, without limitation, soil, concrete, glass, clay, or a ceramic product, or any combination thereof, that have been broken, crushed, or otherwise processed to be unrecognizable as a discrete manufactured product, provided the material:

- 1. Is not hazardous waste pursuant to N.J.A.C. 7:26G;**
- 2. Is not petroleum contaminated soil; and**
- 3. Is processed in accordance with a Class B or Multi-Class recycling approval or pursuant to an exemption set forth at N.J.A.C. 7:26A-1.4.**

...

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

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

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

i. [Asphalt manufacturing] **An asphalt manufacturer that operates a plant[s]** that receives solely source separated recyclable asphalt millings or larger pieces, and [preconsumer] asphalt shingles or other asphalt-based roofing scrap, or a combination thereof, prior to their introduction into the asphalt manufacturing process[. The];
provided that the materials [shall be delivered] are:

(1) Delivered to the manufacturing plant directly from the site of generation unless intermediate storage is authorized by the Department[;] or a **Class B recycling center authorized by the Department to receive, store, process, and transfer asphalt millings;**

(2) Stored at the manufacturing plant in designated areas with environmental controls consistent with (b)2 below; and

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(3) Limited to twice the volume of raw materials replaced in the manufacturing process (such as replacing a volume of gravel with the same volume of asphalt millings) during the preceding calendar year; or

ii. (No change.)

2. The recycling of source separated recyclable materials that are generated **from on-site manufacturing, construction, demolition, or land clearing activities**, processed and reused as a product, **redevelopment backfill, or other purpose** exclusively at the [point of generation] **on-site location**, where all applicable county and municipal approvals have been obtained for that activity. [Specifically] **The following materials are** excluded from this exemption [are source separated petroleum contaminated soils, and the receipt, storage, processing or transfer of materials generated off-site;] **and shall not be recycled and reused on-site:**

i. Petroleum contaminated soil; and

ii. Recyclable soil and fill material contaminated in excess of the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D-4.

3.-6. (No change.)

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

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either:], and recyclable soil and fill material that is contaminated over the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D-4; provided the following conditions are met:

[i. Operates for a specified 60-day period that commences from the start date of the project as indicated in the notification letter required pursuant to (b)5 below, provided all materials stored temporarily are removed from the temporary storage site by the end of the specified 60-day period and temporary storage pursuant to this subparagraph shall not occur more than twice within the same calendar year or in succession; or

ii. Operates on a continuous basis, provided all materials stored temporarily are stored in roll-off containers or other similar containers.

iii. Such person shall also meet the following criteria:

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

(2) No source separated Class B recyclable material which is received and stored as per this exemption shall be processed in any way, including further separation;

(3) Source separated Class B recyclable material which is stored as per this exemption shall be transferred only to a recycling center approved to receive,

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store, process or transfer the Class B recyclable material. Documentation from such recycling center(s), such as a legal contract or letter of agreement, that provides that the recycling center(s) will receive the material stored under as per this exemption shall be provided to the Department, along with the written notification required pursuant to N.J.A.C. 7:26A-1.4(b)5; and

(4) Records of the daily amount and type of the Class B recyclable materials received, stored and transferred, including the name and address of the recycling center to which the materials are transferred, shall be kept and shall be maintained for three years from the date of recording by the person or recycling center operating pursuant to this exemption. The required records shall be kept on site, be made available to the Department during an inspection and be submitted to the Department upon request.]

i. The person stores the material:

(1) On a once-a-calendar-year, project-specific basis, for a specified 120-day period that commences from the receipt of the materials (commencement date) and ends when the materials are completely transferred to the Class B recycling center, in accordance with the operation commencement date provided in the written notice required pursuant to (b)5 below; or

(2) On a continuing basis, in one or more piles, with an aggregate volume not to exceed 7,500 cubic yards and no pile to exceed 20 feet in

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height, provided an amount equal to the average storage volume of material or 7,500 cubic yards, whichever is greater, is transferred to an approved Class B recycling center at least every six months;

ii. The person:

(1) Stores the material in a manner that prevents migration (such as runoff, leakage, seepage, or dust) from the storage area into the environment and in accordance with all applicable Federal, State, and local laws, rules, and regulations;

(2) Locates the material at least 25 feet from the property boundary;

(3) Does not process the material in any way, including further separation; and

(4) Upon request by the Department, provides documentation, such as a contract or letter agreement, indicating the identity of the recycling center to which the material was transferred and the willingness of that recycling center to accept the material, along with the written notification required pursuant to (b)5 below;

8.-19. (No change.)

20. [Any construction company or contractor which] **A person who**, through the course of **their own** construction and demolition activities **conducted at off-site locations**, generates source separated concrete, asphalt, brick, [and] block, **or recyclable soil and fill material**, may receive, store, process, and transfer the material **at their own place of business** provided that:

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- i. The [company or contractor] **person** is the sole generator of the material;
- [ii. The unprocessed material shall be stored in accordance with N.J.A.C. 7:26A-1.4(a)7i, ii, and iii(1) and (4) and all applicable county or municipal laws or regulations;
- iii. The processing of the material shall be conducted at the contractor's or construction company's yard and in accordance with either N.J.A.C. 7:26A-1.4(a)7i or ii;
- iv. A schedule for the completion of the processing activities shall be provided to the Department along with the written notification required pursuant to N.J.A.C. 7:26A-1.4(b)5. A written notification is required each time the material stored on-site is to be processed. Processing may not begin until the contractor has received a written response from the Department;
- v. The company or contractor shall be the sole end-user and/or end-market of the end product that is generated and the end product shall be used exclusively for future projects of the company or contractor. Sale of the processed material is strictly prohibited; and
- vi. The processed material shall only be stored on-site for a period of one year;]
- ii. The person uses the material in their own projects and does not sell the material;**
- iii. The place of business is not a residential property;**
- iv. The concrete, asphalt, brick, block, or soil is separated from all other solid and hazardous waste material at the original construction or demolition site and is free of putrescible matter and not mixed with solid waste;**

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v. Recyclable soil and fill material for reuse does not contain concentrations of one or more contaminants that exceed the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards;

vi. The material is processed and stored in a manner that prevents migration (such as runoff, leakage, seepage, or dust) from the processing and storage areas into the environment and in accordance with all applicable Federal, State, and local laws, rules, and regulations;

vii. The processing units and material piles are located at least 25 feet from the property boundary;

viii. The total volume of processed and unprocessed material at any given time does not exceed 2,000 cubic yards;

ix. All material is stored separately at the place of business, in piles that do not exceed 20 feet in height and are at least eight feet apart; and

x. An amount equal to the average volume of material or 2,000 cubic yards, whichever is greater, is reused in off-site projects undertaken by the person each calendar year;

21.-22. (No change.)

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

i.-vii. (No change.)

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viii. Within one year of the start-up of the compost operation, the composting operator shall attend a composting course sponsored by the Rutgers Cooperative Extension, the appropriate county agricultural or resource management agents, or any other similar course approved by the Department. Proof of timely attendance at such a course shall be retained by the composting operator and made available to the Department upon request; [and]

24. The receipt and storage of architectural salvage items at a commercial enterprise[.];

25. A person receiving, transferring, selling, recycling, blending, processing, and/or manufacturing recyclable soil and fill material; provided:

i. The recyclable soil and fill material is free of putrescible waste and not mixed with solid waste;

ii. Recyclable soil and fill material offered for sale or distribution meets the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards;

iii. Less than 5,000 cubic yards of recyclable soil and fill material, including blending material, is stored, transferred, or blended at the facility at any one time;

iv. The recyclable soil and fill material and any blending material are stored in a manner that prevents migration (such as runoff, leakage, seepage, or dust) from the storage area into the environment and in accordance with all applicable Federal, State, and local laws, rules, and regulations;

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v. The person has a quality assurance/quality control (QA/QC) plan in place to ensure that each load of recyclable soil and fill material collected, transported, processed, brokered, stored, purchased, or sold by the person meets the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards. QA/QC plan development information is available at the Department's website at (cite to be added upon adoption); and

vi. The person provides notice to customers of any restrictions or limitations on the use of the processed material. Guidance on appropriate language for such notice is provided on the Department's website at (cite to be added upon adoption).

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

1.-3. (No change.)

4. With the exception of the exempted activities set forth at (a)5, 7, 8, 14, 15, 16, 17, 19 [and], 22, **and 25** above, tonnage reports shall be submitted in accordance with N.J.A.C. 7:26A-4.4(b);

5. All persons operating pursuant to an exemption at (a) above except for small quantity handlers of universal waste operating pursuant to N.J.A.C. 7:26A-7.2 **and persons conducting a residential swimming pool demolition who intend to reuse the concrete as backfill or for other on-site use, in accordance with (a)2 above**, shall provide a written notice of such operation to the New Jersey Department of Environmental Protection, Division of Sustainable Waste Management, Bureau of Recycling and Hazardous Waste Management, 401 East State

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Street, PO Box 420, Mail Code 401-02C, Trenton, New Jersey 08625-0420, the host municipality, and host county prior to the commencement of operations.

i.-iii. (No change.)

6.-8. (No change.)

9. A person operating pursuant to exemptions (a)7, 20, or 25 above shall maintain the following records for at least three consecutive years and make the records available for immediate inspection upon the Department's request:

i. Daily records using the applicable forms found on the Department's website at (cite to be added upon adoption); and

ii. Records demonstrating that the applicable conditions at (a)7i(1) or (2) or at (a)20viii above are met.

(c) (No change.)

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

7:26A-3.9 Storage of Class B materials and Class D materials that are not universal waste

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

(d) A recycling center that receives recyclable soil and fill material shall prepare and implement an Incoming Materials Acceptance Plan (IMAP). The recycling center shall

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retain the IMAP and make it available to the Department upon request. IMAP development guidance and Best Management Practices for recyclable soil and fill material are available at the Department's website at (cite to be added upon adoption). The IMAP shall:

- 1. Document the volume and quality of the recyclable soil and fill material received by the recycling center;**
- 2. Provide for storage of the recyclable soil and fill material in a manner that is protective of human health and the environment; and**
- 3. Provide for compliance with all applicable environmental regulations and regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA).**

7:26A-3.17 Recordkeeping and annual report; confidentiality of records

(a) [All] A holder[s] of a general approval shall maintain daily records of all materials received, stored, processed **at**, or transferred **to or from the recycling center**. Said records shall indicate, at a minimum:

1. A daily record of the amounts of each recyclable material by type [and municipality of origin which are] received, [stored, processed or transferred each day,] expressed in tons, cubic yards, cubic feet, or gallons. [Those operators specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;]

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i. For each individual load the recycling center receives, the record shall include the volume of material accepted, the name and contact information of the transporter, and the municipality (and state, as applicable) of origin.

ii. For each individual load of recyclable soil and fill materials received, all information and data required by the recycling center's IMAP, including, but not limited to, analytical data received from a customer.

iii. For each individual load of concrete, asphalt, brick, block, or recyclable soil and fill material the recycling center receives in excess of 15 cubic yards, the daily record shall also include:

(1) The name and address of the point of generation;

(2) The name and contact information for the person controlling the point of generation; and

(3) A description of the point of generation as residential, commercial, or industrial;

2. A daily record of the amount of each recyclable material, including unprocessed material, by type stored on site;

3. A daily record of the amount of each recyclable material by type processed;

4. A daily record of the amount of each recyclable material by type transferred from the recycling center;

[2.] 5. The name, address, [and] telephone number, and email address of the point of contact [of the] for each end-market[s] for all recyclable material transported from the recycling

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center, [including] **and** the amounts, in tons, cubic yards, cubic feet or gallons, transported to each end-market[. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons]; and

[3.] **6.** The amount of residue disposed of, expressed in tons, cubic yards, cubic feet, or gallons, including the name **of** and New Jersey Department of Environmental Protection solid waste registration number [of] **for** the solid waste collector/hauler contracted to provide the haulage/disposal service[. Those persons specifying the amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons.], **as well as the name and address of the facility receiving the solid waste; and**

7. If any volume information is expressed in cubic yards, the record shall indicate the conversion ratio of the material from cubic yards to tons.

(b) [All] **A** holder[s] of a general approval shall retain [the information required pursuant to N.J.A.C. 7:26A-3.2(a)16iii for three calendar years following the calendar year for which reporting is required pursuant to (c) and (d) below.] **and make the following records available to the Department immediately upon request:**

1. Daily records for a period of not less than three calendar years; and

2. Laboratory analytical data representing the material received at the recycling center or transferred from the recycling center for three calendar years from the date of sample collection.

(c) [All] **A** holder[s] of a general approval shall **electronically** submit an annual report [containing monthly summary statements of the information required pursuant to (a) above], **on**

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forms available from the Department at (cite to be added upon adoption), to the New Jersey Department of Environmental Protection, [Solid and Hazardous Waste Management Program]

Division of Sustainable Waste Management using NJDEP Online,

<https://dep.nj.gov/online/>, on or before March 1 of each year, for the previous calendar year.

The [summaries] **annual report** shall include the following:

1. Monthly totals, **expressed in tons and cubic yards**, of the amount of recyclable material received from each customer [by municipality of origin] **and the name and address of each point of generation, the name, address, telephone number, and email address of the contact person for each point of generation, a description of each point of generation (residential, commercial, or industrial), and the type and source of contamination, if any;**

2. Monthly totals of the **type and** amount of recyclable product **and by-product**, **expressed in tons and cubic yards**, transferred to each end-market; and

3. The amount of residue disposed of during each month, **expressed in tons and cubic yards**.

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

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

7:26A-4.2 Inclusion in district solid waste management plans

(a) No recycling center, as defined [in] at N.J.A.C. 7:26A-1.3, with the exception of those recycling centers operating pursuant to an approval granted [under] **pursuant to N.J.A.C. 7:26A-3.7 and as provided at (b) below**, shall commence operations unless and until it is included in the applicable district solid waste management plan **and the applicant must receive all applicable local, State, and Federal permits or approvals.**

(b) A recycling center that is operating and receives recyclable soil and fill material as of (the effective date of this rulemaking) shall comply with the following, as applicable:

1. A recycling center operating pursuant to a general approval whose site plan indicates that it receives recyclable soil and fill material shall apply to the county for an administrative action to the district solid waste management plan in accordance with N.J.A.C. 7:26-6 within 90 calendar days after the effective date of the amendment. Within 30 calendar days after the county's approval of the administrative action, the holder shall submit a written request to the Department for review and approval of a modification to its general approval to conform with the standards.

2. A recycling center that does not have a general approval shall apply to the county to include the recycling center in the district solid waste management plan within 180

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calendar days after the effective date of the amendment. Within 30 calendar days after the date the recycling center is included in the district solid waste management plan, the recycling center shall submit an administratively complete application to the Department for a general approval in accordance with N.J.A.C. 7:26A-3.

3. A recycling center whose application to the county pursuant to (d)1 or 2 above is denied shall no longer receive recyclable soil and fill material.

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

(a) (No change.)

(b) Compost, **that for purposes of this section includes any mixture of compost and recyclable soil and fill material**, produced by recycling centers which process Class C recyclable materials, shall be subject to the following:

1. **The recycling center shall provide notice to a purchaser or person receiving the compost of any restrictions or limitations on the use of the compost.** Compost given away or offered for sale by the recycling center [must] **shall** contain a label describing the recommended safe uses and application rates, and restrictions, if any, on use of the product. If compost is offered for bulk sale, signs, or printed literature containing the above information shall be available on the bill of lading to the purchaser or persons receiving the compost.

2. (No change.)

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3. No person shall give away or offer for sale as non-restricted soil and fill recyclable material any compost that exceeds the residential remediation standards for the soil ingestion-dermal or soil inhalation exposure pathways, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards.

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

(a) In addition to the requirements [of] **at N.J.A.C. 7:26A-4.1, a recycling center[s receiving] that receives** Class B recyclable material shall be designed with a buffer zone around the entire perimeter of the recycling center of at least 25 feet. **The Department may allow a reduction in the buffer zone if a recycling center satisfactorily demonstrates that such reduction will not pose an adverse impact on the adjacent land use activities.**

(b) (No change.)

(c) In addition to the requirements at N.J.A.C. 7:26A-4.1 and (a) above, a recycling center that receives recyclable soil and fill material shall comply with (c)1 through 6 below.

1. The recycling center shall process recyclable soil and fill material in accordance with their general approval.

2. The recycling center shall develop and have in place a quality assurance/quality control (QA/QC) plan to ensure that each load of recyclable soil and fill material that the recycling center offers for sale or distribution meets the applicable quality standards for its

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anticipated end-use. QA/QC plan development information is available at the Department's website at (cite to be added upon adoption).

3. The recycling center shall stage processed recyclable soil and fill material according to its anticipated end-use and with sufficient separation to allow aisle space for the unobstructed movement of personnel or equipment in an emergency.

