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TITLE 7. ENVIRONMENTAL PROTECTION
CHAPTER 26. SOLID WASTE
SUBCHAPTER 2. DISPOSAL

N.J.A.C. 7:26-2.1 (2012)

7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26A, 2B, 2C and 2D shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid wastes unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26G. However, hazardous waste facilities and activities, both major and minor, are not exempt from the requirements of registration, approval and regulation under the Solid Waste Management Act except where expressly so provided. The principal rules pursuant to the Act, governing the registration and other aspects of the regulation of such facilities and activities, are set forth elsewhere in this chapter. See also other chapters of the New Jersey Administrative Code where applicable.

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

1. This subchapter does not apply to a rail carrier that transfers containerized solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. §§ 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its behalf as part of its rail transportation services. However, a rail carrier that transfers containerized solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.

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.

3. The exemptions set forth at (c)1 and 2 above shall not apply to a solid waste transporter that transports waste to a rail carrier via truck, barge or other nonrail modes. Such a transporter shall remain subject to all applicable solid waste regulations, including, but not limited to, registration and district plan solid waste flow control provisions.

(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:

1. The disclosure statements required under N.J.A.C. 7:26-16; and

2. A complete application for a solid waste facility permit to the Department.

7:26-2.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

7:26-2.3 Purpose

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(a) This subchapter is promulgated for the following purposes:

1. To establish the procedure for obtaining and maintaining a solid waste facility permit;

2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;

3. To establish the general engineering design requirements for solid waste facilities; and

4. To establish the general operational requirements for solid waste facilities.

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

(a) Prior to preparing and submitting the application for a solid waste facility (SWF) permit, other than for facilities specified in (c) below, the applicant may schedule a pre-application conference with the Department to discuss the registration, environmental and health impact statement and engineering submission requirements and the review procedures. At least two weeks prior to the scheduled pre-application conference, the applicant should submit information in the form of reports, maps, studies and other relevant project documentation providing a sufficient basis for review by the Department. The material submitted prior to the pre-application conference may include the following:

1. A site location map plotted on a USGS topographic map;

2. A written description of the type of facility;

3. A written estimate of the proposed design capacity of the facility;

4. A written description of the type of waste to be handled;

5. A written plan establishing the tentative construction schedules;

6. A written scope-of-work outlining the proposed EHIS, geotechnical investigation or engineering design;

7. Written documentation that the facility is included in the applicable district solid waste management plan pursuant to *N.J.S.A. 13:1E-23* or that an application has been submitted to the appropriate public authority seeking inclusion in the solid waste management plan.

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

1. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with *N.J.S.A. 13:1D-120* et seq.;

2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;

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

4. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

5. An EHIS prepared in accordance with N.J.A.C. 7:26-2.9;

6. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10;

7. For sanitary landfills, a closure plan prepared and submitted in accordance with N.J.A.C. 7:26-2A.9; and

8. All applications for a SWF permit shall be submitted to:

Assistant Director for Permitting and

Technical Programs

Division of Solid and Hazardous Waste

Department of Environmental Protection

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

1. For a small-scale thermal destruction facility:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for thermal destruction is nonhazardous;

(2) The waste is generated at the site of the thermal destruction operation, at other associated intracompany plants; or is regulated medical waste, or home self-care waste managed as regulated medical waste, that is received and managed by the operator of the small-scale incinerator in conformance with the requirements of N.J.A.C. 7:26-3A;

(3) The small-scale thermal destruction unit is not a major facility as defined at N.J.A.C. 7:27-8.1;

(4) The facility has been included in the applicable district solid waste management plan; and

(5) The thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)1;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;

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

vi. This exemption from full application requirements is limited to one small-scale thermal destruction unit for each company site; and

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

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

i. Documentation sufficient to demonstrate, to the satisfaction of the Department, that the capacity of the facility is less than 100 tons per day;

ii. A registration statement meeting the requirements of N.J.A.C. 7:26-2.8;

iii. An EHIS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9 (d)2;

iv. An engineering design prepared in accordance with N.J.A.C. 7:26-2.10 and 2B.5;

v. Documentation that the facility has been included in the applicable district solid waste management plan;

vi. The disclosure statement described in N.J.A.C. 7:26-16. 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); and

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

(d) Upon receipt of the initial application materials, the Department shall assign an application number to the application. All correspondence on written comments relating to the application shall thereafter refer to the assigned application number.

(e) All applications shall be signed by the applicant as follows:

1. The completed registration statement shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

2. All engineering designs and reports and the environmental and health impact statement required by this subchapter and other information requested as "Addendums" by the Department pursuant to (f) and (g)4 below, in addition to the documents required to be submitted pursuant to N.J.A.C. 7:26-2.9 and 2.10, shall be signed by a person described in (e)1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. The authorization is made in writing by a person described in (e)1 above;

ii. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, or positions of equivalent responsibility (a duly authorized representative may be either a named individual or any individual occupying the named position); and

iii. The written authorization is submitted to the Department.

3. Any person signing the registration statement, engineering design and reports, environmental and health impact statement or addendum mentioned in (e)1 and 2 above, shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments 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 submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(f) The Department may require an applicant to provide additional data, reports, specifications, plans or other information where such information is necessary, as determined by the Department, to make the application technically complete prior to the tentative decision or to make a final permit determination after the public hearing. The Department shall not make a tentative or final determination on any application until such time as the applicant has supplied the requested information. Any failure to submit such information shall constitute cause for denial of the permit.

(g) The procedures for Department review and tentative approval or denial of a SWF permit application shall be in accordance with the following:

1. The Department shall not begin the processing of an application until the applicant has fully complied with the submission requirements of this subchapter and the signature and certification requirements of (e) above unless the applicant is unable to comply with the submission requirements through the actions or inactions of another Federal, State, county or local agency.

2. Upon receipt of a SWF permit application, the Department shall review the application to determine whether the application is complete. After reviewing the SWF permit application, the Department shall, within 30 days of receipt of the application, notify the applicant, in writing, whether the application is complete or incomplete.

i. For the purposes of this section, "complete application" means that all information required by N.J.A.C. 7:26-2.4(b) has been submitted by the applicant.

3. If the application is deemed incomplete, the Department shall provide the applicant with a written list of the deficiencies and additional information required to make the application complete. A determination of incompleteness shall stop any review and shall stay the time limitations set forth in (g)11 below.

4. Within 30 days of receiving a notice of deficiency, the requested additional information shall be submitted to the Department as an "Addendum to the Application for a Solid Waste Facility Permit" ("Addendum"). The Department, in its discretion, may extend the timeframe for submitting additional information. Failure to correct the deficiency(ies) shall constitute cause for denial of the permit without prejudice.

5. Upon receiving the Addendum, the Department shall review the Addendum and other information supplied by the applicant for a determination of completeness in accordance with the procedure set forth in (g)2 above.

6. Upon determining that the application or Addendum is complete, the Department shall send notice that an application or Addendum has been filed identifying the applicant, describing the type of facility, location of the facility and locations where and when application materials are available for review to the following:

i. The mayor, planning board, environmental commission and the health officer of any municipality in which any portion of the facility is proposed to be located;

ii. The mayor, planning board, environmental commission and health officer of any municipality, the borders of which lie within one mile of the perimeter of the proposed facility; and

iii. The implementing agency for the solid waste management plan of any solid waste management district in which any portion of the facility is proposed to be located;

7. Upon determining that an application or Addendum is complete, the Department shall submit a copy of the SWF permit application materials to the following for review:

i. The municipal clerk of any municipality in which any portion of the facility is proposed to be located;

ii. The County Solid Waste Coordinator of any county in which any portion of the facility is proposed to be located; and

iii. Any other governmental agencies that the Department deems appropriate, such as the County Clerk of any county in which any portion of the facility is proposed to be located; District Solid Waste Advisory Committee of the Solid Waste Management District; Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs; and other affected states.

8. Once the Department determines that an application or Addendum is complete, the application or Addendum may be reviewed by any interested person at the Department's offices during normal working hours by making an appointment, at the address specified at *N.J.A.C. 7:26-2.4(b)*8, with the records custodian of the Division of Solid and Hazardous Waste. Copies may be obtained directly from the applicant or from the Department upon payment of the duplication fee prescribed by law.

9. The Department shall determine whether a site visit and inspection are necessary in order to evaluate the proposed site of the facility. If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date for the visit shall be scheduled.

10. The Department shall publish notice in the DEP Bulletin of the receipt of each new application, and each significant agency action on an application currently before it. Notice shall be given for significant actions including, but not limited to, the determination of completeness, tentative approval, rejection of an application, public hearings on a tentative approval, final decision on a permit, transfer of a permit and permit renewal. Publication of notice in the DEP Bulletin constitutes constructive notice to all interested persons of the Department actions on SWF permits. The notice shall include, but not be limited to:

i. The applicant's name;

ii. The agency application number;

iii. The type of facility proposed by the applicant;

iv. The location of the proposed facility;

v. The date and description of significant agency action on the application;

vi. The locations where and when application materials are available for review; and

vii. A statement that comments concerning the pending permit action may be submitted to the Department at the address specified in N.J.A.C. 7:26-2.4(b)8.

11. Not later than six months after the date upon the Department's letter notifying the applicant that the application is complete pursuant to (g)2 above, except in the case set forth in (g)3 above, the Department shall reject the SWF permit application, without prejudice, as technically incomplete, or deny or grant tentative approval of the application.

i. The Department shall perform a technical review of a complete application in accordance with the following timeframes:

(1) The Department shall complete its initial technical review of the application within 120 days from the determination that the application is complete;

(2) If the application is deemed technically incomplete, the Department shall provide the applicant with an opportunity to correct the deficiency or deficiencies pursuant to (g)3, 4 and 5 above;

(3) Upon receiving the Addendum submitted pursuant to (g)11i(2) above, the Department shall complete its technical review of the application within 60 days from the determination that the Addendum is complete;

ii. If the Department decides to deny the applicant a SWF permit, the basis for the denial shall be set forth in a letter to the applicant which shall also provide the applicant with notice of opportunity to request an adjudicatory hearing pursuant to (g)22 below.

iii. Where an applicant can demonstrate compelling reasons, the Department shall extend the deadlines set forth at (g)11 above and suspend its consideration of a complete application.