4. Prior to sale of recyclable soil and fill material, the recycling center shall sample and analyze each pile intended to be offered for sale or distribution to ensure that concentrations of contaminants are appropriate for the anticipated end-use. Recommended sampling and analysis parameters, sampling frequency, and Best Management Practices for recyclable soil and fill material management are available at the Department's website at (cite to be added upon adoption). The recycling center shall not add any recyclable soil and fill material to a pile after final sampling and analyses. The recycling center shall post signage adjacent to each pile ready to be offered for sale or distribution identifying the corresponding end-use.

5. The recycling center shall provide notice to customers of any restrictions or limitations on the use of the processed soil and fill material. Guidance on appropriate language for such notice is provided at the Department's website at (cite to be added upon adoption).

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SUBCHAPTER 9. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR
ADJUDICATORY HEARINGS

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

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

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

1. The violations of N.J.A.C. 7:26A-3, Approval of Recycling Centers for Class B, Class C and Class D Recyclable Materials, whether the type of violation is minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation, are as set forth in the following table.

Rule	Rule Summary	Base Penalty	Type of Violation	Grace Period (days)
...				
7:26A-[3.7(j)] 3.7(k)	Failure, within 45 days after expiration of the [tie] time period authorized by the limited approval to operate a recycling [facility] center , to file a final report with the Department	\$3,000	M	30
7:26A-[3.7(k)] 3.7(l)	Failure of persons operating a limited approved recycling center to ensure that no illegal dumping occurs	\$4,500	NM	
...				

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7:26A-3.9(d)	Failure of a recycling center to comply with Incoming Materials Acceptance Plan (IMAP) requirements	\$4,500	NM
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...

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

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Rule	Rule Summary	Base Penalty	Type of Violation	Grace Period (days)
...				
7:26A-4.1(a)6	Failure of recycling center to ensure electronic components which contain polychlorinated biphenyls [(PVBs)] (PCBs) and which are attached to or detached from appliances or other scrap metal are not shredded, sheared, or baled	\$5,000	NM	
...				
7:26A-[4.1(a)11] 4.1(a)12	Failure of recycling center operator to ensure recycling center operations are separated from sensitive land uses by an effective visual screen buffer	\$3,000	M	30
7:26A-[4.1(a)12] 4.1(a)13	Failure of recycling center operator to ensure unauthorized access to center is controlled	\$4,500	NM	
7:26A-[4.1(a)13] 4.1(a)14	Failure of recycling center operator to ensure areas of vehicular usage are suitably compacted and, where necessary, paved	\$3,000	M	30
7:26A-[4.1(a)14] 4.1(a)15	Failure of recycling center operator to have adequate water supply, firefighting equipment, and local fire department phone numbers posted	\$5,000	NM	
...				
7:26A-[4.5(a)4] 4.1(a)5	Failure of Class C operator to ensure all Class C recyclable materials received are removed from bags, boxes	\$3,000	M	30
7:26A-[4.5(a)5, 6] 4.5(a)6	Failure of Class C operator to accept incoming materials containing grass, only in areas of the site that are at least 1,000 feet from any areas of human occupancy and to process such material within the working day	\$4,500	NM	
7:26A-[4.5(a)13i] 4.5(a)14i	Failure of Class C yard trimming operator[s] to attend, within one year of [start up] startup , approved composting courses	\$3,000	M	90
7:26A-[4.5(a)13ii] 4.5(a)14ii	Failure of Class C yard trimming operator to maintain improved active composting surface to prevent ponding or runoff	\$4,500	NM	
7:26A-[4.5(a)13iii] 4.5(a)14iii	Failure of Class C yard trimming operator to moisten, without excess runoff, dry yard trimmings prior to windrow formation	\$3,000	M	30

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7:26A-[4.5(a)13iv] 4.5(a)14iv	Failure of Class C yard trimming operator to position windrows perpendicular to ground surface contours to prevent ponding	\$4,500	NM	
7:26A-[4.5(a)13v] 4.5(a)14v	Failure of Class C yard trimming operator to install windsock	\$3,000	M	30
7:26A-[4.5(a)13vi] 4.5(a)14vi	Failure of Class C yard trimming operator to comply with windrow composting requirements	\$4,500	NM	
7:26A-[4.5(a)13vii] 4.5(a)14vii	Failure of Class C yard trimming operator to comply with material staging and processing buffer distance requirements	\$3,000	M	30
7:26A-[4.5(a)13viii] 4.5(a)14viii	Failure of Class C yard trimming operator to comply with finished compost testing requirements	\$3,000	M	30
7:26A-[4.5(a)13xii] 4.5(a)14xi	Failure of Class C yard trimming operator to comply with additional recordkeeping requirements	\$3,000	M	30
7:26A-[4.5(a)14i] 4.5(a)15i	Failure of Class C yard trimming operator to comply with composting structure requirements, no ponding, leachate control	\$4,500	NM	
7:26A-[4.5(a)14ii] 4.5(a)15ii	Failure of Class C material operator to maintain fully enclosed operation and setback requirements	\$4,500	NM	
7:26A-[4.5(a)14iii] 4.5(a)15iii	Failure of Class C material operator to comply with O & M manual requirements	\$4,500	NM	
7:26A-[4.5(a)14v] 4.5(a)15v	Failure of Class C material operator to comply with employee training requirements	\$3,000	M	30
...				
7:26A-[4.5(a)14xi] 4.5(a)15xix	Failure of Class C material operator to conduct required QA/QC sampling and record results of such sampling	\$4,500	NM	
7:26A-[4.5(a)14xii] 4.5(a)15xv	Failure of Class C material operator to have analysis of finished compost product conducted by laboratory certified in accordance with N.J.A.C. 7:18	\$4,500	NM	
7:26A-[4.5(a)14xiii] 4.5(a)15xvi	Failure of Class C material operator to maintain required records	\$3,000	M	30
7:26A-[4.5(a)14xiv] 4.5(a)15xvii	Failure of Class C material operator to submit quarterly report to the Department within 30 days after the end of each quarter	\$3,000	M	30
...				

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7:26A-4.8(c)1	Failure to process using Department-approved technology equipment and methods.	\$4,500	NM
7:26A-4.8(c)2	Failure to comply with quality assurance/quality control (QA/QC) plan requirements.	\$4,500	NM
7:26A-4.8(c)3	Failure to properly stage and separate processed recyclable soil and fill material.	\$4,500	NM
7:26A-4.8(c)4	Failure to comply with sampling and pile integrity requirements.	\$4,500	NM
7:26A-4.8(c)4	Failure to comply with signage requirements.	\$4,500	NM
7:26A-4.8(c)5	Failure to comply with customer notice requirements.	\$4,500	NM
7:26A-4.8(d)	Failure to comply with county plan inclusion requirements.	\$4,500	NM

3.-10. (No change.)

CHAPTER 26G

HAZARDOUS WASTE

SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7:26G-4.2 State definitions

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

...

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“Exempt transporter” shall, for purposes of N.J.A.C. 7:26G-7.2, mean a transporter [which] **that** is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. [7:26-16.3(d)] **7:26N-2.2**.

...

SUBCHAPTER 7. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

7:26G-7.2 Registration statement and registration requirements

(a) Registration statement approval, renewal, and revocation requirements are as follows:

1.-2. (No change.)

3. Any person who files an application for an approved registration statement shall also submit the disclosure statement described [in] **at** N.J.A.C. [7:26-16.4] **7:26N-3.4 and any disclosure statement filed by a lessor pursuant to N.J.A.C. 7:26N-3.3**. The requirement of a disclosure statement shall not apply to any person specifically exempted [under] **pursuant to** N.J.A.C. [7:26-16.3(d) and/or 16.6(k)], but shall apply in the case of a licensee or permittee which must file a disclosure statement for any lessor which holds a beneficial interest in the licensee or permittee pursuant to N.J.A.C. 7:26-16.6(i) or (j)] **7:26N-2**.

4. Any applicant who claims to be exempted [under] **pursuant to** N.J.A.C. [7:26-16.3(d)] **7:26N-2** from the requirement of a disclosure statement shall submit an affidavit stating the basis

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for the claim. The applicant claiming the exemption shall also file an alternative information statement on forms supplied by the Department, containing the following information:

i.-vii. (No change.)

5. (No change.)

6. The failure to submit updated registration statement and all applicable fees (see N.J.A.C. 7:26G-3) on or before May 1 in each registration period or the failure to submit an [updated disclosure statement] **annual update** pursuant to N.J.A.C. [7:26-16] **7:26N-3.7** and all applicable fees on or before [March] **June** 1 of each calendar year or the failure to comply with a final order of the Department shall be sufficient cause for the Department to revoke the approved registration or to declare it expired. Any registrant who receives a notice of intent to revoke or to declare an approved registration expired, shall have 15 days from receipt of the notice to submit to the Department a request for a hearing pursuant to N.J.A.C. 7:26G-2.3. The Department shall withhold the registration certificate and decal(s) of any registrant who fails to submit the updated registration statement[,] on or before May 1 of the registration period or the [updated disclosure statement] **annual update** and applicable fees (see N.J.A.C. 7:26-4 and [16] **7:26N-3.7 and 6**) on or before [March] **June** 1 of the calendar year.

7.-8. (No change.)

9. No person shall be issued a hazardous waste approved registration statement if that person is disqualified for any of the reasons set forth [in] **at** N.J.A.C. [7:26-16.8] **7:26N-4.1**.

10. The Department, after notice and opportunity for hearing pursuant to the

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Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., **52:14F-1 et seq.**, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, may revoke the approved registration statement of a hazardous waste transporter for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth [in] **at** N.J.A.C. [7:26-16.8 and 16.9]

7:26N-4.1 and 4.2:

i.-iv. (No change.)

11. (No change.)

12. The lease shall be submitted along with an affidavit or certification by the president, chief executive officer, managing partner, [or] sole proprietor, or other appropriate officer or key employee of the permittee or licensee for whom a disclosure statement has been filed in accordance with N.J.A.C. [7:26-16.4(a)10] **7:26N-3.4(a)1**, or if an exempt transporter, by the president, chief executive officer, managing partner, [or] sole proprietor, or other appropriate officer or official or key employee of the exempt transporter. The following statement shall immediately precede the signature of the affiant or certifier:

“1. I swear (or certify) that I am the (title) of (name of licensee, permittee, or exempt transporter) and am authorized to make this certification/affidavit on behalf of (name of licensee, permittee, or exempt transporter), and that I have personal knowledge of the facts set forth below.

2. The lease filed by me as part of this registration statement for the equipment, vehicle type:, with the VIN number:, license number:, issued by the State of:,

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contains the true terms of the lease and has a bonafide business purpose and is not filed with the purpose of preventing the discovery of information which would disqualify, for any reason set forth in N.J.S.A. 13:1E-133, the lessor or any other person from receiving a license.

3. I further swear (or certify) that my company and I understand that it shall exercise exclusive use, possession and control over each piece of hazardous waste equipment which is included in this application for a registration statement while such equipment is used to transport hazardous waste.

4. I further swear (or certify) that my company and I understand that it shall take reasonable measures to ensure that the above-described equipment will not, during the period of the lease, be used by any other person for the purpose of transporting hazardous waste.”

In the case of a certification, the certification shall end with the following statement immediately preceding the signature and date: “I am aware that if any of the foregoing information or statement is willfully false, I am subject to punishment.”

13.-16. (No change.)

(b) (No change.)

CHAPTER 26H

SOLID WASTE UTILITY REGULATIONS

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SUBCHAPTER 1. GENERAL REQUIREMENTS

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

- (a) (No change.)
- (b) Unless otherwise provided by statute or Department rule, no certificate shall be issued to any person until such person has [registered with and is licensed] **received an A-901 license issued** by the Department in accordance with N.J.A.C. [7:26-16] **7:26N**.
- (c) (No change.)
- (d) In the event that [a license] **an A-901 license**, as defined at N.J.A.C. [7:26-16.2] **7:26N-1.4**, is denied, revoked, or withdrawn, the certificate shall immediately become invalid.
- (e)-(f) (No change.)

7:26H-1.8 Application for a certificate

- (a) Each applicant for a certificate shall file an application with the Department with:
 - 1.-4. (No change.)
 - 5. A copy of an [approval letter] **A-901 license issued** pursuant to N.J.A.C. [7:26-16] **7:26N**; and
 - 6. (No change.)
- (b) (No change.)

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7:26H-1.11 Revocation or suspension of certificate

(a) The Department may, upon notice, after hearing, by order, in writing, revoke, or suspend a certificate of public convenience and necessity issued to any person engaged in the solid waste collection or solid waste disposal business upon finding that such person:

1.- 4. (No change.)

5. Fails to submit the annual fee as required by N.J.S.A. 48:13A-7.4, the annual assessment as required by N.J.S.A. 48:2-62, or the annual [licensing renewal] fee as required by N.J.A.C. [7:26-16] **7:26N-6.3** on or before the deadlines established by the Department.

CHAPTER 26N

LICENSING OF SOLID AND HAZARDOUS WASTE SERVICES AND SOIL AND FILL RECYCLING SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

[7:26-16.1] **7:26N-1.1** [Scope and authority] **Purpose and scope**

(a) This [subchapter 16] **chapter** implements [P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.),] **the Act** and the public policy declared therein to preclude from participation in the solid [and] **waste, hazardous waste, and soil and fill recycling** industries persons with known criminal

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records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise, or competence that his or her participation would create or enhance the danger of unsound, unfair, or illegal practices, methods, or activities in the business of those industries.

(b) This [subchapter] **chapter** applies to any [proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a] **person providing, or intending to provide, solid [waste] or hazardous waste [business in New Jersey] services or soil and fill recycling services**, including [any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.] **subcontractors and prime contractors, as defined at N.J.A.C. 7:26-3.2(a)1, unless otherwise provided. Subcontractors and prime contractors are also subject to the registration requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Act.** [(c) All subcontractors and prime contractors, as defined under N.J.A.C. 7:26-3.2(a)1, are subject to the registration requirements of N.J.S.A. 13:1E-1 et seq. and to N.J.S.A. 13:1E-126 et seq. and to this subchapter.]

7:26N-1.2 Construction and severability

(a) This chapter shall be liberally construed for the Department to effectuate the purposes of the Act.

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(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:26N-1.3 Burden of proof

In an enforcement action, or upon request of the Department, any person who claims that they are not required to obtain an A-901 license pursuant to this chapter, including, but not limited to, pursuant to N.J.A.C. 7:26N-2, shall demonstrate that they meet the conditions of the rule or law that they claim releases them from the obligation to obtain an A-901 license, and shall provide all necessary documentation supporting such claim.

[7:26-16.2] 7:26N-1.4 Definitions

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

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“A-901 license” means a license issued by the Department pursuant to the Act to a business concern after the Office of the Attorney General has completed a background investigation of an applicant or permittee.

“Act” means N.J.S.A. 13:1E-126 et seq.

“Applicant” means any business concern [which has] that:

1. Has filed a disclosure statement with [the Department and] the Office of the Attorney General and is seeking an [initial] **A-901** license, provided that the business concern has furnished the Department and the **Office of the Attorney General** with any information required pursuant to [P.L. 1991, c.269] **the Act and this chapter; or**

2. Has been issued a soil and fill recycling registration pursuant to N.J.S.A. 13:1E-127.1, has filed a disclosure statement with the Office of the Attorney General, and is seeking an A-901 license.

“Application” means the forms and accompanying documents filed in connection with an applicant’s or permittee’s request for [a] an A-901 license, including the disclosure statement.

“Broker” means [any] a person[, not registered with the Department,] who for direct or indirect compensation [(e.g., a commission or fee)] arranges [for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person] agreements between the person’s customers and a business concern for the provision of solid or hazardous waste services or the provision of soil and fill recycling services. A broker includes, but is not limited to, a person who performs any of the following activities within the solid or hazardous waste or soil and fill recycling industries:

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1. The person solicits or recruits a business concern engaged in solid or hazardous waste services or soil and fill recycling services for a customer in need of those services, recommends such a business concern to such a customer, informs or advises the customer as to the business concern's compliance with its operational requirements, including possession of an A-901 license and all other required permits and licenses, or solicits or recruits such customers for a business concern engaged in solid or hazardous waste services or soil and fill recycling services;

2. The person, in a non-legal capacity, represents a business concern engaged in solid or hazardous waste services or soil and fill recycling services or a customer in need of those services, participates in negotiations and/or facilitates transactions between, or on behalf of, a business concern engaged in solid or hazardous waste services or soil and fill recycling services or a person in need of such services; an attorney who provides services beyond legal services may be considered a broker for purposes of this chapter; or

3. The person operates as a franchisor pursuant to a franchise agreement involving the provision of solid or hazardous waste services or soil and fill recycling services and in exchange for financial compensation, the person controls the operations or tariff of the franchisee, or provides advertising, operational guidance or advice, training or performance standards, vehicles or other equipment, or other assistance to the franchisee to enable the franchisee to meet its obligations pursuant to the franchise agreement.

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“Business concern” means any corporation, association, firm, partnership, sole proprietorship, trust, **limited liability company**, or other form of commercial organization.

“Certified subsurface evaluator” or “CSE” means an individual who is certified to perform subsurface evaluation of unregulated heating oil tank systems pursuant to the underground storage tanks rules at N.J.A.C. 7:14B-16.

“Consultant” means a person retained by a business concern to furnish specialized advice to the business concern regarding the provision of solid or hazardous waste services or the provision of soil and fill recycling services. An individual not otherwise disclosed as a key employee is a “consultant” if the individual is employed by such a business concern in any capacity and possesses the authority to make discretionary decisions concerning the provision of solid or hazardous waste services, or the provision of soil and fill recycling services. Where a professional license issued by the State is required for an individual to render specialized advice to a business concern regarding solid or hazardous waste services or soil and fill recycling services, and an individual possessing such license is retained by a business concern to provide such advice, that individual is not a “consultant”; provided the individual acts within the scope of such license and the advice rendered is limited to the matter for which the individual was retained.

...

“Disclosure statement” means a statement containing information about an applicant or licensee as set forth [in] at N.J.A.C. [7:26-16.4(d)] **7:26N-3.4**.

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[“Exempt transporter” shall mean a transporter which is exempt from the requirement to file a disclosure statement, pursuant to N.J.A.C. 7:26-16.3(d).]

“Engaging in the business” means deriving any type of benefit, financial or otherwise, through a contract or otherwise, from the collection, transportation, treatment, processing, brokering, storage, transfer, or disposal of solid waste or hazardous waste, or the collection, transportation, processing, brokering, storage, purchase, sale, or disposition of soil and fill recyclable material, singly or in combination — whether obtained from a location within or outside the State of New Jersey — by directly performing those services, or by securing the performance of those services for another, or on behalf of another, through the employment of an A-901-licensed subsidiary, A-901-licensed franchisee, or other A-901-licensed business concern.

“Family member” means spouse, domestic partner, partner in a civil union, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister, whether the individual is related by blood, marriage, or adoption.

“Institutional investor” means a retirement fund administered by a public agency for the exclusive benefit of Federal, State, or local public employees; government or government-owned entity; investment company registered pursuant to the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.); collective investment trust organized by banks pursuant to Part Nine of the Rules of the Comptroller of the Currency; closed end

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investment trust; chartered or licensed life insurance company or property and casualty insurance company; banking or other chartered or licensed lending institution; partnerships, funds, or trusts managed by or directed in conjunction with an investment adviser registered pursuant to the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.) or an institutional investment manager required to make filings pursuant to subsection (f) of section 13 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78m); institutional buyer, as defined pursuant to section 2 of the Uniform Securities Law (1997), N.J.S.A. 49:3-49; small business investment company licensed by the United States Small Business Administration pursuant to subsection (c) of section 301 of the Small Business Investment Act of 1958, as amended (15 U.S.C. § 681); private equity or venture capital entity having or managing aggregate capital commitments in excess of \$25,000,000; and other persons as the Office of the Attorney General may determine for reasons consistent with the policies of the Act.

“Key employee” means any individual employed **or otherwise engaged** by the applicant, the permittee, or [the] licensee, in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste [or], hazardous waste, **or soil and fill recycling** operations of the [business concern, but] **applicant, permittee, or licensee; any family member of an officer, director, partner, or key employee, employed or otherwise engaged by the applicant, permittee, or licensee; or any broker, consultant, or sales person employed or otherwise engaged by, or who does business with, the applicant, permittee, or licensee, with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the**

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applicant, permittee, or licensee. Key employee shall not include [employees]: **(1) an employee, who is not a family member**, exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, transfer, or disposal of solid waste or hazardous waste, **or soil and fill recycling services; or (2) a sales person employed by a publicly traded corporation or a direct or indirect subsidiary of a publicly traded corporation.**

["License" means the initial approval and first renewal by the Department of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State, except that "license" shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). "License" includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit. "License" shall include any registration statement approved for any person who transports any other hazardous waste in addition to hazardous wastes which are or contain precious metals.]

"Lessor" means a person required to file a disclosure statement pursuant to N.J.A.C. 7:26N-3.3.

"Licensed Site Remediation Professional" or "LSRP" shall have the same meaning as defined at N.J.A.C. 7:26I-1.3.

"Licensee" shall be defined as set forth [in] at N.J.S.A. 13:1E-[127.i]127.h.

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“Non-restricted soil and fill recyclable material” means non-water-soluble, non-putrescible, non-decomposable, inert solid material that is not mixed with solid waste as defined at N.J.A.C. 7:26-1.6, is not hazardous waste pursuant to N.J.A.C. 7:26G, and does not contain concentrations of any contaminant that exceed the residential soil remediation standards for the ingestion-dermal pathway or inhalation exposure pathway, whichever is more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards. Such material includes, but is not limited to, rock, soil, sand, gravel, and source-separated recyclable material, such as concrete, block, brick, glass and clay/ceramic products, that has been broken, crushed, or otherwise processed to be unrecognizable as a discrete manufactured product.

“Permittee” shall be defined as set forth [in] at N.J.S.A. 13:1E-127.i.

...

“Personal history disclosure form” means the form required to be filed with the disclosure statement pursuant to N.J.A.C. 7:26N-3.4(b), that contains information about the individuals required to be listed in an applicant’s or licensee’s disclosure statement, including without limitation, their family, education, and employment history. The form can be found at the Department’s website at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>.

“Publicly traded corporation” means a corporation or other legal entity, except a natural person, that:

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1. Has one or more classes of security registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78l);

2. Is an issuer subject to subsection (d) of section 15 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78o); or

3. Has one or more classes of securities traded in an open market in any foreign jurisdiction, provided that the Office of the Attorney General determines that the foreign exchange provides openness, integrity, and oversight in its operations sufficient to meet the intent of the Act, or that the securities traded on the foreign exchange are regulated pursuant to a statute of a foreign jurisdiction that is substantially similar, both in form and effect, to section 12 or subsection (d) of section 15 of the Securities Exchange Act of 1934, as amended.

“Registrant” means a business concern that submitted a registration form to the Department in accordance with N.J.S.A. 13:1E-127.1 and was issued a soil and fill recycling registration by the Department.

“Sales person” means a person that makes, or arranges for, sales for a business concern, for the collection, transportation, treatment, storage, processing, transfer, or disposal of solid or hazardous waste or the provision of soil and fill recycling services.

“Soil and fill recyclable material” means non-putrescible aggregate substitute, including, but not limited to, broken or crushed brick, block, concrete, or other similar manufactured material; soil or soil that may contain aggregate substitute or other debris or material, generated from land clearing, excavation, demolition, or redevelopment activities

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that would otherwise be managed as solid waste, and that may be returned to the economic mainstream in the form of raw materials for further processing or for use as fill material.

“Soil and fill recyclable material” shall not include:

- 1. Class A recyclable material, as defined at N.J.A.C. 7:26A-1.3;**
- 2. Class B recyclable material, as defined at N.J.A.C. 7:26A-1.3, that is shipped to a Class B recycling center approved by the Department for receipt, storage, processing, or transfer in accordance with N.J.S.A. 13:1E-99.34(b);**
- 3. Beneficial use material for which the generator has obtained a certificate of approval or that is categorically approved pursuant to N.J.A.C. 7:26-1.7(g); and**
- 4. Virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay, and other mined products.**

“Soil and fill recycling registration” means a registration issued by the Department to a business concern pursuant to N.J.S.A. 13:1E-127.1.

“Soil and fill recycling service” means the service provided by a person engaging in the business of the collection, transportation, processing, brokering, storage, purchase, sale, and/or disposition of soil and fill recyclable material. Pursuant to N.J.S.A. 13:1E-127.t, “soil and fill recycling service” shall not include the operation of a solar electric power generation facility at a properly closed sanitary landfill where soil and fill material has been previously deposited for permanent disposal.

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“Solid or hazardous waste service” means the service provided by a person engaging in the business of the collection, transportation, treatment, processing, brokering, storage, transfer, and/or disposal of solid waste or hazardous waste.

SUBCHAPTER 2. EXEMPTIONS

7:26N-2.1 Scope and applicability

This subchapter sets forth the persons who are exempt from the A-901 license requirements, as well as any applicable conditions for the exemption to apply.

7:26N-2.2 Exemptions

(a) The following persons are exempt from the requirements of this chapter. For the purposes of (a)2 below, as to solid waste activities “permit” has the meaning set forth at N.J.A.C. 7:26-1.4, and as to hazardous waste activities “permit” has the meaning set forth at N.J.A.C. 7:26G-4.2. For the purposes of (a)3 through 6 below, “permit” has the meaning set forth at N.J.A.C. 7:26G-4.2.

1. A department, division, agency, commission, or authority of the Federal government or any state, or any county, municipality, or agency thereof;

2. A person whose permit application or permit is solely for the collection, transportation, treatment, storage, processing, brokering, transfer, or disposal of solid waste or hazardous waste generated by that person; provided, however, that this

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exemption shall not apply where the waste generated is from a facility requiring an A-901 license and is not itself exempted pursuant to this subsection. For example, a corporation that operates a hazardous waste treatment facility organizes a hauling subsidiary to transport its “own” waste from the facility. If the facility must file a disclosure statement, the hauling subsidiary shall do so as well;

3. A person whose permit application or permit is for the operation of a hazardous waste facility, if at least 75 percent of the total design capacity of that facility is utilized to treat, store, or dispose of hazardous waste generated by that person;

4. A person whose permit application or permit is for the operation of a hazardous waste facility that is considered as such solely as the result of the reclamation, recycling, or refining of hazardous wastes that are or contain any of the following precious metals: gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, or copper;

5. A person whose permit application or permit is solely for the transportation of hazardous wastes that are or contain precious metals to a hazardous waste facility described at (a)4 above for the purposes of reclamation;

6. A person whose permit application or permit is solely for the collection, transportation, treatment, storage, or disposal of granular activated carbon used in the adsorption of hazardous waste;

7. A regulated medical waste generator for the treatment or disposal of regulated medical waste at any noncommercial incinerator or noncommercial facility in this State that accepts regulated medical waste for disposal;

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8. A Licensed Site Remediation Professional retained to perform remediation, such persons employed by the same firm as the LSRP who are performing remediation at the site and are managed, supervised, or periodically reviewed by the LSRP during the performance of the remediation, and the firm at which the LSRP is employed. This exemption applies only for the remediation for which the LSRP has been retained and only if the LSRP has complied with the requirements of the Regulations of the New Jersey Site Remediation Professional Licensing Board, N.J.A.C. 7:26I, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and

9. A certified subsurface evaluator retained to remediate a discharge from one or more unregulated heating oil tank systems at a specific contaminated site, such persons working with the CSE at the same firm to remediate the discharge, and the firm at which the CSE is employed. This exemption applies only for remediation which is conducted by the CSE at the site in conformity with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F.

(b) An LSRP or CSE that is exempt pursuant to (a)8 or 9 above and subcontracts for the transportation or disposal of solid waste or hazardous waste or the transportation or disposition of soil and fill recyclable material shall hire a person with an A-901 license to perform such services.

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7:26N-2.3 Non-restricted soil and fill recyclable material

(a) A person collecting, transporting, processing, brokering, storing, purchasing, and/or selling non-restricted soil and fill recyclable material, exclusively, may conduct such activities without an A-901 license if:

1. The person certifies to the Department by July 14 of each year, on the form available on the Department's website at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>, that the person:

i. Collects, transports, processes, brokers, stores, purchases, and/or sells only material that meets the definition of non-restricted soil and fill recyclable material; and

ii. Has a quality assurance/quality control (QA/QC) plan in place, as provided at (a)3 below;

2. The person complies with the terms and conditions of the certification submitted pursuant to (a)1 above, which shall include an acknowledgement that the person:

i. Has the burden of proving that the only material they are handling is non-restricted soil and fill recyclable material;

ii. Shall remove any non-compliant material; and

iii. Is subject to enforcement action, including civil and criminal penalties, for handling material other than non-restricted soil and fill recyclable material without an A-901 license; and

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3. The person has a QA/QC plan in place to ensure that each load of soil and fill material collected, transported, processed, brokered, stored, purchased, or sold by the person qualifies as non-restricted soil and fill recyclable materials. QA/QC plan development information is available at the Department's website at (cite to be added upon adoption).

(b) A person collecting, transporting, processing, brokering, storing, purchasing, and/or selling non-restricted soil and fill recyclable material, exclusively, need not submit the certification described at (a) above, and may conduct such activities without an A-901 license if the person:

1. Generates less than 15 cubic yards of non-restricted soil and fill recyclable material per day;

2. When maintaining a storage yard, stores less than 100 cubic yards of non-restricted soil and fill recyclable material on site at any time;

3. Transports non-restricted soil and fill recyclable material using a truck or trailer that has a loading capacity of less than 15 cubic yards; and

4. Where required by law, possesses a home improvement contractor license or trade license issued by the New Jersey Division of Consumer Affairs.

(c) A person acting in accordance with (a) or (b) above shall maintain records documenting compliance with the applicable conditions and requirements. Such records shall be kept for at least five years and be made available for immediate inspection upon the request of the Department, its representatives, or delegated agencies.

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SUBCHAPTER 3. APPLICATION, DISCLOSURE STATEMENT, ANNUAL UPDATE, AND TEMPORARY LICENSE

7:26N-3.1 Scope and applicability

(a) This subchapter sets forth the A-901 license and A-901 license application procedures and requirements, including disclosure statement, personal history disclosure form, information change, and annual update requirements, as well as review procedures and provisions for a temporary A-901 license.

(b) Except as otherwise provided by this chapter, a person providing, or intending to provide, solid or hazardous waste services or soil and fill recycling services in the State shall obtain an A-901 license from the Department and comply with all terms and conditions of the license. An A-901 license is nontransferable and shall be valid for only the length of time for which it is issued.

(c) A registrant shall file an application for an A-901 license in accordance with N.J.A.C. 7:26N-3.2 by (30 days after effective date of this rulemaking), unless the registrant requests and receives an extension from the Office of the Attorney General. A soil and fill recycling registration shall automatically expire and become invalid upon:

1. Failure by the registrant to submit a valid and administratively complete application for an A-901 license within the required timeframe; or

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2. A final determination by the Department regarding the registrant's A-901 license application.

(d) Except as provided at N.J.A.C. 7:26N-3.8, the Department will not issue an A-901 license until it has received and reviewed an investigative report from the Office of the Attorney General.

[7:26-16.3] 7:26N-3.2 [Licensure; filing of disclosure statement] Application submission and review

[(a) No person shall engage or continue to engage in the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste in this State without a license, or without complying with all the provisions of N.J.S.A. 13:1E-126 et seq., and with the provisions of this subchapter and of N.J.A.C. 7:26-16A. Every applicant and permittee shall file a disclosure statement with the Attorney General at the time the application is filed, unless exempted under (d) below. Applicants for siting under the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., shall file a disclosure statement at the time specified in N.J.A.C. 7:26-13A.6.]

[(b)] **(a) [Disclosure statements shall be filed] A person shall file an application for an A-901 license by submitting an original [and one conformed copy of all papers, including Personal History Disclosure Forms,] disclosure statement in accordance with N.J.A.C. 7:26N-3.4 to the Office of the Attorney General [at] by electronic mail to A901mail@law.njoag.gov or in hard copy to the following address:**

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New Jersey Department of Law and Public Safety

[Hughes Justice Complex]

[New Jersey] Division of Law

Environmental [Enforcement] **Permitting and Counseling** Section

A-901 Unit

[P.O.] **PO** Box 093

25 Market Street

Trenton, New Jersey 08625-0093

Payment of fees [is to] **shall** be made by check, payable to “Treasurer – State of New Jersey,” and sent to the following address:

New Jersey Department of **the** Treasury

Bureau of Revenue

[P.O.] **PO** Box 417

160 South Broad Street

Trenton, New Jersey 08625-0417

[1.] Additional [conformed] copies of disclosure statements, or any portions thereof, shall be supplied upon the request of **the Office of** the Attorney General.

[2. Within 30 days of receipt of a disclosure statement from an applicant, the Attorney General shall advise the applicant, if the disclosure statement is incomplete on its face, and shall specify what additional information is required.]

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[(c)] **(b)** Any [person] **individual** required to be listed in the disclosure statement, other than a nonsupervisory employee required to be listed [under] **pursuant to** N.J.A.C. [7:26-16.4(a)9] **7:26N-3.4(a)1vi**, shall be fingerprinted for identification and investigation purposes in accordance with procedures established by **the Office of** the Attorney General. **Instructions for fingerprinting can be found at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>.**

[1. Completed fingerprint cards shall be supplied by the applicant, permittee or licensee with the filed disclosure statement. The applicant, permittee or licensee shall arrange for the taking of fingerprints.

2. Fingerprints shall be supplied on fingerprint cards specified for the purpose by the Attorney General and made available by the Department. Fingerprints must be taken and verified by an employee of a police agency authorized to take fingerprints. (Most local police departments will provide this service. Some charge a fee).