12. A tentative approval shall establish draft design, construction, operational, and maintenance conditions for the proposed solid waste disposal facility, requirements for the monitoring thereof and any other conditions required under Federal or State laws or rules and regulations as deemed appropriate by the Department.

13. Not later than 45 days after the granting of a tentative approval of an application for a SWF permit, the Department shall conduct a public hearing on the proposed facility and operator in accordance with the procedures set forth in N.J.A.C. 7:26-2.5. In the case of an application for a solid waste facility described in N.J.A.C. 7:26-2.4(c), an application to modify permit conditions or to revoke and reissue a permit pursuant to N.J.A.C. 7:26-2.6, an application for a permit renewal pursuant to N.J.A.C. 7:26-2.7(b), an application to transfer a permit pursuant to N.J.A.C. 7:26-2.7(e), the Department shall provide public notice, in accordance with (g)15 below, of the opportunity for a public hearing on the proposed agency action. Upon the written request of any interested party which, in the opinion of the Department, raises significant issues of fact relevant to the proposed agency action within 30 days of the newspaper publication of a notice of opportunity for a hearing, a public hearing on the proposed agency action shall be held in accordance with N.J.A.C. 7:26-2.5.

14. Not less than 15 or more than 30 days before a public hearing the Department shall provide notice, as described in (g)15 below, of the tentative approval and scheduled hearing, by the following methods:

i. By mailing a copy of a notice to the following persons (any person entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits);

(1) The applicant;

(2) The municipality in which the proposed facility will be located;

(3) Any Federal, State, county or municipal agency known to the Department to have issued or have jurisdiction to issue a permit for the same facility or activity;

(4) Any Federal, State, county or municipal agency which commented on the application and requested notice;

(5) Any other persons required by law, statute, regulation or court order to receive such notice; and

(6) Any interested person requesting such notice.

ii. By publication of a notice in two newspapers of general circulation within the area affected by or served by the facility or activity; and

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)14i and ii above. Where the notice of opportunity for a public hearing results in the scheduling of a hearing, a subsequent notice of the hearing date shall be provided in accordance with (g)14i and ii above.

15. All public notices issued pursuant to this section shall include the following information;

i. Name and address of the office processing the tentative approval for which notice is being given;

ii. Name and address of the applicant, and if different, the address of the facility or activity described by the SWF permit application materials;

iii. A brief description of the business to be conducted at the facility, including the activities described in the SWF permit application materials;

iv. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the fact sheet required by (g)16 below;

v. A brief description of the comment procedures by which the public may participate in the final permit decision and the time and place of the public hearing, if necessary; and

vi. The location of the administrative record, the times at which the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record.

16. A fact sheet concerning the proposed facility shall be prepared by the Department and shall be provided with the hearing notice required in (g)15 above. The fact sheet shall include the following:

i. The principal facts and the significant factual, legal, methodological or policy questions considered in granting the tentative approval;

ii. A description of the proposed facility;

iii. The types and quantities of solid waste which may be disposed of at the proposed facility; and

iv. A brief summary of the impacts and bases for the conditions of the tentative approval.

17. The public comment period shall be determined by the Department in accordance with the following:

i. The public comment period shall be the opportunity for any interested person to submit comments to the Department concerning a proposed facility and operator;

ii. For purposes of this subchapter the public comment period shall begin upon notice by the Department that a tentative approval has been issued or other agency action taken;

iii. The public comment period shall close 15 days after the date of the last public hearing, if any, on any tentative approval, unless the Department decides to extend the comment period in accordance with (g)17v below or reopen the comment period in accordance with (g)18 below. For agency actions on which no public hearing is held, the public comment period shall close 30 days after publication of the notice of the agency action;

iv. All interested persons, including the applicant, who believe any aspect of the tentative approval or other agency action is inappropriate shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations or other generally available reference materials;

v. A public comment period longer than 15 days following the public hearing may be necessary, in certain cases, to give interested persons an opportunity to comply with the requirements of (g)17iv above. Any interested person who reasonably requires additional time within which to supplement the administrative record should request, in writing, an extension of the public comment period, and the Department shall exercise reasonable discretion in setting the closing date for public comment;

vi. The Department shall publish notice, in accordance with (g)14 above of any decision to extend the period for public comment beyond the 15 days following the public hearing. Any notice of an extension of the public comment period shall clearly set forth the closing date of such extension.

18. Reopening of the public comment period shall be at the Department's discretion based upon the following:

i. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a tentative approval or other agency action, the Department may take one or more of the following actions:

(1) Issue a permit, appropriately modifying the tentative approval to reflect the Department's response to the questions raised;

(2) Prepare a revised fact sheet and revised tentative approval and reopen the comment period under this section; or

(3) Reopen the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

ii. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening;

iii. Public notice of any of the above actions shall be published in accordance with (g)14 above. Any notice issued pursuant to this section shall clearly define the scope of the reopening for purposes of limiting the scope of comments submitted during the reopened period pursuant to (g)18ii above.

19. The Department shall base the final permit decision on the administrative record, which shall be complete on the date the SWF permit is issued and which shall include, but not be limited to:

i. The application, including the registration statement, engineering design, EHIS, Addendums, if any, and all other additional materials submitted by the applicant in support of the application;

ii. All written comments received during the public comment period, including any comments submitted during an extension or reopening of the comment period;

iii. The transcript of any public hearing held on the permit application;

iv. The hearing officer's report which shall contain the Department's response to comments made during the comment period;

v. The fact sheet prepared by the Department for any public hearing and other documents contained in the supporting file;

vi. The tentative approval and final permit documents; and

vii. Material readily available to the Department, or published material which is generally available, need not be physically in the same file as the rest of the administrative record as long as it is specifically referred to in the fact sheet, the written comments, the transcript, or in the response to comments.

20. The provisions of this subchapter shall not supersede the public hearing procedures required for facilities obtaining any other permit issued by the Department. The public notice and public comment provisions contained in the applicable regulations or statutes shall govern those permit procedures.

21. The Department shall notify the applicant of the permit application decision by issuance of a SWF permit or by letter of denial on the application. In addition, the SWF permit or letter of denial shall be made available to all parties receiving copies of the application or notice of the application pursuant to (g)6 and 7 above and to any other interested person who has commented, orally or in writing, on the application, tentative approval or other agency action. Notice of the decision shall be published in the DEP Bulletin.

22. Within 20 calendar days of receipt of the Department's decision, the applicant may submit a written request to the Department for an adjudicatory hearing to contest any aspect of the Department's decision.

i. Any request for an adjudicatory hearing must be based on specific relevant issues raised by the applicant during the public comment period;

ii. Any request raising new issues shall be considered by the Department as a request to reopen the public comment period pursuant to (g)18 above;

iii. The Department may base a denial of a request for an adjudicatory hearing on the failure of the applicant to have raised the issue during the public comment period;

iv. The request for an adjudicatory hearing shall state the applicant's factual position on each question alleged to be at issue, its relevance to the permit decision, specific reference to contested permit conditions as well as suggested revised or alternative permit conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue. Supporting documentation shall be identified in the administrative record and shall be properly referenced; and

v. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402.

23. The Department may extend the time allowed for submitting a hearing request under this section for good cause shown.

24. For 30 days following receipt of a request for an adjudicatory hearing, the Department may attempt to settle the dispute by conducting such proceedings, meetings, and conferences as it deems appropriate.

25. If Department efforts at settlement fail, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26-2.5 Public hearing procedures

(a) The Department shall be responsible for scheduling and conducting a public hearing in reasonable proximity to the location of the proposed facility.

(b) The Department shall designate a hearing officer who shall exercise reasonable discretion in the conduct of the hearing and shall encourage general discussion of the proposed facility, including public comment on the proposed operation, tentative approval or other action to be taken by the Department.

(c) The public hearing shall be a non-adversarial hearing at which any interested person may submit oral or written statements and data concerning the proposed operation, tentative approval or other agency action.

(d) The Department may make a presentation at the public hearing, describing the proposed facility and explaining the basis for the issuance of the tentative approval or other proposed action.

(e) The applicant shall appear at the public hearing on a tentative approval and be available to answer questions regarding the proposed facility. Failure of an applicant to appear and answer relevant questions at the public hearing may result in revocation of the tentative approval and denial of the application. The applicant may make a presentation at the public hearing, describing the proposed facility.

(f) The public hearing proceedings shall be transcribed or recorded and the transcript shall be part of the administrative record.

(g) The hearing officer, to the extent feasible, shall conduct the hearing in the following manner:

1. All interested persons shall be afforded the opportunity to appear and comment at the hearing;

2. Time shall be allotted for individuals to present comments where necessary to accommodate those present and to limit repetition;

3. Testimony on irrelevant matters shall be excluded; and

4. The hearing officer shall ensure that the hearing proceeds in an orderly fashion.

(h) To help ensure that relevant questions are answered at the public hearing, such questions may be submitted to the Department no later than five days prior to the public hearing. At the time of the hearing, the Department or the applicant, in the Department's discretion, will make every reasonable effort to answer these questions and other relevant questions received at the hearing.

(i) (Reserved)

(j) In the event that a response to a question cannot be given at the hearing, a written response shall be prepared after the hearing by either the Department or the applicant, at the Department's discretion. A copy of that written response shall be included in the hearing officer's report and shall be provided to the individual asking the question and others requesting copies of the hearing officer's report.

(k) The cost of advertisement and other expenses of the public hearing, including provision and preparation of the transcript, will be certified to the applicant who shall pay the bill within 30 days thereafter. Payment of the bill, in full, shall be a condition of final permit issuance.

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7:26-2.6 Procedures and grounds for modification, revocation and reissuance and termination of SWF permits

(a) When the Department receives any information concerning a solid waste facility, it may determine whether or not one or more of the causes listed at (a)4 below for modification or revocation and reissuance exist.

1. If cause exists, the Department may modify, or revoke and reissue the SWF permit, subject to the limitations of this section, and may require the SWF permittee to submit an updated or new application in accordance with (e) below, if appropriate. When a permit is modified, only the SWF permit conditions subject to modification may be reopened for public comment. If a permit is revoked and reissued, the entire permit shall be reopened for public comment and the permit shall be reissued for a new term.

2. If a cause does not exist under this subsection or (c) below, the Department shall not modify or revoke and reissue the permit. The Department shall notify the person submitting the request that cause does not exist for a permit condition modification or a revocation and reissuance of the permit.