(d) Exemptions: The following persons are exempted from the requirement to submit a disclosure statement:

1. Any department, division, agency, commission or authority of the Federal government or any State, or any county, municipality or agency thereof;

2. Any person whose application, permit or license is solely for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste generated by that person; provided, however, that this exemption shall not apply where the waste generated is from a facility requiring a license and not itself exempted under this subsection;

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- i. Example--a corporation that operates a hazardous waste treatment facility organizes a hauling subsidiary to transport its “own” waste from the facility. If the facility must file a disclosure statement, the hauling subsidiary must do so as well;
 - 3. Any person whose application, permit or license is for the operation of a hazardous waste facility, if at least 75 percent of the total design capacity of that facility is utilized to treat, store or dispose of hazardous waste generated by that person;
 - 4. Any person whose application, permit or license is for the operation of a hazardous waste facility which is considered as such solely as the result of the reclamation, recycling or refining of hazardous wastes which are or contain any of the following precious metals: gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, or copper;
 - 5. Any person whose application, permit or license is solely for the transportation of hazardous wastes which are or contain precious metals to a hazardous waste facility described in (d)4 above for the purposes of reclamation;
 - 6. Any person whose application, permit or license is solely for the collection, transportation, treatment, storage or disposal of granular activated carbon used in the absorption of hazardous waste; and
 - 7. Any regulated medical waste generator for the treatment or disposal of regulated medical waste at any noncommercial incinerator or noncommercial facility in this State that accepts regulated medical waste for disposal.]
- [(e)] (c) Where an applicant, permittee, or licensee owns or operates more than one facility or operation requiring [a] **an A-901** license[,], or is one of two or more business concerns requiring

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licenses [which] **that** are under common ownership or management, **and each business concern requires an A-901 license**, the business concerns may file disclosure statements concurrently as a group. In the case of such a group filing:

1. (No change.)
2. A cover letter [must] **shall** be supplied indicating the intent to file disclosure statements as a group and identifying the members of the group and their relationships;
- 3.[A] **The Office of the Attorney General will accept a** single set of [Personal History Disclosure Forms] **personal history disclosure forms** for any individual identified in any of the group's disclosure statements [will be accepted,] even though the name appears on more than one **disclosure** statement;
4. The Department in its discretion may authorize departures from the disclosure statement forms [so] to minimize duplicate reporting of information;
5. For the purposes of fee calculation [under] **pursuant to** N.J.A.C. [7:26-16.13] **7:26N-6.2**, the group shall be treated as a single applicant, permittee, or licensee; and
6. [A group filing may be made] **The business concerns may file as a group** even if one or more members of the [group] **business concerns** have previously filed disclosure statements separately. However, [those] members **of the group that have previously filed separately** will not be regarded as part of the group filing and [no refund of fees] **the State will not provide a refund** or credit for fees paid [shall be allowed on account of the earlier] **based on the prior** separate filings.

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(d) Within 30 days of receipt of a disclosure statement from an applicant, the Office of the Attorney General will advise the applicant if the disclosure statement is incomplete on its face and specify what additional information is required. Should the applicant fail to timely provide the requested information, the Office of the Attorney General will determine the application void and administratively closed and the State will not provide a refund or credit for fees paid.

(e) Once an application has been determined to be complete, the Office of the Attorney General will initiate review and upon completion, provide an investigative report and recommendation to the Department to either approve, with conditions or otherwise, the application for an A-901 license or deny the application.

(f) After receipt from the Office of the Attorney General, the Department will review the investigative report and recommendation as well as the application. The Department will then either approve and issue an A-901 license, with conditions or otherwise, or send a notice denying the application. An applicant whose application is denied may request an adjudicatory hearing in accordance with N.J.A.C. 7:26N-7.3.

(g) If an applicant withdraws an application during the review process, the State will not provide a refund or credit for fees paid.

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7:26N-3.3 Disclosure statement requirements for lessors

(a) A lessor that does not hold an A-901 license shall file a disclosure statement with the Department in accordance with N.J.A.C. 7:26N-3.2 and 3.4 within 30 days of any of the documents at (a)1 through 5 below. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, the lessee may provide written notice within 10 days of any of the below that the lessor is already an applicant whose disclosure statement is on file. The notice shall be sent by electronic mail to A901mail@law.njoag.gov or in hard copy to the following address:

New Jersey Department of Law and Public Safety

Division of Law

Environmental Permitting and Counseling Section

A-901 Unit

PO Box 093

25 Market Street

Trenton, New Jersey 08625-0093

- 1. Execution of an exclusive lease with a licensee for all of the lessor's solid waste, hazardous waste, or soil and fill recyclable material vehicles or operators;**
- 2. Execution of a lease with a licensee for 10 or more solid waste, hazardous waste, or soil and fill recyclable material vehicles and operators;**

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3. Execution of a lease with a licensee for solid waste, hazardous waste, or soil and fill recyclable material vehicles where the leased vehicles represent 20 percent or more of the licensee's fleet of collection or transport vehicles;

4. Execution of a lease with a licensee for 20 or more solid waste, hazardous waste, or soil and fill recyclable material operators; or

5. Directive of the Office of the Attorney General to file a disclosure statement.

(b) The lessor, as set forth at (a) above, shall be deemed to be a person with a beneficial interest in the business of the licensee, and the Department or the Office of the Attorney General may, pursuant to N.J.S.A. 13:1E-128.b, demand additional information from the licensee or lessor.

[7:26-16.4] 7:26N-3.4 Content of a disclosure statement

(a) [The] **An applicant, permittee, licensee, or lessor shall file a** disclosure statement [shall be filed] on forms supplied by the [Division of Law and] **Office of the Attorney General. The disclosure statement** shall include the following information:

1. The full name, [business] **home** address, [home] **business** address, **telephone number, email address**, date of birth, [social security] **and Social Security** number [and/or] **or** Federal [Employer Identification Number of the] **employer identification number or, where applicable, both, for the following persons:**

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i. **The applicant, permittee, or licensee, [of any officers, directors, partners, or key employees thereof and all persons] or lessor, as applicable;**

ii. **Each officer, director, and/or partner of the applicant, permittee, licensee, or lessor, as applicable;**

iii. **Each key employee of the applicant, permittee, licensee, or lessor;**

iv. **Any person holding any equity in, or debt liability of [that business concern], the applicant, permittee, licensee, or lessor, or, if the [business concern] applicant, permittee, licensee, or lessor is a publicly traded corporation, all persons holding more than five percent of the equity in, or the debt liability of [that business concern], the applicant, permittee, licensee, or lessor, except [that where the debt liability is held by a chartered lending institution, the applicant, permittee or licensee need only supply the name and business address of the lending institution;] where such person is:**

(1) An institutional investor, in which instance, the required information is limited to the name and business address of the institutional investor and the basis upon which the institutional investor qualifies as an institutional investor; or

(2) A chartered lending institution, in which instance, the required information is limited to the name and business address of the lending institution;

2. [The] **For any business concern disclosed pursuant to (a)1i through iv above, the full name, [business] home address, [home] business address, telephone number, email**

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address, date of birth, [social security] and Social Security number or Federal [of all officers, directors, or partners of any business concern disclosed in the disclosure statement and the names and address of all persons] employer identification number or, where applicable, both, for the following persons:

- i. Each officer, director, and/or partner, as applicable;**
- ii. Any family member employed by, or otherwise engaged by or with, the business concern;**
- iii. Any consultant employed by, or otherwise engaged by or with, the business concern;**
- iv. Any sales person employed by, or otherwise engaged by or with, the business concern;**
- v. Each key employee of the business concern;**
- vi. Any person holding any equity in, or the debt liability of, [any] the business concern [so disclosed, or, if the business concern is a], except where such person is:**

(1) A publicly traded corporation[, all persons holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant, permittee or licensee need only supply the name and business address of the lending institution], in which instance, the required information is limited to the name and business address of the publicly traded corporation and copies

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of its annual filings with the Securities and Exchange Commission, or its foreign equivalent;

(2) An institutional investor, in which instance, the required information is limited to the name and business address of the institutional investor and the basis upon which the institutional investor qualifies as an institutional investor; or

(3) A chartered lending institution, in which instance, the required information is limited to the name and business address of the lending institution;

3. The full name, home address, business address, telephone number, email address, date of birth, and Social Security number or Federal employer identification number or, where applicable, both, for:

i. Any person employed by the applicant, permittee, licensee, or lessor in its solid or hazardous waste or soil and fill recycling operations in New Jersey not otherwise listed at (a)1 and 2 above; and

ii. Any other person required to be disclosed by the Department or the Office of the Attorney General;

[3.] 4. The full name and business address of any [company which collects, transports, treats, stores, transfers or disposes of solid waste or hazardous waste] **business concern that provides solid or hazardous waste services or soil and fill recycling services**, in which the applicant, permittee [or], licensee, **or lessor** holds an equity interest;

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[4.] **5.** A description of the experience and credentials in, including any past or present licenses for[,] the [collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste] **provision of solid or hazardous waste services, or the provision of soil and fill recycling services**, possessed by the applicant, permittee [or], licensee, **or lessor**, or by the key employees, officers, directors, or partners thereof;

[5.] **6.** A listing and explanation of any notice[s] of violation or prosecution, administrative order[s] or license revocation[s] issued by any state or Federal authority, in the 10 years immediately preceding the filing of the application, **or disclosure statement, whichever is later**, which [are] **is** pending or [have] **has** resulted in a finding or a settlement of a violation of any law or regulation relating to the [collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste] **provision of solid or hazardous waste services or the provision of soil and fill recycling services** by the applicant, permittee [or], licensee, **lessor**, or by any key employee, officer, director, or partner thereof;

[6.] **7.** A listing and explanation of any judgment of liability or conviction [which] **that** was rendered, pursuant to **the laws of this State**, **or** any State or Federal statute or local ordinance, against the applicant, permittee [or], licensee, **or lessor**, or against any key employee, officer, director, or partner thereof, except for any violation of [Title 39 of the Revised Statutes (N.J.S.A.)] **N.J.S.A. Title 39**, other than a violation of the provisions [of] **at N.J.S.A. 39:5B-18 et seq., 39:5B-25 et seq., or 39:5B-30 et seq.**, or comparable motor vehicle offenses in jurisdictions other than New Jersey;

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[7.] **8.** A listing of all labor unions and trade and business associations in which the applicant, permittee [or], licensee, **or lessor** was a member or with [which] **whom** the applicant, permittee [or], licensee, **or lessor** had a collective bargaining agreement during the 10 years preceding the date of filing of **the application or** disclosure statement, **whichever is later**;

[8.] **9.** A listing of any [agencies] **agency** outside of New Jersey [which] **that** had regulatory responsibility over the applicant, permittee [or], licensee, **or lessor** in connection with [its collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste] **the provision of solid or hazardous waste services or soil and fill recycling services**;

[9. A listing of all persons employed by the applicant, permittee or licensee in its solid waste or hazardous waste operations in New Jersey and not otherwise required to be listed, and as to each, the full name, home address, date of birth and social security number;

10. As to every person required to be listed in the disclosure statement (other than holder of debt liability or non-supervisory employee required to be listed under N.J.A.C. 7:26-16.4(a)9), a completed Personal History Disclosure Form or forms supplied by the Department, including information about family, education and employment history. Holders of debt liability or non-supervisory employees may be required to provide Personal History Disclosure Forms if this information is requested by the Department or the Attorney General; and]

10. The full name and business address of any person that leases real property or equipment used for the provision of solid or hazardous waste services, or the provision of soil and fill recycling services, to the applicant, permittee, or licensee;

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11. A listing and explanation of any civil litigation pending between the applicant, permittee, licensee, or lessor, or any key employee, officer, director, or partner thereof, and any other person who provides solid or hazardous waste services or soil and fill recycling services, related to the provision of solid or hazardous waste services, or soil and fill recycling services; and

[11.] **12.** Any other information **the Office of** the Attorney General [or the Department] may require that relates to the competency, reliability, honesty, integrity, or good character of the applicant, permittee [or], licensee, **or lessor.**

(b) The disclosure statement shall include a personal history disclosure form for each individual required to be disclosed pursuant to (a)1, 2, and 3 above, other than a holder of debt liability or non-supervisory employee required to be listed pursuant to (a)3i above, on a form developed by the Office of the Attorney General and supplied by the Department. The personal history disclosure form shall contain all information about the individual required by the Department or the Office of the Attorney General, including without limitation, information about the individual's family, education, and employment history. Each personal history disclosure form shall be signed by the individual described therein and submitted with the disclosure statement. A holder of debt liability or non-supervisory employee may be required to provide personal history disclosure forms if this information is requested by the Department or the Office of the Attorney General.

[(b)] (c) The disclosure statement and all forms submitted therewith shall [be sworn to or affirmed and subscribed and dated by the applicant, permittee, licensee or the author before a

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person legally competent to take an oath or affirmation, who shall himself subscribe and date the signature of affiant and indicate the basis of his authority to take oaths and affirmation. Personal History Disclosure Forms shall be sworn to or affirmed and subscribed in the same manner, by the individual and the oath-taker. The] **contain the** following statement [shall] immediately [precede] **preceding** the signature of the affiant: “I swear (or affirm) that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.” **The disclosure statement and all forms submitted therewith shall be sworn to, or affirmed and subscribed, before a person legally competent to take an oath or affirmation, who shall subscribe and date the signature of the affiant and indicate the basis of their authority to take oaths and affirmations.**

[(c)] **(d)** Disclosure statements **and all forms submitted therewith** shall be signed [by each of the following] **as follows:**

1. [If of] **For** a corporation, by [its president, its chairman of the board, any other chief executive officer thereof, its secretary and its treasurer.] **a responsible corporate official. For purposes of this section, a responsible corporate official means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;**

2. **For a limited liability company, by a responsible company official. For the purposes of this section, a responsible company official means an individual who has the**

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authority to bind the limited liability company to the provisions of this chapter, including, without limitation, an officer, member, or manager of the limited liability company;

[2.] **3.** [If of] **For** a partnership, by each [of its partners;] **partner, or** if [of] a limited partnership, [only] by [each of its] **the** general partner[s];

[3. If of any other business concern, by its chief executive officer, its secretary and its treasurer.

4. If of a natural person, by the person himself or herself.]

4. For a sole proprietorship, by the proprietor; and

5. For an individual, by the individual.

[(d) Personal History Disclosure Forms shall be signed by the individual described thereon.]

(e) All [signatures] **documents** shall be signed [in ink] and dated on original papers, but **signatures** may be photocopied, typed, stamped, or printed on copies. The name and address of the signatory shall be typed, stamped, or printed beneath each signature.

[7:26-16.6] **7:26N-3.5** Change of information on disclosure statement[; sales or transfers of ownership]

(a) [Where] **If** an applicant or permittee has an application pending before the Department and any of the information required to be included in a disclosure statement changes, or any additional information should be added after the filing of the statement, the applicant or permittee shall provide that information to the Department and **the Office of** the Attorney

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General, in writing, within 30 days of the change or addition **and in any subsequent annual update filed pursuant to N.J.A.C. 7:26N-3.7.**

(b) [Licensees] **A licensee** shall report to the Department and **the Office of** the Attorney General within 30 days any changes or additions in the following information required to be included in the disclosure statement:

1. (No change.)
2. The name[s or identities] **or identity** of any officer[s], director[s], partner[s or] **and/or** key employee[s] of the licensee;
3. [Unless previously disclosed under (i) below, the names or identities] **The name or identity** of any holder[s] of equity in or debt liability of the licensee, if they would have been required on the original disclosure statement; except that **a** holder[s] of less than five [per cent] **percent** of the debt liability of the licensee need only be reported [on] **in** the annual update [described in (c) below] **filed pursuant to N.J.A.C. 7:26N-3.7;**
4. The name and business address of any [company which collects, transports, treats, stores, transfers or disposes of solid waste or hazardous waste] **business concern that provides solid or hazardous waste services or provides soil and fill recycling services** in which the licensee acquires an equity interest;
5. A listing and explanation of any notice[s] of violation, administrative order[s], or license or permit revocation[s] issued by any State or Federal authority, except that **a** notice[s] issued by the Department and **a** notice[s] demanding a penalty of less than \$5,000 and not

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involving an intent to revoke a license or permit need only be reported [annually] **in the annual update filed pursuant to N.J.A.C. 7:26N-3.7;**

6. Any criminal charge or conviction and any conviction for a disorderly persons offense filed or entered against the licensee or against any key employee, officer, director, equity holder required to be disclosed, or partner thereof, other than for a motor vehicle offense; **and**

7. (No change.)

[(c) All changes to the information contained in a permittee's or licensee's disclosure statement currently on file with the Department and the Attorney General shall be reported on an annual update to be filed with the Division of Law at the time of the permittee's or licensee's annual renewal of its registration with the Department; provided, however, that amending or updating of Personal History Disclosure Forms, other than to report a criminal or disorderly persons conviction, or the filing of a criminal or disorderly persons charge, is not required unless specifically requested by the Department or Attorney General.]

(c) A lessor shall provide to the Department and the Office of the Attorney General within 30 days any changes or addition to the following information required to be included in a lessor's disclosure statement:

- 1. The name of the lessor;**
- 2. The name or identity of any officer, director, partner, and/or key employee of the lessor;**
- 3. The name or identity of any holder of equity in or debt liability of the lessor, if they would have been required on the original disclosure statement; except that a holder of**

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less than five percent of the debt liability of the lessor need only be reported in the annual update filed pursuant to N.J.A.C. 7:26N-3.7;

4. The name and business address of any business concern that provides solid or hazardous waste services or provides soil and fill recycling services in which the lessor acquires an equity interest;

5. A listing and explanation of any notice of violation, administrative order, or license or permit revocation issued by any State or Federal authority, except that a notice issued by the Department and a notice demanding a penalty of less than \$5,000 and not involving an intent to revoke a license or permit need only be reported in the annual update filed pursuant to N.J.A.C. 7:26N-3.7;

6. Any criminal charge or conviction and any conviction for a disorderly persons offense filed or entered against the lessor or against any key employee, officer, director, equity holder required to be disclosed, or partner thereof, other than for a motor vehicle offense; and

7. Any collective bargaining agreement entered into with a labor union not previously listed on a disclosure statement, and any new membership in a trade or business association.

(d) A licensee shall provide the following information to the Department and the Office of the Attorney General, within the time frame set forth below, when converting its business concern from one business form to another pursuant to N.J.S.A. 14A:11A-1 or 2:

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1. Within 30 days of filing, a copy of the certificate of conversion and certificate of incorporation filed with the State pursuant to N.J.S.A. 14A:11A-1(4) converting the licensee’s business concern from an “other entity,” as defined at N.J.S.A. 14A:11A-1(1), to a domestic corporation. The licensee shall also submit a copy of the plan of conversion, evidence of its written approval and evidence of the approval of the certificate of incorporation required pursuant to N.J.S.A. 14A:11A-1(3);

2. Within 30 days of filing, a copy of the certificate of conversion filed with the State pursuant to N.J.S.A. 14A:11A-2(4) or (5), as applicable, converting a licensee’s business concern from a domestic corporation to an “other entity,” as defined at N.J.S.A. 14A:11A-2(1). The licensee shall also submit a copy of the plan of conversion, the resolution of the board of directors approving that plan, a copy of the notice to the shareholders of the plan, and evidence of the plan’s approval by the shareholders required pursuant to N.J.S.A. 14A:11A-2(3); and

3. Within 30 days of receipt, a copy of a certificate of authority to transact business in the State issued to a foreign corporation pursuant to N.J.S.A. 14A:13-6.1(3) following the conversion of an “other business entity,” as defined at N.J.S.A. 14A:1-2.1(q), authorized to do business in the State to a foreign corporation, and a copy of the application filed with the State pursuant to N.J.S.A. 14A:13-6.1(1) and all attachments thereto.

[(d)] (e) [Changes] **Any change** of information required to be filed within 30 days pursuant to [(b)] (a) **through (d)** above may be filed by letter, on amendment forms supplied by [the Department] **the Office of the Attorney General and available at (cite to be added upon**

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adoption), or on copies of applicable portions of disclosure statement forms. The person filing the report of change shall swear to or affirm the truth of the information contained therein **in the manner prescribed for original disclosure statements at N.J.A.C. 7:26N-3.4(b).**

[(e) Annual updates shall be filed on amendment forms supplied by the Department, or on copies of applicable portions of the disclosure statement or Personal History Disclosure Form. Annual updates shall include a recapitulation of any changes previously reported on a 30-day notice.]

(f) [Changes] **Any change** of information shall be filed by submitting an original and one conformed copy to the Department[, which shall transmit copies to the Attorney General]. **The Department will transmit copies to the Office of the Attorney General.**

[(g) Annual updates shall be sworn to or affirmed and subscribed in the manner prescribed for original disclosure statements at N.J.A.C. 7:26-16.4(b).]

[(h)] (g) [Where an applicant, permittee or licensee has submitted multiple amendments to its disclosure statement; or the information concerning an applicant, permittee or licensee has undergone substantial change; or if the disclosure statement currently on file with the Department is more than five years old, the] **The Department**[, in its discretion,] may require the applicant, permittee, [or] licensee, **or lessor** to file a new disclosure statement[.] **if:**

1. An applicant, permittee, licensee, or lessor has submitted multiple amendments to its disclosure statement;

2. The information concerning an applicant, permittee, licensee, or lessor has undergone substantial change; or

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3. The disclosure statement on file with the Office of the Attorney General is more than five years old.

(h) If the applicant, permittee, licensee, or lessor adds a new person who is required to be listed in the disclosure statement, that person is subject to the same disclosure requirements as set forth in this subchapter and, if applicable, the applicant, permittee, licensee, or lessor shall be required to pay an additional fee as specified at N.J.A.C. 7:26N-6.

(i) When a permittee or licensee leases ten (10) or more solid waste vehicles and operators from a single lessor which is not a permittee or licensee, or when such leased vehicles represent at least 20 percent of the permittee's or licensee's fleet of solid waste vehicles, the permittee or licensee shall, within 30 days of entering into the lease, file, or cause the lessor to file, a business concern disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(j) Permittees and licensees which lease 20 or more solid waste operators from a single lessor which is not also a permittee or licensee, shall file, or cause the lessor to file, a business concern

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disclosure statement for the lessor, and personal history disclosure statements for directors, officers, key employees, partners and equity holders of the lessor, within 30 days of entering into the lease. Such a lessor shall be deemed to be a person with a beneficial interest in the business of the permittee or licensee, and the Department or the Attorney General may, pursuant to N.J.S.A. 13:1E-128(b), demand additional information from the licensee or permittee, or lessor. If the lessor is an applicant, then in lieu of filing duplicate disclosure statements, lessees may instead provide written notice within 10 days to the Division of Law, Environmental Enforcement Section, A-901 Unit that the lessor is already an applicant whose disclosure statement is on file.

(k) Permittees and licensees who have 10 or less leased solid or hazardous waste vehicles and/or operators in their total fleet shall be exempt from the business concern disclosure statement requirements pursuant to N.J.A.C. 7:26-16.6(i) and (j).

(l) No permittee or licensee shall enter into a management agreement with a business concern which is not authorized to conduct that solid waste activity as a permittee or licensee. For the purposes of this section, a management agreement is an agreement under which a business concern assumes effective management and control of a permittee or licensee.]

[7:26-16.7] 7:26N-3.6 Additional information; duty to cooperate

(a) [All applicants, permittees and licensees shall have] **Each applicant, permittee, licensee, and lessor has** the continuing duty to provide any assistance or information requested by the

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Department or **the Office of** the Attorney General, and to cooperate in an inquiry or investigation conducted by **the Office of** the Attorney General or the State Commission of Investigation and any inquiry, investigation, or hearing conducted by the Department. If, upon issuance of a formal request to answer any inquiry or produce information, evidence, or testimony, any applicant, permittee, or licensee refuses to comply, [the application of the business concern for a license may be denied, or the license of that business concern may be revoked by] the Department **will deny the person's application for an A-901 license or revoke the person's A-901 license.**

(b) Upon request, the applicant, **permittee, licensee, or lessor** shall supply [physical] **all** evidence **requested by the Department or the Office of the Attorney General**, including, but not limited to, **physical evidence, such as** photographs or handwriting exemplars of any individual listed on the disclosure statement or any amendment thereof.

7:26N-3.7 Annual update

(a) An applicant, permittee, licensee, and lessor shall annually update its disclosure statement and personal history disclosure forms for its A-901 license on or before June 1 each year. The annual update shall include all changes of information required to be reported pursuant to N.J.A.C. 7:26N-3.5; however, updating personal history disclosure forms, other than to report a criminal or disorderly persons conviction, or the filing of a criminal or disorderly persons charge, is not required unless specifically requested by the Department or the Office of the Attorney General.

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- (b) An annual update shall be filed on a form supplied by the Office of the Attorney General and available at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>. The annual update shall include a recapitulation of any changes previously reported on a 30-day notice pursuant to N.J.A.C. 7:26N-3.5 and shall be accompanied by the applicable fee set forth at N.J.A.C. 7:26N-6.**
- (c) An annual update shall be submitted pursuant to N.J.A.C. 7:26N-3.2 for original applications and sworn to or affirmed and subscribed in the manner prescribed for original disclosure statements at N.J.A.C. 7:26N-3.4(b).**
- (d) If a licensee or permittee fails to submit an annual update, the Department may revoke its A-901 license. The Department will provide 30 days' notice of its intent to revoke. A licensee or permittee may request a hearing in accordance with N.J.A.C. 7:26N-7.3 to contest the notice of revocation.**
- (e) If an applicant fails to submit an annual update, the Department and the Office of the Attorney General may suspend review of its A-901 license application until the annual update is submitted. Should the applicant fail to timely provide the annual update during the review process, the Office of the Attorney General retains discretion to cease review and administratively close the application or continue review and render a recommendation to the Department, whereupon the Department will then either approve and issue a license, conditioned or otherwise, or send a notice denying the application. The State will not provide a refund or credit for fees paid, regardless of the disposition of the application.**

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[7:26-16.5] **7:26N-3.8** [Investigative report by Attorney General] **Temporary A-901 license**

[(a) The Department shall not issue any license to an applicant, permittee or licensee until it has received and reviewed an investigative report from the Attorney General.

(b) In conducting a review of the application, the Department shall include a review of the disclosure statement and investigative report.]

[(c)] **(a)** [In its discretion] **While review of an A-901 license application is pending**, the Department may issue a temporary **A-901 license for the provision of solid or hazardous waste services or soil and fill recycling services** for not more than six months at a time to an applicant or permittee if [such issuance is necessary to] **the Department determines that such license will** prevent or ameliorate a hazard to the public health, safety, or the environment[; to], prevent economic hardship to a public body[;], or [the issuance of a temporary license] otherwise serves some interest of the general public. The issuance of a temporary **A-901 license** in all cases is conditional upon the applicant or permittee signing an agreement that it will cease **providing** its solid [waste] or hazardous waste [operations] **services or soil and fill recycling services** upon the expiration date of the temporary **A-901 license** if **it is** not renewed by the Department and [a] **an A-901 license** has not been approved by the Department, or upon order of the Department.

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[(d)] **(b)** In its discretion, the Department[,] may renew a temporary **A-901** license for incremental periods of six months at a time prior to its receipt and review of an investigative report from **the Office of** the Attorney General, if **the Department determines that** such renewal [is necessary to] **will** prevent or ameliorate a hazard to the public health, safety, or to the environment[; to], prevent economic hardship to a public body[;], or [if the renewal of a temporary license] otherwise serve some interest of the general public. The renewal of a temporary **A-901** license in all cases is conditional upon the applicant or permittee signing an agreement that it will cease **providing** its solid [waste] or hazardous waste [operations] **services or soil and fill recycling services** upon the expiration date of the temporary **A-901** license if not renewed by the Department and [a] **an A-901** license has not been approved by the Department, or upon order of the Department.

7:26N-3.9 Prohibited transactions

(a) A licensee shall not enter into a management agreement with a business concern that is not authorized to conduct solid or hazardous waste services or soil and fill recycling services as a permittee or an A-901 licensee. For the purposes of this section, a management agreement is an agreement through which a person assumes effective management and control of a licensee.

(b) A licensee shall not engage in a business transaction for the provision of solid or hazardous waste services or soil and fill recycling services with a person not authorized

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pursuant to the Act and this chapter to conduct those services, including without limitation, an unlicensed franchisor or unlicensed broker.

SUBCHAPTER 4 DISQUALIFICATION, LICENSE DENIAL, AND REVOCATION

[7:26-16.8] 7:26N-4.1 Disqualification criteria

(a) [No license shall be approved by the] **The Department will not approve an application for an A-901 license** unless the Department finds that the applicant or permittee, in any prior performance record [in the collection, transportation, treatment, storage, transfer or disposal] **involving the provision of solid [waste] or hazardous waste services, or the provision of soil and fill recycling services,** has exhibited sufficient integrity, reliability, expertise, and competency to [engage in the collection or transportation of solid waste or hazardous waste, or to operate the solid waste facility or hazardous waste facility, given the potential economic consequences for affected counties, municipalities and ratepayers or significant adverse impacts upon human health and the environment which could result from the irresponsible participation therein or operation thereof] **provide solid or hazardous waste services or soil and fill recycling services,** or if no prior record exists, that the applicant or permittee is likely to exhibit that integrity, reliability, expertise, and competence **to provide solid or hazardous waste services or soil and fill recycling services.**

(b) [No license shall be approved by the] **The Department will not approve an application for an A-901 license** if any person required to be listed in the disclosure statement, or otherwise

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shown to have a beneficial interest in the business of the applicant, the permittee, or the licensee, **or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles, or other equipment used for the provision of solid or hazardous waste services or the provision of soil and fill recycling services, has been debarred from the provision of solid or hazardous waste services, or the provision of soil and fill recycling services in the State or any other jurisdiction outside of the State, or** has been convicted of any of the following crimes under the laws of New Jersey or the equivalent thereof [under] **pursuant to** the laws of any other jurisdiction:

1.-17. (No change.)

18. Violation of criminal provisions of the [“]New Jersey Antitrust Act,[“] N.J.S.A. 56:9-1 et seq.

19.-20. (No change.)

21. Perjury, false swearing, or any other offense set forth in Chapter 28 of the New Jersey Code of Criminal Justice, N.J.S.A. 2C:28-1 et seq.;

22. Violation of the criminal provisions of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., or 48:13A-6.1[.]; **or**

23. Aggravated assault.

(c) Notwithstanding the provisions [of] **at** (b) above **and N.J.A.C. 7:26N-4.3**, [no applicant, permittee or licensee shall be denied a] **the Department will not deny an A-901** license on the basis of a conviction of any [individual] **person** required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee, or

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licensee, or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles, or other equipment used for the provision of solid or hazardous waste services, or the provision of soil and fill recycling services, for any of the offenses enumerated [in] at (b) above as disqualification criteria, if the person has affirmatively demonstrated by clear and convincing evidence [his or her] **their** rehabilitation. In determining whether a **debarred or** convicted individual has affirmatively demonstrated rehabilitation, the Department [shall] **will** request a **written** recommendation thereon from **the Office of** the Attorney General, and [shall] **will** consider the following factors and weigh them in [light] **consideration** of the policies set forth [in N.J.A.C. 7:26-16.20 et seq.] **at N.J.A.C. 7:26N-4.5 through 4.8:**

1. The nature and responsibilities of the position which a **debarred or** convicted individual would hold;
2. The nature and seriousness of the **debarment or** offense;
3. The circumstances under which **the debarment was imposed, or** the offense occurred;
4. The date of the **debarment or** offense;
5. The age of the **debarred or convicted** individual when the **debarment or** offense was committed;
6. Whether the **cause of the debarment or** offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the **debarment or** offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational

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schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the [applicant] **debarred or convicted individual** under their supervision **since the debarment or conviction; and**

9. The full criminal record of the debarred or convicted individual, any record of civil or regulatory violations or notices or any complaints alleging any such civil or regulatory violations, or any other allegations of wrongdoing.

(d) [No license shall be approved by the] **The Department will not approve an A-901 license if the Office of the Attorney General determines that there is a reasonable suspicion to believe that a person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee, or licensee, or to have rented or leased to the applicant, the permittee, or the licensee at any cost or at no cost, real property, vehicles, or other equipment used to provide solid or hazardous waste services or soil and fill recycling services, does not possess a reputation for good character, honesty, and integrity, and that person or the applicant, permittee, or licensee fails, by clear and convincing evidence, to establish [his] their reputation for good character, honesty, and integrity.**

(e) [No license shall be approved by the] **The Department will not approve an A-901 license if the Office of the Attorney General determines that any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant, permittee, or licensee, or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles, or other equipment used to provide solid or hazardous waste services or soil and fill recycling services, has been identified by the**

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State Commission of Investigation or the Federal Bureau of Investigation as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel, where such identification, membership, or association creates a reasonable belief that the participation of that person in any activity required to be licensed [under this act] **pursuant to the Act** would be “inimical” to the policies of [N.J.S.A. 13:1E-126 et seq.] **the Act**. For the purposes of this subsection, “career offender” means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and a “career offender cartel” means any group of persons who operate together as career offenders. Also, for purposes of this subsection, association of a person required to be listed in a disclosure statement, or shown to have a beneficial interest in the business of the applicant, permittee, or licensee, **or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles, or other equipment used to provide solid or hazardous waste services or soil and fill recycling services**, with career offenders or members of career offender cartels, will be considered inimical to the policies of [N.J.S.A. 13:1E-126 et seq.] **the Act** where the nature and quality of the association create a risk that the career offender or member of a career offender cartel might exercise some degree of influence or control over the applicant with regard to operations required to be licensed [under N.J.S.A. 13:1E-126 et seq.] **pursuant to the Act** or other business incidental to such operations.

(f) [No license shall be approved by the Department with respect to the approval of an initial license,] **The Department will not initially approve an A-901 license** if there [are current

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prosecutions or pending charges] **is a pending prosecution or charge** in any jurisdiction against any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant or the permittee, **or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles, or other equipment used to provide solid or hazardous waste services or soil and fill recycling services**, for any of the crimes enumerated [in] **at** (b) above[, provided]; however, [that] at the request of the applicant, permittee, or the person charged, the Department [shall] **will** defer decision upon such application during the pendency of such **prosecution or charge**.