3. If a permit modification satisfies the criteria in (d) below for a minor modification, the permit may be modified without issuance of a tentative approval or public comment thereon. Otherwise, a tentative approval of the modified SWF permit conditions or of the revoked and reissued SWF permit shall be prepared pursuant to (e) below and the procedures in N.J.A.C. 7:26-2.4 (g) 11 through 25 followed.

4. The following may be cause for modification of permit conditions or revocation and reissuance of the SWF permit at the discretion of the Department.

i. There are material and significant alterations or additions to the permitted facility or operation which occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit. For the purpose of this subchapter, a material and significant alteration or addition is defined as:

(1) A major alteration to or addition of a new structure to the facility, which is not deemed to be a minor modification as set forth at (d) below and which would result in a significant change in the approved environmental impacts of the facility;

(2) An increase in the approved capacity of the facility which would result in a significant change in the approved environmental impacts of the facility; and

(3) A major alteration in the operations of the facility which would result in a significant change in the approved environmental impacts of the facility;

ii. The Department has received information that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of issuance. This shall include any information indicating that the effects on the environment are unacceptable or that the facility is being operated in an environmentally unsound manner;

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by a judicial decision after the permit was issued. Permits may be modified for this cause only as follows:

(1) For promulgation of amended standards or regulations, when the permit condition to be modified was based on a requirement of N.J.A.C. 7:26, and the Department has revised, repealed or modified that portion of the regulation on which the permit condition was based; and

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed a Department regulation or guideline, if the remand and stay concerned that portion of the regulation or guideline on which the permit condition was based and a request is filed by the permittee.

5. The Department shall follow the applicable procedures in (e) below while pursuing a modification or revocation and reissuance of any permit under this section.

(b) The Department may modify or, alternatively, revoke and reissue a permit if cause exists for termination under (c) below and the Department determines that modification or revocation and reissuance is appropriate.

(c) When the Department receives any information concerning a facility, it may determine whether or not one or more of the causes listed below for termination of the permit exist and shall proceed as set forth below.

1. The following are causes for terminating a permit during its term or for denying a permit renewal application.

i. Noncompliance with any condition of the permit;

ii. The permittee's failure in the application, during the permit issuance process or at any subsequent time during the permitted operations of the facility to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time, including a material and significant alteration or addition to the permitted facility;

iii. A determination by the Department that the facility is being operated in an environmentally unsound manner;

iv. A determination that the permitted activity endangers human health or the environment, or has the potential to do so, and can only be regulated to acceptable levels by permit modification or termination; or

v. A change in ownership or operational control of a permitted facility not in compliance with N.J.A.C. 7:26-2.7(e);

2. The Department shall follow the applicable procedures in (e) below in terminating any permit under this section.

(d) Upon the request of the permittee, an interested party or for good cause, the Department may make certain minor modifications to a permit without issuing a tentative approval, providing public notice thereof or holding a public hearing thereon.

1. Minor modifications to the permit shall be made to accomplish only the following:

i. Require more frequent monitoring or reporting by the permittee;

ii. Change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;

iii. Change a compliance schedule when the cause of the required change is an event over which the permittee has little or no control, such as a flood, strike or material shortage, or another event for which the permittee has no reasonable available remedy;

iv. Delete types of solid waste being accepted for handling, processing or storage at the facility or include types which are similar in nature to those included in the permit at the time of issuance without increasing the design capacity of the facility;

v. Change the testing methods or procedures in the permit as a result of changes to standardized methods or procedures;

vi. Revisions as necessary to conform to a decision by the Department rendered after an adjudicatory hearing or any settlement of the issues for which an adjudicatory hearing has been requested, pursuant to *N.J.A.C. 7:26-2.4(g)*;

(1) After settlement of the issues for which an adjudicatory hearing had been requested, those persons who commented on the tentative approval shall receive notice of any revised permit conditions; or

vii. Changes in the design or operation of the facility which, in the best engineering judgement of the Department, will upgrade or cause no change in the environmental performance or reduce adverse environmental or human health impacts and/or are consistent with any applicable solid waste facility performance partnership agreement pursuant to N.J.A.C. 7:26-2.14 or Silver Track II Covenant pursuant to N.J.A.C. 7:26-2C.

2. A minor modification shall be effective within 60 days from the receipt by the Department of the request submitted pursuant to (d)1 above. In the event that the Department determines, based on the information submitted, that a modification of permit conditions or the revocation and reissuance of the permit pursuant to (a)3 above is warranted, the Department shall notify the permittee within 60 days of the receipt of the request. In the event that the Department fails to take action on a request for a minor modification within 60 days, the minor modification shall be deemed effective.

(e) Permits may be modified, revoked and reissued, or terminated either upon written request of the permittee, or upon the Department's initiative. The request shall set forth the relevant factors and rationale supporting the request. Upon receipt of any request, the Department shall follow the procedures set forth below:

1. Within 30 days of receipt of a request to modify or revoke and reissue, or terminate a permit, the Department shall review the request and determine whether the grounds exist for modification, revocation and reissuance or termination.

i. If the Department determines that grounds exist for modification, revocation and reissuance or termination consistent with (a)4, (b) or (c) above, it shall notify the permittee and, if necessary, require the permittee to submit information, including, but not limited to, a new or updated application.

ii. If the Department determines that grounds do not exist for modification, revocation and reissuance or termination, the Department shall notify the requesting party.

2. If a new or updated application is required, the Department shall follow the procedures for review and tentative approval outlined at N.J.A.C. 7:26-2.4(g).

3. If a new or updated application is not required, the Department shall, within 60 days of determining that a request is complete, deny or prepare a tentative approval incorporating the proposed change pursuant to N.J.A.C. 7:26-2.4(g)12.

4. In a permit modification only those conditions to be modified shall be reopened for public comment in accordance with the procedures set forth at N.J.A.C. 7:26-2.4(g)13 through 25. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

5. During any modification proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until the modification proceedings are completed.

6. When a permit is revoked and reissued, the entire permit shall be reopened in accordance with the procedures set forth at N.J.A.C. 7:26-2.4. During any revocation and reissuance proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until a new final permit is issued; or

7. Minor modifications as defined in (d) above are not subject to the requirements of this subsection.

8. If the Department tentatively decides to terminate a permit under (c) above, it shall issue a notice of intent to terminate. The notice of intent to terminate shall be processed in accordance with the same procedures as a tentative approval pursuant to N.J.A.C. 7:26-2.4(g)11 through 25.

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

(a) A permit issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years except as provided in (c) and (d) below or N.J.A.C. 7:26-2.14 or 2C. A permit may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the District Solid Waste Management Plan and, for sanitary landfills, provided that the permitted capacity, as specified in the approved engineering design, is not exceeded.

1. The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

2. Nothing herein shall be construed to allow the permittee to exceed the maximum permitted capacity of the facility as set forth in the SWF permit for the facility at any time during the term of the permit. Any expansion, extension, enlargement or other increase beyond permitted capacity conditions shall be considered a material and significant alteration or addition to the permitted facility or operation and shall be cause for modification or revocation of the SWF permit at the discretion of the Department in accordance with N.J.A.C. 7:26-2.6(a)4.

3. The Department may issue any permit for a duration that is less than the full allowable term under this section.

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

1. The permittee of a permitted solid waste facility shall apply for permit renewal at least 90 days prior to the expiration date of the existing SWF permit if the facility has remaining permitted capacity in accordance with its SWF permit and if the facility is included in the District Solid Waste Management Plan.

2. The permittee, owner or operator shall submit all fees required by 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. An updated registration statement on forms provided by the Department;

ii. An updated engineering design for the facility;

iii. An updated Operations and Maintenance Manual for the facility; and

iv. An amendment to the disclosure statement as required pursuant to N.J.A.C. 7:26-16.6; and

v. An updated environmental and health impact statement, including a complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-2.4(g)6 and 7 of the SWF permit renewal application.

4. The Department shall review the application for completeness in accordance with procedures set forth at N.J.A.C. 7:26-2.4(g).

5. The Department shall provide notice of its tentative decision on the permit renewal application and of the opportunity for a public hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

6. A request for a public hearing must be filed within 30 days of publication of a notice of opportunity for such hearing in accordance with N.J.A.C. 7:26-2.4(g)14iii.

7. The public comment period shall close 15 days after the date of last public hearing or 30 days after the notice of opportunity for a public hearing on the renewal application.

8. The final agency decision on the SWF permit renewal application shall be based on the administrative record as defined in N.J.A.C. 7:26-2.4(g)19.

(c) The conditions of an expired permit are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for a renewal pursuant to (b) above;

2. The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit, due to time or resource constraints;

(d) Permits continued under this section remain fully effective and enforceable;

1. If the permittee is not in compliance with any one of the conditions of the expiring or expired permit the Department may choose to do any or all of the following:

i. Initiate enforcement action based upon the permit which has been continued;

ii. Issue a notice of intent to deny the new permit under N.J.A.C. 7:26-2.4. If the permit is denied, the owner or operator would then be required to cease activities and operations authorized by the continued permit or be subject to an enforcement action for operating without a permit;

iii. Issue a new permit under N.J.A.C. 7:26-2.4 with appropriate conditions; or

iv. Take such other actions as are authorized by these regulations or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(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. A registration statement, completed by the prospective new permittee on forms provided by the Department;

ii. A disclosure statement as required by N.J.A.C. 7:26-16.4 completed by the proposed transferee;

iii. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-2A.9 will be met by the proposed new permittee; and

iv. A written agreement between the existing permittee and the proposed new permittee containing a specific future date for transfer of ownership or operations.

2. A new owner or operator may commence operations at the facility only after the existing permit has been revoked and a permit is issued pursuant to N.J.A.C. 7:26-2.4.

3. The permittee of record remains liable for ensuring compliance with all conditions of the permit unless and until the existing permit is revoked and a new permit is issued in the name of the new owner or operator.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the permittee from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

7:26-2.8 Registration and general prohibitions

(a) The registration statement shall be executed, in accordance with the requirements of N.J.A.C. 7:26-2.4(e), on forms furnished by the Department, and shall state such information necessary and proper for the enforcement of this subchapter as the Department may require.

(b) Prior to May 1 of each calendar year, each permittee shall submit to the Department, a statement updating the information contained in the initial registration statement. This update shall be on forms furnished by the Department. In no case shall submission of an updated statement alter the conditions of the permit.