(g) [No license shall be approved by the] **The Department will not approve an A-901 license** if any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant[, permittee] or the licensee, **or to have rented or leased to the applicant, the permittee, or the licensee at any or no cost real property, vehicles or other equipment used to provide solid or hazardous waste services or soil and fill recycling services**, has pursued economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State, where such pursuit creates a reasonable belief that the participation of that person in any activity required to be licensed [under] **pursuant to** this chapter would be inimical to the policies of [N.J.S.A. 13:1E-126 et seq.] **the Act**. For purpose of this subsection, “occupational manner or context” means the systematic planning, administration, management, or execution of an activity for financial gain. Also, for **the** purposes of this subsection, pursuit of economic gain in an occupational manner or context which is in violation of the criminal or civil public policies of this State will be

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considered [“]inimical[”] to the policies of the [act] **Act** where the nature and quality of the activity in question create a risk that the applicant will, after licensure, engage in civil or criminal violations of the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., the New Jersey Antitrust Act, N.J.S.A. 56:9-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or other New Jersey environmental statutes and their implementing regulations while engaged in any activity required to be licensed [under N.J.S.A. 13:1E-126 et seq.] **pursuant to the Act** or other business incidental to such activities.

(h) [No license shall be approved by the] **The Department will not approve an A-901 license** if the applicant, permittee, or licensee refuses to comply with inquiries as required [under] **pursuant to N.J.A.C. [7:26-16.7] 7:26N-3.6.**

(i) [No license shall be approved by the] **The Department will not approve an A-901 license** if the applicant, permittee, or licensee in its application, disclosure statement, or any other [materials] **material** supplied to the Department or **to the Office of** the Attorney General [shall supply] **provides** information [which] **that** is untrue or misleading as to a material fact pertaining to the disqualification criteria.

(j) [A license may be approved by the] **The Department may approve an A-901 license** for any applicant or permittee if the information contained within the disclosure statement and investigative report, including any determination made by **the Office of** the Attorney General concerning the character, honesty, and integrity of any person required to be listed in the disclosure statement, or otherwise shown to have a beneficial interest in the business of the applicant or permittee, would not require disqualification pursuant to (a), (b), [(c)] **or** (d)[, (e),

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(g), (h) or] **through (i) above. The Department may issue an A-901 license subject to such conditions, restrictions, limitations, or covenants as the Department determines necessary to accomplish the objectives of the Act.**

[(k) A license approved by the Department for any applicant, licensee or permittee pursuant to this section is nontransferable and shall be valid only for the length of time for which it is given.]

[7:26-16.9] **7:26N-4.2 Cause for [license] denial or revocation**

(a) In addition to any other cause set forth in this chapter, [any license may be revoked by] the Department **may deny or revoke any A-901 license** for any of the following causes:

1. Any cause [which] **that** would require disqualification, pursuant to [N.J.S.A. 7:26-16.8] **N.J.A.C. 7:26N-4.1**, from receiving [a] **an A-901** license upon original application;
2. Fraud, deceit, or misrepresentation in securing [the] **or maintaining an A-901** license, or in the conduct of the licensed activity;
3. **Failure to comply with the duty to cooperate pursuant to N.J.A.C. 7:26N-3.6;**
- [3.] 4. [Offering, conferring or agreeing] **Offer or agreement** to confer **or conferment** of any benefit to induce any other person to violate the provisions of [N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1E-126 et seq.] **the Act, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.,** or of any other law relating to the [collection, transportation, treatment, storage, transfer or disposal] **provision** of solid [waste] or hazardous waste **services, or the provision of soil and fill recycling services,** or of any rule **or regulation** adopted pursuant thereto;

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[4.] **5.** Coercion of a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee or licensee; [or]

[5.] **6.** [Preventing, without authorization of the Department,] **Unauthorized prevention** of any permittee or licensee from disposing of solid waste or hazardous waste at a licensed, authorized, or approved treatment, storage, transfer, or disposal facility;

7. Termination of any solid waste facility permit pursuant to N.J.A.C. 7:26-2.6(c);

8. Termination of any hazardous waste facility permit pursuant to 40 CFR 270.43 and N.J.A.C. 7:26G-12.1(a);

9. Revocation of any solid waste transporter registration pursuant to N.J.A.C. 7:26-3.2(m);

10. Revocation of any hazardous waste transporter registration pursuant to N.J.A.C. 7:26G-7.2(a)10;

11. Revocation of a certificate of public convenience and necessity pursuant to N.J.A.C. 7:26H-1.11;

12. Failure to file an update as directed by the Office of the Attorney General or the Department; or

13. Failure to pay all fees or penalties due and owing pursuant to this chapter or other rule or law.

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[7:26-16.12] **7:26N-4.3** License **denial or** revocation; ineligibility for reapplication

(a) The Department will not issue [a license] **an A-901 license** to any [person who] **business concern that** has had an application denied, or [a] **an A-901** license revoked, for any of the reasons set forth [in N.J.A.C. 7:26-16.8 or 16.9,] **at N.J.A.C. 7:26N-4.1 or 4.2** for a period of [5] **five years** [following such] **from the date of the** denial or revocation. **The business concern may apply for an A-901 license after the expiration of five years.**

(b) [A person that is] **The Department will not issue an A-901 license to** a business concern [shall be considered as the same person] **for a period of five years** if the management structure of the business concern includes the person or persons that were the cause of the original disqualification. **The business concern may apply for an A-901 license after the expiration of five years.**

[7:26-16.11] **7:26N-4.4** Severance of disqualifying individuals

(a) Notwithstanding the disqualification of any applicant, permittee, or licensee pursuant to N.J.A.C. [7:26-16.8 or 16.9] **7:26N-4.1 or 4.2**, the Department may issue or renew [a] **an A-901** license if the applicant, permittee, or licensee severs the interest of or affiliation with the person who would otherwise cause that disqualification. **The Department may debar the person who would otherwise cause the disqualification from participation in the provision of solid or hazardous waste services, or the provision of soil and fill recycling services.**

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(b) Where the disqualifying individual is the owner of an equity interest or interest in the debt liability of the licensee, permittee, or applicant, the individual must completely divest [himself or herself] **themselves** of that interest.

1. Where immediate sale of the interest would work an economic hardship on the individual, the licensee, permittee, or applicant, the Department may[, in its discretion,] allow for divestiture over a period of time not to exceed one year, **except as provided at (b)2 below**.

2. The Department may accept an arrangement, such as a blind trust, as part of a divestiture arrangement only if the trustee is obligated to sell within a period not to exceed two years, the interest of the disqualifying individual.

[(c) Arrangements such as blind trusts will be acceptable only as part of a divestiture arrangement under which the trustee is obliged to sell the disqualifying individual's interest within a period not to exceed two years.]

[(d)] (c) Before the Department will issue or renew [a] **an A-901** license to an applicant, permittee, or licensee [which] **that** has severed **its relationship with** a disqualifying individual, the applicant, permittee, or licensee [must] **shall** submit to the Department an affidavit, sworn to by the chief executive officer, attesting to [the severance of the disqualifying individual] and describing the terms, circumstances, and conditions of that severance. Any instruments pertaining to that severance (such as a trust agreement) shall be submitted with the affidavit.

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[7:26-16.21] **7:26N-4.5 [Convicted] Debarred and convicted persons, generally**

(a) No applicant, permittee, or licensee shall knowingly hire as an officer, director [or], key employee, [nor] **or any person who has been debarred or convicted of any of the crimes enumerated at N.J.A.C. 7:26N-4.1(b),** or knowingly allows **such a person** to acquire an equity interest or debt liability interest[, any person who has been convicted of any of the crimes enumerated in N.J.A.C. 7:26-16.8(b)] **in the applicant, permittee, or licensee,** without first obtaining the approval of the Department. This provision does not apply to persons who were employed or held their interests before June 11, 1984.

(b) In connection with [any such] **a request for approval to hire a debarred or convicted individual as an officer, director, or key employee of the applicant, permittee, or licensee or to allow a debarred or convicted person to acquire an interest in the applicant, permittee, or licensee,** the applicant, permittee, or licensee shall file with the Department and **the Office of** the Attorney General an amended disclosure statement, containing the necessary information about the person, including any evidence the applicant, permittee, or licensee wishes to bring forth demonstrating the person's rehabilitation.

(c) The Department [shall] **will** request a recommendation from **the Office of** the Attorney General as to whether the person has affirmatively demonstrated rehabilitation[, and [shall] **will** consider the factors set forth at N.J.A.C. [7:26-16.8(c)] **7:26N-4.1(c)** in determining whether to grant permission to the applicant, permittee, or licensee to employ the [individual] **person** or allow [him] **the person** to acquire an interest in the applicant, permittee, or licensee.

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(d) Any applicant, permittee, or licensee that violates (a) above may be subject to having its permit or license revoked or having its [license] application denied, notwithstanding the rehabilitation of the [individual] **person** in question.

[7:26-16.22] 7:26N-4.6 Persons convicted of environmental crime[s] or debarred for environmental violation

(a) In the case of **any** person[s] convicted of violating the criminal provisions of any [federal] **Federal** or state environmental protection laws, rules, or regulations, including N.J.S.A. 2C:17-2, [N.J.S.A.] 13:1E-9(e) or (f), and [N.J.S.A.] 58:10A-10(f), [or persons] convicted of any crime [which] **that** involved the violation of such laws, rules, or regulations, **or debarred for violating any such laws, rules, or regulations**, the Department will not consider such person rehabilitated unless [he] **the person** has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities for which [he] **the person** was convicted **or debarred**, and to make restitution to any victims injured thereby[; and].

(b) In the absence of clear and convincing evidence to the contrary, the Department will hold that [such a] **any conviction or debarment as set forth at (a) above** warrants a finding of [“]unreliability[” under] **pursuant to** N.J.A.C. [7:26-16.8(a)] **7:26N-4.1(a)** if the date the conviction **or debarment** became final (including the exhaustion of any appeals) is less than [ten] **or equal to 10** years preceding the filing of the application or notice of intent to revoke [a] **an A-901** license.

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(c) Notwithstanding (a) and (b) above, the Department may [still] deny or revoke [a] **an A-901** license because of a conviction **or debarment** more than [ten] **10** years old if the person in question fails to demonstrate rehabilitation by clear and convincing evidence.

[7:26-16.23] **7:26N-4.7** [“Independent contractors[,]” or “consultants”]

(a) [Applicants, permittees and licensees] **An applicant, permittee, or licensee** may not avoid the effects of [N.J.A.C. 7:26-16.8 and 16.9] **this chapter** by designating [an employee] **a person** as an [“independent contractor[”] or [“consultant”] **similar term**. [The Department will look beyond the form of such contracts, and if it] **If the Department** finds that a person **so** designated [as an “independent contractor”, “consultant” or similar term is performing functions commonly performed in the industry by employees, or is exercising any discretion over the solid waste or hazardous waste operations of an applicant, permittee or licensee] **meets the definition of key employee set forth at N.J.A.C. 7:26N-1.4 or is compensated in a manner indicating that the person is a key employee**, the Department will regard that person as [an] **a key employee for the purposes of this chapter**.

(b) The Department may deny or revoke [a] **an A-901** license if it finds that an applicant, permittee, or licensee has entered an [“**independent contractor**[”] arrangement, [“consultant” agreement] or similar arrangement for the purpose of avoiding disqualification [under] **pursuant to N.J.A.C. [7:26-16.8 or 16.9] 7:26N-4.1 or 4.2**.

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SUBCHAPTER 5. CONFIDENTIAL INFORMATION

7:26N-5.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Authorized personnel” means any employee of the Department or of the Office of the Attorney General authorized to act in the enforcement of the Act.

“Confidential information” means:

1. Any information required to be furnished to the Department or the Office of the Attorney General by an applicant, permittee, licensee, or person required to be listed on a disclosure statement, which pertains to private financial matters of the applicant, permittee, licensee, or person and is not subject to public disclosure by any statute or regulation;
2. Any information that pertains to the criminal record, family, or personal background of an applicant, permittee, a licensee, or person required to be listed on a disclosure statement and not subject to public disclosure by any statute or regulation;
3. Any information obtained by the Department or the Office of the Attorney General pursuant to an interrogatory issued pursuant to N.J.S.A. 13:1E-129 or a subpoena issued pursuant to N.J.S.A. 13:1E-130; and

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4. Any other information that is confidential pursuant to applicable statutory provision, judicial decision, or rule of court.

“Secure storage facility” means any area, room, furniture, equipment, machinery, or other device used for the storage of confidential information, access to which is limited solely to authorized personnel and secured by locks, alarms, codes, or other appropriate security precautions.

[7:26-16.14] 7:26N-5.2 Confidential information

[(a) As used in this section, the following terms shall mean:

1. “Authorized personnel” means any employee of the Department or the Attorney General authorized to act in the enforcement of P.L. 1983, c.392, N.J.S.A. 13:1E-126 et seq.

2. “Confidential information” means:

i. Any information required to be furnished to the Department or the Attorney General by an applicant, permittee, licensee or an individual required to be listed on a disclosure statement, which pertains to private financial matters of the applicant, permittee, licensee or individual which are not otherwise subject to public disclosure by any statute or regulation;

ii. Any information which pertains to the criminal record, family or personal background of an applicant, a permittee, a licensee or an individual required to be listed

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on a disclosure statement which is not otherwise subject to public disclosure by any statute or regulation;

iii. Any information obtained by the Department or the Attorney General pursuant to an interrogatory issued pursuant to N.J.S.A. 13:1E-129 or a subpoena issued pursuant to N.J.S.A. 13:1E-130; and

iv. Any other information which is confidential pursuant to applicable statutory provision, judicial decision or rule of court.

3. “Secure storage facility” means any area, room, furniture, equipment, machinery or other device used for the storage of confidential information, access to which is limited to authorized personnel at all times by locks, alarms, codes or other appropriate security precautions.]

[(b)] **(a)** Confidential information shall not be released or disclosed to any person except in accordance with the provisions of this [section] **subchapter**.

[(c)] **(b)** Except as otherwise provided [in (k) below] **at N.J.A.C. 7:26N-5.3**, access to confidential information within the possession of the Department or **the Office of** the Attorney General shall be restricted to authorized personnel who require such information in the performance of their official duties.

[(d)] **(c)** Confidential information not currently being used by authorized personnel shall be stored in **a** secure storage [facilities] **facility**. Every such facility shall be under the direct [supervision] **control** of a supervisor designated by the Commissioner **of the Department** or **the Director of the Division of Law**. The [said] supervisor shall periodically review [for their

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effectiveness] all security measures **to ensure their effectiveness**. Measures determined to be ineffective shall be immediately corrected or improved.

[(e)] **(d)** The Commissioner [or] **of the Department and the** Director [shall] **of the Division of Law will** designate, in writing, all Department personnel authorized to have access to confidential information.

[(f)] **(e)** Authorized personnel shall not remove confidential information from **a** designated secure storage [facilities] **facility** unless such removal is necessary to the fulfillment of their official duties. Confidential information [which] **that** is not presently being utilized by authorized personnel shall be promptly returned to its secure storage facility.

[(g)] **(f)** A record shall be maintained of all confidential information [which] **that** is removed from **a** secure storage [facilities] **facility**. This record shall include:

1. The name[s] of the [person] **authorized personnel** removing the information;
2. The name of [the person for] **any recipient to** whom the information [is being obtained] **will be provided**;
3. (No change.)
4. A description of the information removed or the number of the file [which] **that** has been removed; and
5. (No change.)

[(h)] **(g)** Confidential information shall not be removed from the offices of the Department **or the Office of the Attorney General** without the prior approval of an appropriate supervisor.

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Such approval shall only be granted where removal of the confidential information is necessary to the performance of the official duties of authorized personnel.

[(i)] **(h)** [The integrity of confidential] **Confidential** information in the possession of authorized personnel shall be **[preserved at all times] maintained in a manner designed to preserve confidentiality**. It shall be the personal responsibility of any individual granted temporary custody of confidential information to [insure] **ensure** that the information is not shown, released, or disclosed to any unauthorized person or to any [otherwise] authorized person who does not require such information in the performance of their official duties. Confidential information temporarily stored outside a designated secure storage [facilities] **facility** shall be maintained in a locked desk or filing cabinet[,], or protected by other appropriate security [precautions] **measures**.

[(j)] **(i)** A [hard] copy of confidential information stored [on computer or magnetic media] **electronically**, or any other copy of confidential information within the possession of the Department **or the Office of the Attorney General** [shall] **will** only be made where [absolutely] necessary to the administration of [N.J.S.A. 13:1E-126 et seq.,] **the Act** or where an authorized release of the confidential information is made pursuant to [the provisions of (k) and (l) below] **N.J.A.C. 7:26N-5.3**.

1. Where confidential information is stored on a computer or [1magnetic] **magnetic** medium to which access is physically restricted to authorized personnel, a record shall be kept of the [persons] **individuals** who access the data, including the time and date of the access.

2. (No change.)