(c) The permittee shall notify the Department in writing within 30 days of any change in the information set forth in this current registration statement.

(d) The failure to submit an updated registration statement and to submit all applicable fees, required by N.J.A.C. 7:26-4, on or before July 1 of each calendar year shall be sufficient cause for the Department to revoke the permit or take such other enforcement action as is appropriate.

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1,1.7 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.

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 N.J.A.C. 7:26-16.8.

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(g) No person shall continue to operate a solid waste facility, unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7 or 1.8 without obtaining a SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved SWF Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) The fulfillment of the application and approval requirements set forth in this subchapter shall not exempt the applicant from obtaining all other permits or approvals required by law or regulations.

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11, unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(j) No person shall engage or continue to engage in disposal of solid waste in this State in a manner which does not meet all the conditions, restrictions, requirements or any other provisions set forth in its SWF permit.

(k) Except for minor modifications as set forth at N.J.A.C. 7:26-2.6(d), no permit condition shall be modified, revised or otherwise changed without prior written approval of the Department.

(l) No owner shall transfer ownership of the permit without receiving prior written approval of the Department, in accordance with N.J.A.C. 7:26-2.7(e).

(m) No permittee shall begin construction of a sanitary landfill until the Department approves the final Quality Assurance/Quality Control Plan submitted in accordance with N.J.A.C. 7:26-2A.8.

(n) No permittee shall begin operating a sanitary landfill, composting or co-composting facility, transfer station, materials recover facility, or thermal destruction facility until:

1. The Department approves the final Operations and Maintenance manual in accordance with N.J.A.C. 7:26-2.10; and

2. The Department receives and approves the certification of construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2A.9(a).

(*o*) No thermal destruction facility shall begin operations until:

1. The Department receives and approves the certification of the construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2B; and

2. The Department approves the testing period results in accordance with standards and procedures set forth in N.J.A.C. 7:26-2B.8(c).

(p) The owner or operator of any solid waste facility which is determined by the Department to be operating in an environmentally unsound manner shall:

1. Within 90 days of notification by the Department, submit a plan to close or environmentally upgrade the facility in conformance with the applicable standards, as determined by the Department and set forth in this chapter;

2. Within 90 days of receipt of written approval by the Department of the submitted plan, begin to close or construct the environmental upgrading at the facility; and

3. Within one year of receipt of written approval by the Department of the submitted plan, complete closure or construction of the environmental upgrading at the facility.

(q) A one time extension of the compliance schedule established by (p) above shall be granted by the Department provided the facility owner or operator demonstrates that he or she has made a good faith effort to meet the schedule.

(r) Should the closure or environmental upgrading required pursuant to (p) above not be completed or should continued operations be determined by the Department to be environmentally unsound despite the implementation of the plan approved pursuant to (p) above, the solid waste facility shall temporarily or permanently cease operations and close or enter into receivership, as provided for in N.J.S.A. 13:1E-9, for that period of time necessary to rectify the environmentally unsound conditions.

(s) No person shall knowingly dispose of a used covered electronic device, as defined at N.J.A.C. 7:26A-13.2, or any of its components or subassemblies, as solid waste. A used covered electronic device shall be recycled in accordance with N.J.A.C. 7:26A.

7:26-2.9 Environmental and Health Impact Statement requirements

(a) The Environmental and Health Impact Statement, (hereinafter EHIS), shall be prepared utilizing a systematic, interdisciplinary approach in order to ensure the integrated assessment of technical, economic, environmental and social parameters potentially affected by the proposed facility.

(b) An EHIS prepared and submitted pursuant to this section shall address each category described at (c)3 below. The magnitude and detail of the environmental inventory, the environmental assessment, the health impact assessment and the overall EHIS shall reflect the type, size and location of the proposed solid waste facility. Where

the information addressing a requirement of the inventory is supplied in the engineering designs or reports, reference to such designs or reports may be noted in the inventory, provided the appropriate section and page number of the design or report is cross referenced and indexed. If any category described at (c)3 below presents no impact relative to the proposed facility, a notation of non-applicability shall be entered in the environmental inventory for that category. The Department shall allow variances to the requirements of this section for any category, or to reduce the size of the general area to be described in the inventory relative to site specific impacts, if the applicant demonstrates during the pre-application conference that specific categories are not applicable or the area is not appropriately subject to the EHIS based on the type, size and location of the proposed solid waste facility.

(c) The EHIS for all solid waste facilities other than solid waste facilities for which specific requirements are set forth in (d) below, shall contain the following:

1. An executive summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts;

2. A detailed written description of the municipal and neighborhood setting of the proposed facility. The site location shall also be identified by the following:

i. An 8 1/2 inch x 11 inch copy of the key map prepared in accordance with N.J.A.C. 7:26-2.10(b)4 and submitted as part of the engineering design; and

ii. An 8 1/2 inch x 11 inch copy of the vicinity map prepared in accordance with N.J.A.C. 7:26-2.10(b)5 and submitted as part of the engineering design.

3. An environmental inventory, prepared in detail for the site specific conditions and, unless otherwise specified herein, a general description for a minimum area of one mile from the perimeter of the proposed facility's property lines, describing existing conditions for each of the following categories:

i. Category I, the physical/chemical category, requires the following parameter descriptions:

(1) Describe the physical geology by identifying major characteristics of the formations present, including, but not limited to, thickness, lithology, structural features, degree of weathering and amount of overburden. The description of the site specific geology shall include, but not be limited to, the general engineering properties and indexes and, where applicable, the quality of the subsurface soils. Provide a copy of the geologic map prepared in accordance with *N.J.A.C. 7:26-2.10(b)*7ii;

(2) Describe the soils by identifying major soil types and their characteristics including, but not limited to, drainage, erosion potential and sedimentation potential. Information shall be based on U.S. Soil Conservation Service Surveys. The description of the site specific soils shall include, but not be limited to, the texture and thickness of each horizon, observed mottling, taxonomic classification and, where applicable, the quality of the surface soils. Provide a copy of the soils map prepared in accordance with *N.J.A.C. 7:26-2.10(b)*7i;

(3) Describe the subsurface hydrology by presenting groundwater quantity and quality data for the aquifers located beneath the site, including, but not limited to, depth to groundwater during seasonal high and low flow, flow direction, existing uses and future supply capabilities;

(4) For water bodies which directly abut the site, exist on the site, or drain directly onto or off the site, provide detailed water quantity and quality data. Such data shall include, but not be limited to, flow rates, current uses and supply capabilities, dissolved oxygen (D.O.), biochemical oxygen demand (B.O.D.), total organic carbon (T.O.C.) total suspended solids (T.S.S.) and general temperature regime. Identify also all existing water classifications, designated uses and limitations of the surface water bodies in accordance with *N.J.A.C. 7:9B*;

(5) For upstream tributaries of bodies of water which flow onto the site, and downstream tributaries of bodies which flow from the site, identify all existing water classifications, designated uses and limitations of the surface water bodies, in accordance with *N.J.A.C. 7:9B*. Provide also a narrative description of the factors influencing the water quality in such bodies, including but not limited to major permitted discharges, tributaries or confluences with other bodies, etc. Information required by this subsection shall be provided for a distance of one mile from the site boundary;

(6) For all water bodies not named in (4) and (5) above, identify all existing water classifications, designated uses and limitations of the surface water, in accordance with *N.J.A.C. 7:9B*;

(7) Provide documentation that the proposed facility will not be inconsistent with any facility or area wide water quality management plan developed pursuant to the Water Quality Planning Act, *N.J.S.A. 58:11A-1* et seq.;

(8) Describe the topography by presenting contour data, drainage patterns and 100 year floodway and flood hazard areas delineations pursuant to the Flood Hazard Area Control Act, *N.J.S.A. 58:16A-50* et seq., or areas identified pursuant to and based upon the most current Federal Flood Emergency Management Act (F.E.M.A.) maps and data;

(9) Describe the climate by presenting site specific data for wind direction, velocity and frequency, average annual and monthly precipitation and temperature. Unless specifically required to be otherwise obtained by the Department, meteorological data may be obtained from the nearest National Oceanographic and Atmospheric Administration (N.O.A.A.) sanctioned station;

(10) Describe the ambient air quality by presenting data for existing concentrations of the National Ambient Air Quality Standard pollutants as identified in *42 USC 7401* et seq., and provide a demonstration that the proposed facility will be consistent with the New Jersey State Implementation Plan and related air quality requirements established by the Office of Air Quality Management. Unless specifically required to be otherwise obtained by the Department, ambient air quality data may be obtained from the nearest State operated monitoring station.

(11) Describe the ambient acoustical conditions by providing day and night noise levels measured at the boundaries of the proposed site. Identify sources of impulsive and continuous noise.

ii. Category II, the biological/ecological category, requires the following parameter descriptions:

(1) Characterize the site and an area within one mile radius from the site boundary, with respect to major plant association (for example, mixed hardwood forest, old field successional, etc.). Delineate different associations present in a mapped format. Identify major dominant and minor species present in each plant association present. Provide estimates of the proportions of each;

(2) For game and non-game mammals, and for an area which includes the site and area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(3) For game and non-game birds, and for an area which includes the site and an area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(4) For reptiles and amphibians, for those water bodies listed in (c)3i(4) and (5) above, and for an area within one-quarter mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(5) For fish, for all water bodies listed in (c)3i(4) and (5) above, and all water bodies within one-quarter mile of the site boundary, describe utilization by identifying species and estimating populations utilizing the site for year-round, breeding, wintering and migratory purposes;

(6) Describe the plant or animal species on the Federal and State endangered, threatened or rare plant or animal species lists and identify, in a mapped format, the extent of utilization by such species, if present. Quantify the amount of habitat at the site for each such species and the corresponding carrying capacity for each species. Evaluate applicable breeding, wintering and migratory patterns when identifying species utilization;

(7) Identify by mapping any unique, critical or unusual habitat including, but not limited to, wetlands, prime agricultural lands, steep slopes of greater than 15 percent, riparian lands, coastal zones or other areas as may be specified by the Department;

(8) Present a description of site visits actually undertaken to evaluate the site ecosystem. The description should include the date, duration of the visit, weather conditions, individuals present to conduct the study, parameters being studied and a copy of studies prepared in connection with preparation of the environmental inventory; and