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[(k) Confidential information within the possession of the Department shall not be released or disclosed in whole or in part to any person except:

1. Upon lawful order of a court of competent jurisdiction;
2. In the course of the necessary administration of N.J.S.A. 13:1E-126 et seq., including issuance of Administrative Orders denying or revoking a license, or granting a license on condition;
3. With the approval of the Attorney General, to a duly authorized law enforcement agency;
4. Upon presentation of proper identification, to the applicant, permittee, licensee or individual who furnished the confidential information to the Department or the Attorney General; or
5. Upon presentation of a duly executed and notarized release authorization by the applicant, permittee, licensee or individual who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(l) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (k)2 through 5 above, written notice shall be given to any applicant, permittee, licensee or individual affected prior to the release or disclosure, whenever possible, unless such notice would otherwise imperil the administration of N.J.S.A. 13:1E-126 et seq. To the extent known, the notice shall include:

1. The name and address of the person to whom the information was released or disclosed;

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2. A description of the information released or disclosed; and

3. The date of the release or disclosure.

(m) Any confidential information disclosed in the course of any proceeding in the administration of N.J.S.A. 13:1E-126 et seq., or in the course of a judicial proceeding in which disclosure has been made pursuant to lawful order of the court, shall cease to be confidential information to the extent the record of the proceeding becomes a public record.

(n) Any knowing or willful disclosure of confidential information by personnel of the Department, other than a disclosure authorized under this section, shall be a violation of the Department's code of ethics and shall subject the violator to the penalties proved by N.J.S.A. 52:13D-23(d), following notice and the right to a hearing before the Executive Commission on Ethical Standards. The violator may also be subject to disciplinary action, including suspension or dismissal. Unauthorized disclosure of information obtained pursuant to interrogatory or subpoena may subject the violator to criminal penalties under N.J.S.A. 13:1E-131.]

7:26N-5.3 Release or disclosure

(a) Confidential information within the possession of the Department or the Office of the Attorney General will not be released or disclosed in whole or in part, except:

1. Upon lawful order of a court of competent jurisdiction;

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2. In the course of the necessary administration of the Act, including the issuance of an administrative order denying an A-901 license application, revoking an A-901 license, or granting a A-901 license;

3. Upon the approval of the Office of the Attorney General, to a duly authorized law enforcement agency;

4. Upon presentation of proper identification, to the applicant, permittee, licensee, or individual who furnished the confidential information to the Department or the Office of the Attorney General; or

5. Upon presentation of a duly executed and notarized release authorization by the applicant, permittee, licensee, or individual who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(b) If confidential information is released or otherwise disclosed pursuant to any circumstance other than those identified at (a)2, 3, 4, or 5 above, written notice shall be given to any applicant, permittee, licensee, or individual affected prior to the release or disclosure, whenever possible, unless such notice would otherwise imperil the administration of the Act. To the extent known, the notice shall include:

1. The name and address of the individual to whom the information was released or disclosed;

2. A description of the information released or disclosed; and

3. The date of the release or disclosure.

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(c) Any confidential information disclosed in the course of any proceeding in the administration of the Act, or in the course of a judicial proceeding in which disclosure has been made pursuant to lawful order of the court, shall cease to be confidential information to the extent the record of the proceeding becomes a public record and the confidential information is included in the public record.

(d) Any knowing or willful disclosure of confidential information by personnel of the Department or the Office of the Attorney General, other than a disclosure authorized pursuant to this section, shall be a violation of the respective agency's code of ethics and shall subject the violator to the penalties provided at N.J.S.A. 52:13D-23(d), following notice and the right to a hearing before the State Ethics Commission. The violator may also be subject to disciplinary action, including suspension or dismissal. Unauthorized disclosure of information obtained pursuant to interrogatory or subpoena may subject the violator to criminal penalties pursuant to N.J.S.A. 13:1E-131.

SUBCHAPTER 6. FEES

7:26N-6.1 General

(a) This subchapter governs the assessment of fees necessary to defray the costs incurred by the Department and other State agencies, including the Office of the Attorney General, to oversee the A-901 license program.

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(b) Every applicant, permittee, licensee, or lessor subject to the disclosure requirements of the Act and this chapter shall pay fees to the Department, as set forth in this subchapter.

(c) The fees shall be used to pay costs related to the Department's consideration of A-901 license applications, investigations, monitoring, enforcement, and related activities, and to reimburse the Department and other State agencies, including the Office of the Attorney General, for expenses incurred in the performance of pre-licensing investigations, post-licensing compliance monitoring, or any other related activities, consistent with the provisions of the Act.

[7:26-16.13] **7:26N-6.2** [Annual solid waste license approval renewal;]

Application and licensing fees; applicant or lessor

[(a) Every business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) shall submit, upon initial filing and annually thereafter, a fee to the Attorney General to cover the expenses incurred by any State agency in the performance of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), reviewing disclosure statements, post-licensing compliance monitoring, including special investigations, conducting investigations to verify claims of exemption from A-901, conducting pre-licensing investigations, securing confidential documents, maintenance, and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.391

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(N.J.S.A. 13:1E-126 et seq.). For purposes of this subsection, "State agency" means any State department, division, agency commission or authority. The A-901 annual fee shall be \$ 600.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9) or who is otherwise shown to have a beneficial interest in the business of the applicant, permittee or licensee, in addition to a per-company fee to be calculated as follows:

1. Business concerns with one individual required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$ 635.00;

2. Business concerns with two or three individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$ 1,775;

3. Business concerns with four to seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$ 5,150; and

4. Business concerns with more than seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of \$ 15,650.

(b) The applicant, permittee or licensee shall calculate the amount of each fee due and submit to the Division of Law a check for the total fee amount, made payable to "Treasurer--State of New Jersey." An application or disclosure statement will not be accepted as complete for filing unless accompanied by the appropriate fee payment.

(c) If on the basis of investigation, the Department or the Attorney General determines that a person not listed on the disclosure statement should have been listed thereon, or that a person not listed on the disclosure statement otherwise has a beneficial interest in the business of the

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applicant, permittee or licensee, the Department may require the payment of additional fees along with the submission of additional information, including a Personal History Disclosure Form, pertaining to that person. The applicant, permittee or licensee shall pay such additional fees promptly upon demand. Nothing in this subsection shall be construed as limiting the power of the Department to deny or revoke a license if the Department finds the omission of a person from the disclosure statement was intended to mislead or conceal information from the Department.

(d) If a business concern subject to P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) files a change of information pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the business concern shall pay additional fees of \$ 600.00 to the Attorney General per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9). Checks are to be made payable to "Treasurer--State of New Jersey." Individuals disclosed pursuant to N.J.A.C. 7:26-16.6 shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.

(e) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26-16.4(a)1 and 2 as holding any equity in or debt liability of the original business concern filing the

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disclosure statement shall be considered to be additions to the original business concern filing the disclosure statement for the purposes of fee calculation.]

(a) The Department will assess the following one-time fees on an applicant for the Department's review of an initial A-901 application that is filed after (the effective date of this rulemaking) or on a lessor required to submit a disclosure statement pursuant to N.J.A.C. 7:26N-3.3.

1. An applicant or a lessor with a single key employee listed in its disclosure statement shall pay a fee of \$100.00 for the key employee and a business concern fee of \$500.00;

2. An applicant or a lessor with two key employees listed in its disclosure statement shall pay a fee of \$100.00 for each key employee and a business concern fee of \$1,000;

3. An applicant or a lessor with no fewer than three and no more than seven key employees listed in its disclosure statement shall pay a fee of \$100.00 for each key employee and a business concern fee of \$3,000; and

4. An applicant or a lessor with more than seven key employees listed in its business disclosure statement shall pay a fee of \$100.00 for each key employee and a business concern fee of \$9,000.

(b) The Department will assess the application and licensing fees set forth at (a) above by issuing an invoice upon receipt of an administratively complete A-901 license application, or disclosure statement, as applicable. The applicant or lessor shall follow the instructions for remittance of the fees prescribed on the invoice. If an applicant or lessor fails to pay an

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invoice within the time frame prescribed on the invoice, the Department will suspend its review of the applicant's application or lessor's disclosure statement until all fees are satisfied in full. An applicant or lessor's failure to timely pay a fee also may subject the applicant or lessor to penalties.

[(f)] (c) Where **two or more** business concerns file disclosure statements concurrently as a group pursuant to N.J.A.C. [7:26-16.3(e)] **7:26N-3.2(c)**, for [the] purposes of fee calculation [under] **pursuant to** this section, the **Department will treat such** group [shall be treated] as a single applicant, permittee, or licensee, and fees shall be calculated on the [basis of the] total number of individuals required to be listed in [all of] the disclosure statements filed by members of the group. [Individuals] **The Department will count individuals** whose names appear on more than one disclosure statement [shall be counted] only once for purposes of fee calculation.

7:26N-6.3 Annual fees

(a) **The Department will assess an annual fee on a licensee or permittee based on a percentage equal to one-sixth of one percent of its gross operating revenue from intrastate operations relating to the provision of solid or hazardous waste services, the provision of soil and fill recycling services, or both, where applicable, during the preceding calendar year, with a minimum fee of \$600.00.**

(b) **The Department will issue an invoice to the licensee or permittee for the annual fee as set forth at (a) above upon receipt of an administratively complete annual update as**

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prescribed at N.J.A.C. 7:26N-3.7. Failure to pay an invoice within the timeframe prescribed on such invoice may subject the licensee or permittee to penalties and revocation of its A-901 license.

7:26N-6.4 Additional fees based on investigation or information change

- (a) If, on the basis of an investigation, the Department or the Office of the Attorney General determines that a person not listed on the disclosure statement should have been listed thereon, or that a person not listed on the disclosure statement otherwise has a beneficial interest in the business of the applicant, permittee, licensee, or lessor, the Department will require the payment of additional fees along with the submission of additional information, including a personal history disclosure form, pertaining to that person. The applicant, permittee, licensee, or lessor shall pay such additional fees within the timeframe prescribed. Nothing in this subsection shall be construed as limiting the power of the Department to deny or revoke a license if the Department finds the omission of a person from the disclosure statement was intended to mislead or conceal information from the Department.**
- (b) If an applicant, permittee, licensee, or lessor files a change of information pursuant to N.J.A.C. 7:26N-3.5 and discloses a business concern or an individual not listed in the initial application (including any amendments) on file with the Department, the applicant, permittee, licensee, or lessor shall submit a disclosure statement, a personal history**

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disclosure form for each individual disclosed (other than for a nonsupervisory employee required to be listed pursuant to N.J.A.C. 7:26N-3.4(a)1vi) or, where required, both, and shall pay an adjusted fee asset forth in this subsection.

1. One hundred dollars for each additional key employee (other than for a nonsupervisory employee required to be listed pursuant to N.J.A.C. 7:26N-3.4(a)1vi) disclosed pursuant to N.J.A.C. 7:26N-3.5.

2. If the number of additional key employees disclosed pursuant to N.J.A.C. 7:26N-3.5 requires the applicant, permittee, licensee, or lessor to pay a higher one-time business concern fee pursuant to N.J.A.C. 7:26N-6.2(a), the applicant, permittee, licensee, or lessor shall pay the difference between the business concern fee initially paid and the higher business concern fee, except when the applicant, permittee, licensee, or lessor has paid the maximum \$9,000 one-time business concern fee pursuant to N.J.A.C. 7:26N-6.2(a)4, in which case, the applicant, permittee, licensee, or lessor shall pay a \$600.00 fee for each additional key employee disclosed.

3. The Department will invoice the applicant, permittee, licensee, or lessor for the additional fee, which shall be remitted to the Department in the manner prescribed in the invoice.

(c) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26N-3.4(a)1iv and (a)1v(6) as holding any equity in, or debt liability of, the original business concern filing the disclosure statement shall be considered by the Department to

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be additions to the original business concern filing the disclosure statement for the purpose of fee calculation.

7:26N-6.5 Other fees

(a) An applicant, permittee, lessor, or licensee that wishes to change its name or corporate structure shall submit a request for the change to the Department and pay a fee of \$200.00 for each change requested. Upon receipt of the request, the Department will issue an invoice for the fee, which will be paid as prescribed on the invoice. Should an applicant, permittee, or licensee fail to pay an invoice within the timeframe prescribed on the invoice, the applicant, permittee, or licensee may be subject to penalties.

(b) A business concern seeking to acquire a controlling interest in a licensee, whether directly or indirectly, through any means, shall provide the Department with at least 30 calendar days' notice of the closing of the transaction in which the interest will be acquired, and pay a fee of \$1,000. Upon receipt of the notice, the Department will issue an invoice for the fee, which shall be paid to the Department at, or prior to, the closing in accordance with the instructions set forth in the invoice.

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SUBCHAPTER 7. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARING

7:26N-7.1 Scope

(a) This subchapter shall govern the assessment of civil administrative penalties for any violation of the Act, including violation of any rule promulgated or administrative order or A-901 license issued pursuant to the Act. This subchapter shall also govern the procedures for requesting adjudicatory hearings to contest:

- 1. An administrative order;**
- 2. An administrative order and notice of civil administrative penalty assessment; or**
- 3. The Department's decision to:**
 - i. Deny an A-901 license application; or**
 - ii. Revoke an A-901 license.**

(b) Whenever, on the basis of available information, the Department finds that a person has violated any provision of the Act, this chapter, an administrative order, or an A-901 license, the Department may:

- 1. Issue an administrative order requiring the person to comply;**
- 2. Deny an A-901 license application or revoke an A-901 license; and**
- 3. Assess a civil administrative penalty of not more than \$50,000 for each violation.**

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

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(d) The issuance of an administrative order, the assessment of a civil administrative penalty, or the payment of any civil administrative penalty shall not affect the availability of any other enforcement options provided pursuant to the Act or any other statute, including, without limitation, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., in connection with the violation for which the assessment is levied.

(e) Nothing in this subchapter is intended to affect the Department's authority to revoke an A-901 license. The Department may revoke an A-901 license without regard to whether an order or a civil administrative penalty has been or will be issued or assessed pursuant to this subchapter.

(f) For purposes of this chapter, any person who undertakes or performs an obligation imposed upon another person pursuant to the Act, or any rule promulgated, or any administrative order or license issued, pursuant to the Act, may at the discretion of the Department be subject to an order and a civil administrative penalty pursuant to this chapter in the same manner and in the same amount as such other person.

(g) Nothing in this subchapter is intended to affect the Department's authority to compromise a civil administrative penalty assessment. The Department may compromise a civil administrative penalty assessment without regard to whether a hearing has been requested pursuant to N.J.A.C. 7:26N-7.3, an adjudicatory hearing has been conducted, or the notice of civil administrative penalty assessment has become a final order of a contested case.

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7:26N-7.2 Procedures for issuance of orders and assessment and payment of civil administrative penalties

(a) To order a violator to cease or correct a violation or assess a civil administrative penalty for a violation of the Act or any rule promulgated, or any administrative order or A-901 license issued pursuant to the Act, the Department will, by means of a written order or administrative order and notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may order compliance and assess a civil administrative penalty for more than one violation in a single administrative order and notice of civil administrative penalty assessment or in multiple administrative orders and notices of civil administrative penalty assessment. The Department may assess a civil administrative penalty against more than one violator in a single administrative order and notice of civil administrative penalty assessment. The order or administrative order and notice of civil administrative penalty assessment will:

1. Identify the section of the Act, rule, administrative order, or license violated;
2. Concisely state the facts that constitute the violation;
3. Order the violator to cease and/or correct the violation;
4. Specify the amount of any civil administrative penalty assessed; and
5. Advise the violator of the right to request an adjudicatory hearing pursuant to

N.J.A.C. 7:26N-7.3.

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(b) An order and administrative order and notice of civil administrative penalty assessment shall be effective upon receipt. A violator shall have 20 calendar days from receipt of the order or administrative order and notice of civil administrative penalty assessment to submit to the Department a written request for a hearing in accordance with N.J.A.C.

7:26N-7.3. A request for a hearing shall not stay the effect of the order.

(c) Payment of the civil administrative penalty is due to the Department upon receipt by the violator of the Department's final order of a contested case or when an administrative order and notice of civil administrative penalty assessment becomes a final order, as follows:

1. If the Department does not receive a timely request for a hearing pursuant to N.J.A.C. 7:26N-7.3, the administrative order and notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt by the violator of the administrative order and notice of civil administrative penalty assessment;

2. If a hearing is requested pursuant to N.J.A.C. 7:26N-7.3 and the Department denies the hearing request, a notice of administrative order and civil administrative penalty assessment becomes a final order upon receipt by the violator of notice of such denial; or

3. If a hearing is requested pursuant to N.J.A.C. 7:26N-7.3 and an adjudicatory hearing is conducted, an administrative order and notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

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[7:26-16.10] **7:26N-7.3 [Administrative] Procedures to request an adjudicatory hearing; requests**

[(a) Any applicant or permittee who is denied an initial license pursuant to this subchapter shall, upon written request transmitted to the Department within 30 days of that denial, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the “Administrative Procedure Act,” N.J.S.A. 52:14B-1 et seq.