(9) Describe the methodologies utilized to evaluate the biotic community and present a bibliography of all research materials utilized in the preparation of the environmental inventory. The description of the methodologies

utilized shall be sufficient to permit an independent expert to form an opinion as to the scientific justification and integrity of the selected methodology.

iii. Category III, the cultural category, requires the following parameter descriptions:

(1) Describe recreational activities by identifying areas known to be used for such activities as hunting, fishing, trapping, boating, swimming, tourism, camping, nature photography and bird watching. Identify designated parks, forests and wildlife management areas, natural areas and other publicly or privately owned lands designated for open space or recreational activities;

(2) Describe the aesthetics by identifying surrounding architecture, open space areas and scenic areas; and

(3) Describe the areas of historical or archeological importance.

iv. Category IV, the socioeconomic category, requires the following parameter descriptions:

(1) Describe the transportation facilities by identifying the network which will service the proposed facility, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service and average daily number of trips. Identify any proposed local, county, or State Department of Transportation traffic engineering plans for the network identified;

(2) Describe the sewage facilities by identifying the type of treatment system available, its existing treatment capacity, collection system capacity, average and peak flow data, and current committed capacity for treatment and collection system;

(3) Describe the stormwater management system by identifying the type of collection and treatment system available, and current collection and treatment capacity and utilization;

(4) Describe the water supply by identifying the water supply system, water sources, level and type of existing pre-treatment, capacity of the distribution system, current commitment of capacity, availability of additional supply, and peak and average demands;

(5) Describe the energy supply system on-site or immediately available to the site by identifying existing power lines or pipelines, current commitment of capacity, their capability of supplying energy to the proposed facility and conveying, if applicable, any energy products generated by the proposed facility from the site;

(6) Describe the demography of the area by providing existing population totals and describing present and projected future population and trends for the district within which the facility will be located and all districts which will utilize the proposed facility. State, county or local government sources may be used for all demographic data;

(7) Describe property values within the immediate neighborhood with respect to median sales prices and recent (1-2 year) trends and provide a general description of the property values of the municipality within which the proposed facility will be located and all municipalities within one half mile of the proposed facility. The descriptions shall include such factors as zoning changes, development patterns, development approvals, etc. which can affect property values. The description of property values in the immediate area of the facility shall be sufficiently detailed to allow assessment of the effect construction and operation of the facility may have on such values;

(8) Describe public services available by identifying current local law enforcement, fire protection and health protection capabilities of the municipality in which the proposed facility will be located; and

(9) Describe the type and map the location of community and residential dwellings such as hospitals, nursing homes, food processing centers, playgrounds, parks, schools and residences.

4. A description of the proposed facility operations, which shall include, but not be limited to the following:

i. An identification of the project sponsor including name, address, and telephone number where the project sponsor can be contacted during normal working hours. Indicate if the project sponsor is presently, or was previously, associated with any other waste disposal or collection project or operation and, if applicable, identify the project or operation. Describe the responsibilities assumed during this association;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the products or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be located, and the surrounding communities;

iii. An identification of existing or potential markets for each of the products to be recovered from the solid waste disposal operation, if applicable. Identify the types, qualities and daily quantities of products to be recovered. Set forth the elements of a quality control plan for the recovered products. Provide a copy of any long-term contracts for the sale of the recovered products, if available. In the case where long term contracts have not been finalized upon submittal of the EHIS, a detailed letter of intent, describing areas of agreement and disagreement, shall be submitted. The end use of the recovered products, by the purchaser, shall be defined;

iv. An economic analysis for the proposed facility which projects and approximates capital, operating and maintenance expenditures, as well as any revenues to be realized from the anticipated sale of recovered products, if applicable. The analysis shall project the maximum and minimum charges to be assessed for the various waste ID types to be handled, including an estimate of the initial tipping charges to be levied;

v. An identification of the waste streams which the proposed facility will accept, and copies of any agreements which guarantee a steady flow of this waste to the facility;

vi. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

vii. A narrative statement of the type of disposal processes to be used, including control measures and monitoring instrumentation. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily and hourly handling capacity of the overall facility in tons of refuse received per day and the anticipated operating time in hours per day and days per week; and

viii. A description of the quantity and physical/chemical characteristics of process residues and side-stream wastes resulting from the operation, if applicable. A detailed discussion of appropriate methods of disposal for all such materials such as, through contracts or inclusion in the appropriate district solid waste management plan, including, if available, the identification of primary and alternate disposal sites and methods of storage and handling and methods of reuse or recycling, if applicable.

5. A discussion of the relationship of the proposed action to Federal, State, county, and local land-use plans, policies and controls and environmental regulations. The discussion shall include the following:

i. A description of present land use for the site of the proposed facility and the area within two miles of the perimeter of the facility property line. Include a map or maps illustrating zoning designations and a chart setting forth use restrictions. If the site, any portion of the site or any areas adjacent to the site was previously used for waste landfilling, information relating to depth and area of deposition, type of material landfilled, gas concentration and migration, settling and other factors which may potentially affect construction and operation shall be provided;

ii. A description of how the project will conform or conflict with the objectives of any applicable Federal, State or local land use and environmental requirements including, but not limited to, those affecting the following:

(1) The floodway and flood fringe areas of the flood hazard areas as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A 58:16A-50 et seq., or areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA);

(2) Areas designated as wild, scenic, recreational or developed recreational rivers pursuant to the Natural Wild and Scenic Rivers Act, 16 USCA 1271 or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45;

(3) Critical habitat of endangered or threatened species of plants, fish or wildlife as defined by the Federal Endangered Species Act of 1973, P.L. 93-205, or the New Jersey Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A-1 et seq.

(4) Wetlands, tidelands and coastal zone areas as identified by the Department pursuant to the Wetlands and Coastal Resource and Development Policies, N.J.A.C. 7:7E and as identified on the U.S. Fish and Wildlife Services National Wetlands Inventory Maps;

(5) The Preservation and Protection Areas as established by N.J.S.A. 13:18A-11 of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

(6) Nonattainment areas as defined in N.J.A.C. 7:27-18;

(7) Areas subject to the prevention of significant deterioration criteria as defined in 40 CFR 52.21;

(8) Areas which may impact the acoustical quality of residential and commercial properties pursuant to N.J.A.C. 7:29;

(9) Areas which may significantly impact water quality pursuant to N.J.A.C. 7:15;

(10) Lands that have been duly certified by the State Agriculture Development Committee as agricultural development areas pursuant to the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq.;

(11) Watershed areas for water classified by the Department as FW-1 waters or FW-2 Trout Production Waters pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9B;

(12) Areas over a sole source aquifer designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93-523;

(13) Areas within the critical supply areas as defined by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

(14) Areas which will encroach upon, damage or destroy any area, site, structure or object included in the National or State Register of Historic Places established by N.J.S.A. 13:1B-15.128;

(15) Areas within 10,000 feet of any airport runway which is equal to or greater than 3,000 feet in length, within 5,000 feet of any airport runway which is less than 3,000 feet in length;

(16) Areas dedicated to recreational or open space use including, but not limited to, national parks, national recreation areas, national forests, national wildlife refuges, state wildlife management areas, state parks, state forests, state designated natural areas and county or local parks, wildlife sanctuaries and recreational facilities; and

(17) Areas subject to cleanup pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.;

iii. Where the potential for a land use or environmental conflict exists, the applicant shall describe the mitigation efforts to be undertaken to meet the intent of the applicable land use or environmental requirement.

6. A comprehensive description of the district solid waste and, if applicable, sludge management plans for the districts wherein the proposed facility is to be located, from which solid waste is to be received, or to which process residues are to be sent for disposal. The description shall include the following:

i. An identification of all affected municipalities and districts and a description of the strategy of each plan as it pertains to the proposed facility; including inter-district waste flow agreements and intra-district waste flow patterns, plan duration, recycling and waste reduction goals, implementation schedules and plan implementing agencies. A description of how the proposed facility will conform with the content and strategy of each plan shall also be included; and

ii. A discussion of the elements of the plan which indicate a need for the facility, its relation to current solid waste disposal capacities and the mechanisms established that will guarantee the necessary waste flows to the proposed facility.

7. A list and status report on all Federal, State, county and local licenses, permits and certifications necessary for the proposed facility;

8. An environmental assessment, which shall provide a detailed evaluation of the potential impacts of the proposed facility on the environment including, but not limited to, all parameters identified in the environmental inventory in (c)3 above. The assessment shall include, but not be limited to, the following:

i. An evaluation of both positive and negative, as well as, primary (direct or immediate) and secondary (indirect or long range) impacts on each parameter under conditions of maximum usage or output and a correlation of such impacts with various stages of the site preparation, facility construction, operation, closure and post closure phases;

ii. An identification and description of the modeling techniques used to predict impacts on the various parameters identified in (c)3 above. Where applicable, a calibrated and verified model shall be used and a copy of the model in the appropriate format shall be transmitted to the Department. Where an accepted modeling technique is not available best professional judgment may be used. A detailed description of the logical reasoning and assumptions made in the exercise of best professional judgment shall be incorporated to permit independent review;

iii. Isopleths, grid maps or other maps to depict potential zones of contaminant migration surrounding any and all sources of emission or discharge. Identify the type and location of each source;

iv. A quantification of impacts whenever possible (for example, lost habitat in acres) for all potential environmental impacts identified, where such quantification is not included, an explanation of the reason for such omission shall be provided;

v. A qualitative discussion of all potential environmental impacts identified; and

vi. A detailed description of the mitigative techniques proposed to address any potential environmental impact associated with the proposed facility.

9. A health impact assessment for Class II and III sanitary landfills and thermal destruction facilities, which shall provide a detailed evaluation of the potential impacts of the proposed facility on human health resulting from ground or surface water discharges and air emissions, including, but not limited to the following:

i. A description and discussion of the health risk assessment methodology to be employed, including detailed descriptions of the logical reasoning and assumptions employed in the method. A bibliography of reference material utilized in the preparation of the assessment shall be provided. Applicants shall contact the Department prior to the initiation of the assessment to obtain the current guidelines for such activities;

ii. A discussion of the level of uncertainty involved in the overall assessment. This discussion shall address the uncertainty involved in the estimation of individual parameters such as emissions or discharge and decay rates, levels of exposure and health effects, as well as the implications of complex uncertainties;

iii. A listing of all potential contaminants which may reasonably be expected to be released from the facility, and the amounts, concentrations and pathways of each;

iv. A listing of contaminants which will be utilized to assess health risks. All known carcinogens listed in (c)9iii above shall be included; additional contaminants shall be included, based on professional judgment. This list, together with a description of the rationale employed in choosing those materials included on the list, shall be submitted to the Department for review and approval prior to the initiation of the toxicity profile and health impact assessment;

v. For each of the contaminants listed in (c)9iv above, a toxicity profile shall be developed. This profile shall include data on the physical and chemical nature of the contaminant, as well as a description and discussion of data available regarding the environmental fate, acute effects (LD[50], irritation), chronic effects (mutagenicity, teratogenicity, carcinogenicity) and epidemiology of the material. This profile shall include a listing of available toxicological, epidemiological or other acute or chronic health effects studies used or otherwise available on the material in question. Applicants should contact the Department prior to the initiation of development of these profiles, to obtain the current guidelines for such activities;

vi. A quantification of the potential health impacts, where possible. If such quantification is not included, an explanation of the reason for such omission shall be provided; and

vii. A detailed description of the mitigation techniques proposed to address any potential health impacts associated with the proposed facility.

10. A summary discussion of any potential adverse impacts identified in the environmental and health assessment in (c)8 and 9 above that cannot be avoided should the proposed facility be implemented. For those impacts which cannot be avoided, their implications and the reasons why the proposed facility should be permitted shall be described. Where mitigation measures are proposed to reduce these potentially adverse impacts, the projected effectiveness and costs of the mitigative measures shall be discussed.

11. A comparison of reasonable design alternatives to the proposed facility. The comparison shall be sufficiently detailed to permit independent and comparative evaluation of the benefits, costs and environmental impacts of the design of the proposed facility and each reasonable design alternative. The comparison shall include the following:

i. Discussion of the alternative of no action or no project, and addressing the major foreseeable consequences of such a choice;

ii. Discussion of the feasibility of various alternative design or process changes, including those which could reduce or avoid some or all of the adverse impacts identified above;

iii. Preparation of economic analyses for both the chosen design and the identified design alternatives. Techniques such as cost-effectiveness analysis, cost-revenue analysis or other techniques approved by the Department may be employed;

iv. Identification of any significant differences in environmental impact which would result from use of the design/process changes identified in ii above, as compared to those resulting from the chosen alternative;

v. Comparison, in matrix or other appropriate format, of the degree of feasibility and economic and environmental impacts of both the chosen alternative and the set of feasible alternatives identified in (c)11ii above; and

vi. A discussion of the reasons why the proposed action was selected over the alternatives.

12. A discussion of the relationship between local, short term uses of the environment and the effect of the proposed facility on available options for subsequent future uses. Short term refers to the construction phase of the proposed facility. A description of the following shall be included:

i. Those cumulative and long-term effects of the proposed facility which either negatively impact or enhance the environment for the future;

ii. The extent to which the proposed facility prohibits future options;

iii. Plans which provide for the protection and maintenance of the environment during construction of the proposed facility, which shall include, but not be limited to, the following:

(1) Procedures to be used during construction if archeological resources are uncovered;

(2) Erosion and sediment control plans; and

(3) Controls for dust, odors, noise, traffic, and soil tracking.

iv. Plans which provide for the protection and maintenance of the environment after termination of the facility operation.

13. A discussion of irreversible and irretrievable commitments of resources resulting from the construction and operation of the proposed facility. The discussion shall include an analysis of the use of renewable and nonrenewable resources during construction and throughout continued operation, including an assessment of energy consumption. Where applicable, alternative energy sources shall be discussed and compared to the type selected and the rationale for the selection shall be stated.

(d) The minimum EHIS requirements for other types of solid waste disposal operations are as follows:

1. The EHIS for small scale thermal destruction facilities described in N.J.A.C. 7:26-2.4 (c)1 shall be based on the engineering designs submitted as set forth at N.J.A.C. 7:26-2.10 and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and residue disposal;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design as set forth at N.J.A.C. 7:26-2.10(b);

iii. The impact that the proposed facility will have on local transportation patterns, drainage characteristics, surface and ground water quality, endangered and/or threatened wildlife and vegetation, storm water and wastewater collection treatment capability, water supply capability, air quality and ambient acoustal conditions. If the proposed facility is to be located in a previously constructed building, the applicant may note "nonapplicable" for those areas of concern; and

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility.

2. The EHIS for small-scale materials recovery facilities, whose prime mode of operation relies upon the utilization of non-mechanical processing features, and solid waste transfer stations shall be based on engineering

designs prepared in accordance with the requirements of N.J.A.C. 7:26-2.10, and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and use of end product;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design and identified in N.J.A.C. 7:26-2.10(b)5 and 6 shall be included;

iii. The impact that the proposed facility will have on local transportation patterns, drainage and soil characteristics, surface and ground water quality, endangered or threatened wildlife and vegetation, storm water and wastewater collection/treatment capability, water supply capability, ambient acoustical conditions and air quality;

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility; and

v. A description of how the facility will conform or conflict with the objectives of any applicable Federal, State, or local land use and environmental requirement set forth at N.J.A.C. 7:26-2.9(c)5ii.

3. The EHIS for other types of small scale solid waste disposal operations not identified in this section shall be prepared in accordance with requirements established by Department for the operation, based upon the potential for adverse environmental and health impacts caused by such operations;

4. In addition to the EHIS requirements enumerated in this section, the Department retains the right to request additional EHIS information from the applicant.

(e) Compliance with the EHIS requirements set forth in this section shall not preclude the necessity for the applicant to conform with any environmental analysis requirements of other agencies which may have jurisdiction by law.

(f) A preliminary EHIS may be submitted to the Department prior to the submission of a complete permit application package for review and approval in accordance with the procedures set forth in (g) below and shall include but not be limited to the following:

1. An executive summary prepared in accordance with (c)1 above;

2. A site description prepared in accordance with (c)2 above;

3. An environmental inventory of the proposed facility prepared in accordance with (c)3 above;

4. An environmental assessment of the proposed facility, based on conceptual or preliminary engineering designs shall be performed and analyzed at maximum possible discharge or emission levels and on the parameter listed in the environmental inventory performed as required by (c)3 above;

5. A discussion of the relationship of the proposed facility to any Federal, State, county and local land-use or environmental plans, policies, controls or regulations. The discussion shall include the following:

i. A description of how the proposed facility will conform or conflict with the objectives of any of the Federal, State, county or local land-use or environmental requirements set forth in (c)5ii above.

ii. A description of the Federal, State, county or local land-use or environmental requirements which may restrict the construction and operation of the proposed facility; and

iii. A detailed description of the mitigative techniques proposed to address any potential land use or environmental impact associated with the proposed facility.

6. A discussion of any potential adverse impact identified in the environmental assessment in (f)4 and 5 above that cannot be avoided;

7. A comparison of alternatives to the proposed facility design, which shall be sufficiently detailed to permit evaluation of the benefits, costs and environmental impacts of the proposed facility design and reasonable design alternatives;

8. A discussion of the relationship between local, short-term uses of the environment and long-term future uses; and

9. An identification of irreversible and irretrievable commitments of resources that would be affected by the proposed facility.

(g) The following are the procedures for preliminary EHIS review and approval and the effect of the preliminary EHIS approval:

1. An applicant may, at its own option, submit a preliminary EHIS to the Department prior to the submission of a complete application for a SWF permit;

2. The preliminary EHIS shall contain all information required pursuant to (f) above and such other information as the Department deems necessary during a preapplication conference for preliminary EHIS review;

i. The applicant shall provide the Department with documentation demonstrating that the proposed facility is included within the applicable district solid waste management plan, and that the proposed facility can be acquired, constructed or operated pursuant to the standards set forth in this chapter.

3. The preparation of a preliminary EHIS is not a precondition to the preparation and submittal of a complete application for a solid waste facility permit;

4. After submission of a preliminary EHIS, the Department shall review the preliminary EHIS and take one of the following actions:

i. Request, in writing, additional information required by the Department to conclude a review of the preliminary EHIS. Such request shall specify any additional information such as modeling, environmental or health assessments or project alternatives necessary to sufficiently evaluate the preliminary EHIS. The applicant shall respond within 14 days of the receipt of the written request and specify its intent to proceed with the submission of the information requested or terminate the preliminary EHIS review;

ii. Recommend a reconsideration of project alternatives based upon a review of the facts and proposed impacts of the proposed facility;

iii. Approve the preliminary EHIS; or

iv. Disapprove the preliminary EHIS.

5. Preliminary EHIS review and approval shall not preclude the necessity for an applicant to prepare and submit a final EHIS to the Department as part of a complete permit application pursuant to N.J.A.C. 7:26-2.4(d);

6. Pursuant to N.J.S.A. 13:1E-26 and N.J.S.A. 13:1E-29, an applicant receiving preliminary EHIS approval may:

i. Acquire real property intended for use in connection with the proposed facility; or

ii. Issue bonds or other obligations necessary to ensure available financing for the proposed facility's planning, development and implementation.

7. An applicant's decision to acquire property, issue bonds or take any other actions after receiving a preliminary EHIS approval will be solely at the applicant's risk. Any acquisition action taken or expenditures made in reliance on the preliminary EHIS approval are entirely at the applicant's own risk and the Department shall not be liable therefor; and

8. The issuance of any preliminary EHIS approval pursuant to this section shall not be binding on the Department in its review of any subsequent submissions by an applicant for a SWF permit.

7:26-2.10 General engineering design submission requirements

(a) The engineering design submittal requirements set forth in this section are general requirements for all solid waste facilities. Additional engineering design submittal requirements for sanitary landfills shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2A.6. Additional engineering design submittal requirements for thermal destruction facilities, solid waste transfer stations. materials recover facilities, and composting or co-composting facilities shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2B.4, 2B.5 and 2B.6. The Department may require these additional engineering design submittal requirements to the extent applicable

based on the nature and scope of the proposed facility and as may be determined during the pre-application conference.

(b) The general requirements for the preparation and submittal of engineering designs for all proposed solid waste facilities are as follows:

1. All maps of the proposed facility shall be prepared in a manner and format consistent with N.J.A.C. 7:1D, Appendix A. The applicant shall submit a minimum of three complete sets of the application for small-scale facilities and five complete sets of the application for all other types of proposed solid waste facilities. Additional complete sets may be required based upon the type, scale, location, and potential environmental impacts of the proposed facility.