(b) Any licensee who receives a notice of intent to revoke a license or notice of refusal to renew a license shall have 20 days from receipt of the notice to transmit to the Department a request for a hearing.

(c) Requests for hearings shall be sent to the: Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, New Jersey Department of Environmental Protection, 401 E State Street, 7th Floor, PO Box 402, Mail Code 401-07A, Trenton, New Jersey 08625-0420.]

(a) To request an adjudicatory hearing to contest an administrative order or an administrative order and notice of civil administrative penalty assessment issued by the Department pursuant to the Act or a Department decision as set forth at N.J.A.C. 7:26N-7.1(a)3, the person requesting the hearing shall submit a completed Adjudicatory Hearing Request Checklist and Tracking Form to the appropriate address below. If the hearing request is to challenge an order or administrative order and notice of civil administrative penalty assessment issued against more than one violator, each violator seeking to request an adjudicatory hearing shall submit a completed Adjudicatory Hearing Request Checklist and Tracking Form.

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1. For a hearing request to contest an administrative order or an administrative order and notice of civil administrative penalty assessment, the hearing request shall be sent to:

**New Jersey Department of Environmental Protection
Office of Administrative Hearings and Dispute Resolution
ATTENTION: Adjudicatory Hearing Requests
401 E. State Street
Mail Code 401-07A
PO Box 420
Trenton, New Jersey 08625-0420**

With a copy to:

**New Jersey Department of Environmental Protection
ATTENTION: Hazardous Waste Compliance and Enforcement
Mail Code 09-03
PO Box 420
Trenton, New Jersey 08625-0420**

2. For a hearing request to contest a Department decision as set forth at N.J.A.C. 7:26N-7.1(a)3, the hearing request shall be sent to:

**New Jersey Department of Environmental Protection
Office of Administrative Hearings and Dispute Resolution
ATTENTION: Adjudicatory Hearing Requests**

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401 E. State Street

Mail Code 401-07A

PO Box 420

Trenton, New Jersey 08625-0420

With a copy to:

New Jersey Department of Environmental Protection

ATTENTION: A-901 Unit

401 E. State Street

Mail Code 401-02C

PO Box 420

Trenton, New Jersey 08625-0420

and

New Jersey Department of Law and Public Safety

A-901 Unit, Division of Law

Hughes Justice Complex

PO Box 093

Trenton, New Jersey 08625-0093

(b) A person requesting a hearing shall include the following information on the Adjudicatory Hearing Request Checklist and Tracking Form, as applicable:

1. The name, address, and telephone number of the person making the request and its authorized representative;

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2. Any defenses to each of the Department's findings of fact in the findings section of the order or administrative order and notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the findings section of the order or administrative order and notice of civil administrative penalty assessment. If the person is without knowledge or information sufficient to form a belief as to the truth of a finding, the person shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the person intends in good faith to deny only a part or a qualification of a finding, the person shall specify so much of it as is true and material and deny only the remainder. The person may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding that the person denies, the person shall allege the fact or facts as the violator believes such fact or facts to be;

4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours);

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons; and

7. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of the hearing request to the Office of Administrative Law.

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(c) The Department will deny the hearing request if:

1. The Department does not receive the written request for a hearing within 20 days after receipt by the violator of the order or administrative order and notice of a civil administrative penalty assessment being challenged;

2. The Department does not receive the written request for a hearing within 30 days after receipt by the applicant or licensee of the Department's decision to deny the A-901 license application; or

3. The Department does not receive the written request for a hearing within 20 days after receipt by the licensee of the Department's decision to revoke the A-901 license.

(d) If the person requesting the hearing fails to include all the information required pursuant to (a) above, the Department may deny the hearing request.

(e) Adjudicatory hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26N-7.4 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each requirement of any rule listed at (f) below.

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(b) Each violation of a rule listed at (f) below shall constitute an additional, separate, and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

(d) If any requirement of any rule listed at (f) below pertains to more than one act, condition, occurrence, or item, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, or item, shall constitute an additional, separate, and distinct violation.

(e) The Department will determine the amount of a civil administrative penalty for each violation at (f) below as follows:

1. Identify the rule listed at (f) below;

2. Identify the corresponding base penalty dollar amount for the rule violation at (f) below;

3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

SEVERITY FACTOR	MULTIPLIER
i. Violator violated the same rule less than 12 months prior to the violation.	1.00
ii. Violator violated a different rule less than 12 months prior to the violation.	0.50

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iii. Violator violated the same rule during the period which began 24 0.50 months prior to the violation and ended 12 months prior to the violation.

iv. Violator violated a different rule during the period which began 24 0.25 months prior to the violation and ended 12 months prior to the violation.

4. To obtain the civil administrative penalty, add the severity penalty components pursuant to (e)3 above to the base penalty. If the sum exceeds \$50,000, then the civil administrative penalty shall be \$50,000.

Example

Base penalty for violation at N.J.A.C. 7:26N-3.2(b) =	\$3,000
Subparagraph (e)3iii applies: $0.50 \times 3,000 =$	\$1,500
Subparagraph (e)3iv applies: $0.25 \times 3,000 =$	\$750.00
Civil administrative penalty	\$5,250

5. For the purpose of this section, violation of the “same rule” means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the specific requirement must be violated to be considered violation of the “same rule.”

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(f) The Rule Summary column in this subsection, which summarizes certain rules of this chapter, is provided for informational purposes only. If there is a conflict between the description in the Rule Summary column in this subsection and the rule text of this chapter, then the rule text shall prevail. The violations of this chapter, whether the violation is minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are set forth in the following table:

Rule	Rule Summary	Base penalty	Type of violation	Grace period (days)
7:26N-3.2(b)	Failure of an applicant, permittee, or licensee to comply with fingerprinting requirements	\$3,000	M	30
7:26N-3.3(a)1	Failure of a lessor to file a disclosure statement, a personal history disclosure form for its directors, officers, key employees, partners, and equity holders, or both, within 30 days of executing a lease for all of the lessor's waste or soil and fill recyclable material vehicles or operators	\$3,000	NM	
7:26N-3.3(a)2	Failure of a lessor to file a business concern disclosure statement, a personal history disclosure form for its directors, officers, key employees, partners, and equity holders, or both, within 30 days of executing a lease of 10 or more waste or soil and fill recyclable material vehicles and operators	\$3,000	NM	
7:26N-3.3(a)3	Failure of a lessor to file a business concern disclosure statement, a personal history disclosure form for its directors, officers, key employees, partners, and equity holders, or both, within 30 days of executing a lease for 20 percent or more of the licensee's fleet of collection or transport vehicles	\$3,000	NM	
7:26N-3.3(a)4	Failure of a lessor to file a business concern disclosure statement, a personal history disclosure form for its directors, officers, key	\$3,000	NM	

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Rule	Rule Summary	Base penalty	Type of violation	Grace period (days)
	employees, partners, and equity holders, or both, within 30 days of executing a lease for 20 or more waste or soil and fill recyclable material operators			
7:26N-3.4(a) and (b)	Failure of an applicant, permittee, licensee, or lessor to include information required at N.J.A.C. 7:26N-3.4	\$3,000	NM	
7:26N-3.4(c)	Failure of an applicant, permittee, licensee, or lessor to attest to the truth of the statements made in the disclosure statement	\$3,000	NM	
7:26N-3.4(d)	Failure of an applicant, permittee, or lessor, to properly sign a disclosure statement	\$3,000	NM	
7:26N-3.5(a)	Failure of an applicant or permittee to provide additional information or changes to disclosure statement in a pending application within 30 days of the change or addition	\$6,000	NM	
7:26N-3.5(b)	Failure of a licensee to report to the Department and the Attorney General any of the changes or additions to the disclosure statement required pursuant to N.J.A.C. 7:26N-3.5(b) or to submit those changes or additions within 30 days of the change or addition	\$6,000	NM	
7:26N-3.5(c)	Failure of a lessor to provide the changes or additions to the lessor's disclosure statement required pursuant to N.J.A.C. 7:26N-3.5(c) or to submit those changes or additions within 30 days of the change or addition	\$6,000	NM	
7:26N-3.5(d)	Failure of a licensee to provide the information required pursuant to N.J.A.C. 7:26N-3.5(d) within 30 days of converting from one business form to another pursuant to N.J.S.A. 13A:11A-1 or 14A:11A-2	\$6,000	NM	

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Rule	Rule Summary	Base penalty	Type of violation	Grace period (days)
7:26N-3.5(e)	Failure of a permittee, licensee, or lessor to report on its annual update of its disclosure statement all changes previously reported to the Department and the Office of the Attorney General, including the amendment of any personal history disclosure form, to report a criminal or disorderly persons conviction, or the filing of a criminal or disorderly persons charge	\$6,000	NM	
7:26N-3.5(f)	Failure of a licensee to swear and affirm the information provided in submissions made pursuant to N.J.A.C. 7:26N-3.5(b) and (d)	\$3,000	NM	
7:26N-3.5(f)	Failure of a lessor to swear and affirm the information provided in submissions made pursuant to N.J.A.C. 7:26N-3.5(c)	\$3,000	NM	
7:26N-3.5(g)	Failure of a permittee, licensee, or lessor to file a new disclosure statement when required by the Department to do so	\$6,000	NM	
7:26N-3.7(a)	Failure of a permittee, licensee, or lessor to file its annual update by June 1	\$3,000	NM	
7:26N-3.7(b)	Failure of a licensee or lessor to recap in its annual update the changes reported pursuant to N.J.A.C. 7:26N-3.5(b)	\$6,000	NM	
7:26N-3.7(c)	Failure of a licensee, permittee, or lessor to swear and subscribe the information in its annual update in the manner required at N.J.A.C. 7:26N-3.4(b)	\$6,000	NM	

7:26N-7.5 Civil administrative penalty determination

(a) The Department will assess penalties pursuant to this section, and not pursuant to N.J.A.C. 7:26N-7.4, when:

1. The violation concerns a section of the rules listed at N.J.A.C. 7:26N-7.4, and the Department determines that, under the specific circumstances of the violation, the penalty

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amount at N.J.A.C. 7:26N-7.4 would be too low to provide a sufficient deterrent as required by the Act; or

2. The violation is not listed at N.J.A.C. 7:26N-7.4.

(b) Each violation of the Act, or any rule promulgated, or any administrative order or license issued, pursuant to the Act, shall constitute an additional, separate, and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

(d) Where any requirement of the Act, any rule promulgated, or any administrative order or license issued by the Department, pursuant to the Act, may pertain to more than one act, condition, occurrence, or item, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, or item, shall constitute an additional, separate, and distinct violation.

(e) The Department will assess a civil administrative penalty pursuant to this section for a minor violation as follows:

1. A violation is minor if it meets the criteria at N.J.A.C. 7:26N-7.9(c).

2. A minor violation shall be subject to a grace period of 30 days.

3. If the violator fails to cure the minor violation within the grace period, the violator shall be subject to a \$3,000 penalty to be assessed in accordance with the procedure set forth at N.J.A.C. 7:26N-7.9.

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(f) A violation that does not meet the criteria at N.J.A.C. 7:26N-7.9(c) is non-minor and the penalty shall be assessed at the mid-point of the following ranges, unless adjusted pursuant to (i) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$40,000-\$50,000	\$30,000-\$40,000	\$15,000-\$25,000
	Moderate	\$30,000-\$40,000	\$10,000-\$20,000	\$3,000-\$6,000
	Minor	\$15,000-\$25,000	\$3,000- \$6,000	N/A*

*N/A means not applicable.

(g) The Department will determine the seriousness of the violation as major, moderate, or minor as follows:

1. The violation is of major seriousness when it:

i. Has caused or has the potential to cause serious harm to human health or the environment; or

ii. Seriously deviates from the requirements of the Act, any rule promulgated, or any administrative order or A-901 license issued pursuant to the Act. Serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirements, or if some of the requirements are met, that severely impair or undermine the operation or intent of the requirements;

2. The violation is of moderate seriousness when it:

i. Has caused or has the potential to cause substantial harm to human health or the environment; or

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ii. Substantially deviates from the requirements of the Act, any rule promulgated, or any administrative order or license issued, pursuant to the Act; 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 requirements; and

3. The violation is of minor seriousness when it does not meet the criteria at (g)1 or 2 above.

(h) The Department will determine the conduct of the violator as major, moderate, or minor, as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any conduct that does not meet the criteria at (h)1 or 2 above.

(i) The Department may adjust the amount of the civil administrative penalty calculated pursuant to (f), (g), and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described at (f) above, based on the following factors:

1. The compliance history of the violator;

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2. The nature, timing, and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed. If the violator immediately implements measures that effectively mitigate the effects of the violation, the Department will reduce the penalty to the bottom of the range;

3. The nature, timing, and effectiveness of any measures taken by the violator to prevent future similar violations. If the violator implements measures to prevent a recurrence of the same type of violation, the Department will reduce the penalty to the bottom of the range;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and

5. Other specific circumstances of the violator or the violation.

7:26N-7.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative 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 disclosure statement, personal history disclosure form, or other document required to be submitted or maintained pursuant to the Act, any rule promulgated, or any order or license issued, pursuant to the Act.

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(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate, and distinct violation.

(c) The Department will assess a civil administrative penalty for violations described in this section based on the violator's conduct at the mid-point of the following ranges:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the person, the civil administrative penalty per act or omission shall be in an amount of not more than \$50,000 nor less than \$40,000 per act or omission; and

2. For all other conduct, the civil administrative penalty, per act or omission, shall be in the amount of \$1,000 per violation.

(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) A violation pursuant to this section is non-minor and, therefore, not subject to a grace period.

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7:26N-7.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against any person who refuses, inhibits, or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building, or facility that the Department may enter and inspect pursuant to the Act or other law.

(b) Each day that a person 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 law shall be an additional, separate, and distinct violation.

(c) The Department will assess a civil administrative penalty for violations described in this section 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 pursuant to the Act, the civil administrative penalty shall be in an amount of not more than \$30,000 and not less than \$20,000 per violation; and

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount of not more than \$5,000 and not less than \$3,000 per violation.

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(d) The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes, if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(e) A violation pursuant to this section is non-minor and, therefore, not subject to a grace period.

7:26N-7.8 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each person who fails to pay a fee assessed and invoiced pursuant to this chapter.

(b) To assess a civil administrative penalty pursuant to this section:

1. The Department will identify the civil administrative base penalty pursuant to (c) below; and

2. The civil administrative penalty shall be the base penalty unless adjusted pursuant to (d) below.

(c) The base penalty shall be as follows:

1. An amount equal to one-half of the unpaid fee or \$100.00, whichever is greater, for nonpayment of a fee due in any calendar year;

2. An amount equal to the unpaid fee or \$250.00, whichever is greater, for the nonpayment of a second fee due in the same calendar year as that at (c)1 above; or

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3. An amount equal to twice the unpaid fee or \$500.00, whichever is greater, for the nonpayment of a third fee due in the same calendar year as that at (c)1 or 2 above.

(d) If a violator fails to pay a fee within 30 days of receipt of a notice of nonpayment from the Department, each day the fee remains unpaid shall be considered a continuing violation.

(e) For a continuing violation, the Department may increase the amount of the base penalty calculated pursuant to (c) above by the amount obtained by multiplying the base penalty dollar amount by one percent for each day that the fee is past due.

(f) A violation pursuant to this section is non-minor and, therefore, not subject to a grace period.

7:26N-7.9 Grace period applicability; procedures

(a) Each violation identified in the penalty tables at N.J.A.C. 7:26N-7.4(f) by an "M" in the Type of Violation column and each violation that is determined to be minor pursuant to N.J.A.C. 7:26N-7.5(e) for which the conditions at (c) below are satisfied is a minor violation, and is subject to a grace period. The length of the grace period (in days) for violations identified in the penalty tables at N.J.A.C. 7:26N-7.4(f), indicated in the column with the heading "Grace Period."

(b) Each violation identified in the penalty tables at N.J.A.C. 7:26N-7.4(f) by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

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(c) The Department or local government agency will provide a grace period for any violation identified as minor pursuant to this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation;

2. The violation poses minimal risk to the public health, safety, and natural resources;

3. The violation does not materially and substantially undermine or impair the goals of the Act;

4. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

5. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

6. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

7. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or

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substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

8. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(d) For a violation determined to be minor pursuant to (c) above:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation, and in addition, shall not consider the minor violation for purposes of calculating the “severity factor” pursuant to N.J.A.C. 7:26N-7.4(f).

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, a written report detailing the corrective action taken or compliance achieved, certified as follows and signed in accordance with N.J.A.C. 7:26N-3.2(d):

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“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for willfully submitting false information, including the possibility of fines and imprisonment.”

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made to the Department, in writing, no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance and shall be certified in accordance with (d)3 above. The Department may, at its discretion, approve, in writing, an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department will consider the following:

- i. Whether the person responsible for the violation has taken reasonable measures to achieve compliance in a timely manner;**
- ii. Whether the delay has been caused by circumstances beyond the control of the person responsible for the violation;**

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iii. Whether the delay will pose a risk to the public health, safety, and the environment; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation pursuant to (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.