2. Individual engineering drawing sheets shall not be larger than 30 inches by 42 inches or smaller than 24 inches by 36 inches in size.

3. Each drawing sheet shall bear the date of preparation and the raised seal of the New Jersey licensed professional engineer responsible for the preparation of the design.

4. A key map of the engineering drawings, delineating the general location of the proposed facility, shall be prepared and submitted as part of the engineering design. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of three miles from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted. The key map shall depict the following:

i. All surface waters, coastal zone areas as defined in N.J.S.A. 13:19-1 et seq.; wetlands as defined in N.J.S.A. 13:9A-1 et seq.; water supply wells and reservoirs; FW-1 and FW-2 Trout Production waters as defined in N.J.A.C. 7:9B; wild, scenic, recreational or developed recreational rivers designated pursuant to the Natural Wild and Scenic River Act 16 USCA 1271 et seq. or the New Jersey Wild and Scenic River Act N.J.S.A. 13:8-45 et seq., and all 100 year floodway and flood hazard areas as delineated in N.J.A.C. 7:13:

ii. General zoning designations within one mile of the perimeter of the proposed facility's boundary:

iii. All main service corridors, transportation routes and main access roads that will be used as routes of traffic flow; and

iv. All airports and runways.

5. A vicinity map prepared in accordance with (b)2 above shall be prepared and submitted as part of the engineering design. The vicinity map shall have a minimum scale of one inch equals 400 feet (1" = 400') with contour intervals shown at 20 foot intervals. The vicinity map shall delineate an area of one mile from the perimeter of the property line of the proposed facility. Contour elevations and vertical horizontal locations shall be based on the North American Vertical Datum of 1988 whenever possible rather than the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the North American Datum of 1983. One or more vicinity maps may be utilized to ensure clarity of the information submitted. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photographic. The vicinity map shall depict the following:

i. All buildings and structures including the layout of the buildings which will comprise the proposed facility;

ii. The boundaries of the proposed facility;

iii. The limits of the actual disposal operations within the boundaries of the proposed facility;

iv. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

v. The specific local zoning designation within 1,000 feet of the perimeter of the proposed facility's boundary; and

vi. The location of all existing and proposed utility lines, pipelines or other utility structures which will service the facility, including, but not limited to, the stormwater drainage system, sanitary sewer system, water supply system, and energy system.

6. A site plan map, delineating the existing and final as-built contours of the site of the proposed facility, shall be prepared in accordance with (b)2 above and be submitted as part of the engineering design. The site plan map shall be prepared in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980 and the New Jersey Map Filing Law, N.J.S.A. 46:23-9, at a minimum scale of one inch equals 200 feet (1" = 200') with contour intervals shown at two foot intervals. Contour elevations and vertical and horizontal locations shall be based on the North American Vertical Datum of 1988 whenever possible rather than the National Geodetic Vertical Datum of 1929 (Mean Sea Level Datum 1929) and keyed into the North American Datum of 1983. The site plan map shall depict the following:

i. The legal boundaries of the facility as determined by a survey performed by a licensed New Jersey Land Surveyor. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points, in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. A copy of the deed of record or other document proving ownership shall accompany the site map. If the property is leased by the applicant, a copy of the lease shall accompany the site map. In those cases where the applicant is scheduled to take title to the property or sign a lease for the property at a later date, submit a timetable for same;

ii. The total acreage of the facility property and the total acreage of the actual disposal operations;

iii. The boundaries of the area to be used for disposal operations; and

iv. The layout of all buildings, access roads, internal routes of traffic flow and environmental controls, as they will appear at the site.

7. A geotechnical and soils report shall be prepared and submitted as part of the engineering design. The report shall include the following:

i. A soils map, published by the United States Department of Agriculture, Soil Conservation Service, depicting the site of the proposed facility and the area within one half mile from the perimeter of the facility; and

ii. A geologic map based on published or unpublished material and mapping available from the United States Geological Survey and New Jersey Geological Survey or unpublished mapping acceptable to the New Jersey Geologic Survey depicting the area within one mile from the perimeter of the facility.

8. An engineering report shall be prepared and submitted as part of the engineering design. The engineering report shall include the following:

i. A descriptive statement and detailed specifications of all proposed waste disposal system processes;

ii. A description of the installation methods and procedures and the scheduling of events for construction of the facility;

iii. A description of the rated and proposed design capacity of the facility in terms of tons and cubic yards per day and tons per hour to be disposed of at the facility;

iv. A description of the daily number and types of vehicles which will transport solid waste to the facility and, if applicable, the reclaimed material and waste from the facility;

v. A presentation of the results and calculations, clearly noted, of all required design testing; and

vi. A projection of the life expectancy of the facility.

9. An operations and maintenance (O and M) manual shall be prepared and submitted as part of the engineering design. The O and M manual shall include the following:

i. A description of the proposed methods of facility operation, including, but not limited to, the following:

(1) Hours of operation;

(2) Types of equipment (indicate capacity and number of units);

(3) Implementation schedule for the solid waste facility;

(4) Monitoring;

(5) Security; and

(6) Methods to be employed to meet the operational requirements of N.J.A.C. 7:26-2.11.

ii. A facility inspection plan, which shall include a schedule for inspecting all applicable major aspects of facility operation necessary to ensure compliance with the requirements of this subchapter and N.J.A.C. 7:26-2A or 2B, as applicable. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. Areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs, shall be inspected daily, when in use. The plan shall include a schedule for inspecting, monitoring, safety and emergency equipment, security devices and process operating and structural equipment. The plan shall identify the types of problems which are to be looked for during the inspection and the frequency of inspection;

iii. A maintenance plan, which shall include an analysis of all applicable major aspects of the facility operation based on applicable industry established rates of potential equipment deterioration or malfunction if available, an analysis of spare parts inventory needs, schedules for anticipated repairs and maintenance contracts with local equipment dealers to supply standby or emergency equipment;

iv. A safety plan which shall include a description of the proposed measures to protect facility and other personnel from injury during operation;

v. A description of the proposed measures to handle unusual peak loadings which may exceed designed facility capacity;

vi. A description of the proposed measures to handle incoming waste flow during periods of short term facility shutdown for normal equipment repairs and also for periods of longer term facility shutdown for more extensive repairs;

vii. A waste inspection plan, which shall include a program for detecting and preventing the disposal of all unauthorized waste types, including regulated hazardous wastes. This program shall include, at a minimum, but not be limited to, the following:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain unauthorized waste types, including regulated hazardous waste or TSCA waste;

(2) Records of any inspections;

(3) Training of facility personnel to recognize any unauthorized waste types, including regulated hazardous waste; and

(4) Notification procedures to report to the Department any discovery of any unauthorized waste types, including regulated hazardous waste at the facility; and

viii. For ID 72 liquid waste transfer stations, a description of the methods to be employed to meet the waste analysis and incompatible wastes requirements of N.J.A.C. 7:26-2B.9(g)2 and 3.

10. The Department will review the O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a revised O and M manual. The revised O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but at least 60 days prior to initiating full-scale operations. Full-scale facility operations shall not be initiated before formal Department approval of the revised O and M manual.

11. A landscaping plan delineating the existing site vegetation to be retained, and discussing the methods to be employed in order to ensure protection during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted, shall be submitted as part of the engineering design. Information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan. Facility exterior grounds shall be landscaped in a manner which enhances the visual appearance of the property.

12. Foundation sources and basis documents supporting all factual information submitted and all conclusions drawn, shall be identified.

7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities, except as noted in (e) below. Additional operational requirements for sanitary landfills are set forth in N.J.A.C. 7:26-2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26-2B.8. Additional operational requirements for transfer stations and materials recovery facilities are set forth in N.J.A.C. 7:26-2B.9.

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1. Within each 24 hour period the operator shall clean each area where waste has been deposited or stored, except for those storage areas at thermal destruction facilities which are designed for multiple day storage capability and as exempted by (c)2 below; for sanitary landfills, all areas where waste has been deposited shall be covered with the appropriate cover material except as permitted by (c)2 below;

2. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

3. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented at all facilities;

4. Methods of effectively controlling dust shall be implemented at all facilities in order to prevent offsite migration;

5. The operation of the facility shall not result in the emission of air contaminants in violation of N.J.A.C. 7:27-5.2(a);

6. The operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

7. An adequate water supply and adequate fire-fighting equipment shall be maintained at the facility or be readily available to extinguish any and all types of fires. Fire-fighting procedures as delineated in the approved O and M manual, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

8. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

9. The operator shall at all times comply with the conditions of the SWF permit, as well as all other permits or certificates required and issued by the Department or any other Federal or State authority. The operator shall not receive, store, handle, process or dispose of waste types not specifically identified in that facility's SWF permit or other permit or certificate issued by the Department;

10. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit certificate. The designed processing and disposal capacity approved within any solid waste facility permit, other permit certificate or approval conditions as a ton per day operational maximum shall be inclusive of all solid waste received at the facility as well as all tonnages of source separated recyclables received;

11. The facility shall be operated in a manner that employs the use of the equipment and those techniques for the receipt, storage, handling, processing or disposal of incoming waste and process residues that are specifically authorized by the facility's SWF permit; and

12. The approved final O and M manual shall be maintained at the facility. A written description of any proposed changes to the approved, final O and M manual shall be submitted to the Department for review. These proposed changes shall not be implemented at the facility until the Department approves the changes.

(c) In addition to the requirements listed at (b) above, those solid waste disposal facilities that receive solid waste from off site shall also comply with the following:

1. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility. Solid waste vehicles exempt from registration pursuant to N.J.A.C. 7:26-3.3, or those which must be manually unloaded, shall not be admitted to the tipping area when registered, commercial type solid waste vehicles including, but not limited to, compactor trucks, trailers or any solid waste vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

2. The operator shall designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles which are either exempt from the registration requirements of N.J.A.C. 7:26-3.3 or which must be manually unloaded. Bulky items and recyclable materials may be provided for in this manner. The operator may establish a separate secure area, with the approval of the Department, for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM) separate and apart from the disposal areas described in this paragraph or in N.J.A.C. 7:26-2A.8(l)2i and ii. The operator shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer. The facility operator shall be responsible for the sanitary conditions and orderly operation of the designated areas. It shall be the operator's responsibility to remove the bulky items, recyclable materials, ACWM or other waste from the designated area at a frequency so as not be exceed the storage capacity of the areas;

3. The operator shall designate a secure are a under the facility's control, located a safe distance from the active disposal area, where solid waste, including suspected hazardous waste, which the facility is not permitted to receive shall be deposited until the operator receives instruction from the Department as to the proper disposal of the unpermitted waste;

4. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the Department; and

5. The operator shall provide a means of removing mud, solid waste or other debris from the tires of all vehicles. Vehicle tires shall be cleaned prior to the vehicle's departure from the facility's boundaries.

(d) Department inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

i. Sampling any materials on site;

ii. Photographing any portion of the facility;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's SWF permit or other permit or certificate issued by the Department; or

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(e) Owners or operators of transfer stations who receive, store, treat or transfer only ID 72 liquid wastes are not required to comply with (b)1, (b)2, (b)3, (b)4, (c)2 and (c)5 above.

7:26-2.12 Generator requirements for disposal of asbestos containing waste materials

(a) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the standards for waste disposal at 40 C.F.R. 61.149 and 40 C.F.R. 61.150.

(b) Generators of asbestos-containing waste materials, including sources subject to 40 C.F.R. 61.142, 61.144, 61.145, 61.146, and 147, shall comply with the reporting requirements of the following agencies: United States Environmental Protection Agency, at 40 CFR 61.145 to 61.155; the New Jersey Department of Community Affairs, at N.J.A.C. 5:23-8; the New Jersey Department of Labor and Workforce Development, at N.J.A.C. 12:120-7.2; and the New Jersey Department of Health and Senior Services, at N.J.A.C. 8:60-7.2.

7:26-2.13 Solid waste facility; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1. Identification of the solid waste facility by name and facility identification number;

2. Identification of the transporter by the Department of Environmental Protection registration number assigned and solid waste decal number;

3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of three categories of wastes as follows:

i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);

ii. Septage and liquid sewage sludges: Waste ID 73 and 74 received (in gallons);

iii. Bulk liquid and semiliquids: Waste ID 72 received (in gallons);

4. Date and time of delivery to the facility;

5. The license plate number and State initials of the solid waste vehicle; and

6. The place of origin of the waste identified by municipality, county and state, except in those instances where the waste is transported from a transfer station or materials recovery facility to a final disposal facility. In those instances, the facility ID of the transfer station or materials recovery facility shall be listed instead of the municipality, county and state as indicated above.

7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste materials shall maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

i. Date and time of delivery;

ii. Identification of the transporter by name and by the New Jersey Department of Environmental Protection registration number assigned to the transporter;

iii. Quantity in cubic yards and/or tons of the waste;

iv. Name and address of the generator; and

v. For rejected shipments, the reason for rejection and disposition of the shipment after rejection.

8. In addition to the requirements of (a)1 through 7 above, transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13. Transfer stations and materials recovery facilities which do not have scales shall report data in accordance with N.J.A.C. 7:26-2.11(c)4.

9. In addition to the information required by (a)1 through 6 above, ID 72 liquid waste transfer stations shall include the following information in the daily record:

i. Records of waste analyses and/or waste determinations performed as specified in N.J.A.C. 7:26-2B.9(g)2 and 3; and

ii. A written description of any release or other incident which requires implementation of the cleanup procedures specified in N.J.A.C. 7:26-2B.9(g)4.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of the same, or on systems acceptable to the Department, shall be kept for five years, and shall be

available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to N.J.S.A. 26:3A2-1 et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/disposal (O and D) form (or the duplication of same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a designated district facility pursuant to N.J.A.C. 7:26-6, the waste remaining after processing shall be designated within the O and D form and daily record as the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility.

1. The facility operator shall verify that the form has been completed by a registered transporter, that the waste as identified by the transporter may be disposed of at the facility in compliance with the host District Solid Waste Management Plan and the facility's registration, and, where applicable, the facility's computer recording of scale data is in conformance with the information supplied, and sign the completed form.

2. The facility operator shall retain all O and D forms for a minimum of one year and shall make them available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to *N.J.S.A. 26:3A2-1* et seq. for any county from which solid waste is received, or the local health department at any time during normal working hours.

3. If an O and D form is not completed and signed by a registered transporter for each solid waste vehicle, or if the waste disposal would not be in compliance with the facility's registration, as required in (c)3 above, the facility operator shall deny the transporter the right to dispose of the solid waste at the facility.

(d) The following solid waste collection and disposal operations are exempt from complying with the provisions of (c) above:

1. Noncommercial industrial facilities which dispose of only solid waste generated by that industrial firm;

2. Municipally operated facilities which accept only solid waste which is collected by that municipality's transporters and which is generated within that municipality;

3. Sludge farming operations which accept only ID 12 solid waste and which report to the Division of Water Quality;

4. Recycling facilities which accept only recyclable materials which have been separated at the point of generation for sale or reuse; and

5. Operations exempt from registration pursuant to N.J.A.C. 7:26-3.3(a).

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the Solid Waste Coordinator for the district where the facility is located on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month.

1. All solid waste facilities shall include the following within the monthly summary:

i. The tonnages and types of solid waste received by origin from each county (including municipality), transfer station, materials recovery facility or out-of-State source;

ii. The tonnages and types of solid waste returned to the county or state of origin by facility of receipt;

iii. The tonnages, types and origin (by county and municipality) of source separated recyclable materials or recyclable materials removed from the waste stream. In cases where recyclable materials are separated from mixed solid waste at the transfer station or materials recovery facility, and hence the origin (by county and municipality) cannot be identified at the time of receipt, the transfer station shall allocate the amount of recyclable materials proportionally to each municipality on the basis of the total amount of solid waste received for the calendar month;

iv. The identification of end-markets, manufacturers or recycling centers by specific name and location used for the materials designated as recyclable materials and the amount of materials sent to each specific end-market, manufacturer or recycling center. The requirements for transportation to, and identification of, end-markets, manufacturers, and recycling centers shall be the same as at N.J.A.C. 7:26A;

v. The tonnage and types of recyclable materials being stored at the transfer station or materials recovery facility at the end of the reporting month;

(f) Any certified county or local health agency certified by the Department pursuant to *N.J.S.A. 26:3A2-1* et seq. or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 7:26H-5.9(c)5.

(g) Waste identification and definition of solids includes the following:

1. Solid wastes; waste ID number and definitions:

i. 10 Municipal (household, commercial and institutional): Waste originating in the community consisting of household waste from private residences, commercial waste which originates in wholesale, retail or service establishments, such as, restaurants, stores, markets, theatres, hotels and warehouses, and institutional waste material originated in schools, hospitals, research institutions and public buildings.

ii. 12 Dry sewage sludge: Sludge from a sewage treatment plant which has been digested and dewatered and does not require liquid handling equipment.

iii. 13 Bulky waste: Large items of waste material, such as appliances and furniture. Discarded automobiles, trucks and trailers and large vehicle parts, and tires are included under this category.

iv. 13C Construction and demolition waste: Waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements and other structures. The following materials may be found in construction and demolition waste: treated and untreated wood scrap; tree parts, tree stumps and brush; concrete, asphalt, bricks, blocks and other masonry; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and non-ferrous metal; non-asbestos building insulation; plastic scrap; dirt; carpets and padding; glass (window and door); and other miscellaneous materials; but shall not include other solid waste types.

v. 23 Vegetative waste: Waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes.

vi. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries, including animal manure when intended for disposal and not reuse. Also included are dead animals. Deceased animals that are intended for cremation in an animal crematorium with the residual ashes either returned to the pet owner or interred in a burial plot at a legally recognized pet cemetery, or deceased animals intended for internment at a legally recognized pet cemetery are not considered solid waste pursuant to this chapter. (Carcasses which are cremated at a crematorium but whose final destination of the residual ashes is a solid waste facility are considered disposed of and are considered solid waste pursuant to this chapter.) Animal manure, when intended for reuse or composting, is to be managed in accordance with the criteria and standards developed by the Department of Agriculture as set forth at N.J.S.A. 4:9-38.

vii. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26G. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, and residue from the operations of a scrap metal shredding facility.

viii. 27A Waste material consisting of asbestos or asbestos containing waste.

ix. 27I Waste material consisting of incinerator ash or ash containing waste.

(h) Waste identification and definition of liquids include the following:

1. Liquid wastes; waste ID number and definitions:

i. 72 Non-hazardous liquid and semiliquids: Liquid or a mixture consisting of solid matter suspended in a liquid media which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of 20 gallons or more. Also included are non-hazardous pesticide liquids. Not included in this waste classification are septic tank clean-out wastes and liquid sewage sludge.

ii. 73 Septic tank clean-out wastes: Pumping from septic tanks and cesspools. Not included are wastes from a sewage treatment plant.

iii. 74 Liquid sewage sludge: Liquid residue from a sewage treatment plant consisting of sewage solids combined with water and dissolved materials.

(i) For all waste disposed of within or leaving the district for further transfer, materials recovery or disposal (either in-State or out-of-State), each waste district shall record at a minimum the following information: district of waste origin; the identity of the transfer facility (if applicable); the identity of the final destination facility; the tonnage or cubic yards of waste; the waste type; and the tonnage or cubic yards of any material recycled. This information shall be compiled into monthly summaries which shall be retained for a period of one year or longer in the event of an unresolved enforcement action. If a district chooses to impose an in-district weighing requirement consistent with N.J.A.C. 7:26-6.10(b)2, to institute a mechanism to ensure the payment of outstanding debt and other financial obligations, the district may gather this information through in-district weighing, but only for the period set forth in N.J.A.C. 7:26-6.10(b)2. Districts which do not conduct in-district weighing shall develop an alternate recordkeeping method to ensure that accurate information is collected on a monthly basis as set forth above.

(j) The operator of a designated district weighing facility shall ensure that all weighing is conducted in a manner that facilitates proper operation and minimizes systems interruptions.

7:26-2.14 Solid waste facility performance partnership agreements

(a) Any thermal destruction facility, materials recovery facility, transfer station, municipal solid waste composting or co-composting facility processing greater than 100 tons per day may negotiate a 15-year solid waste facility performance partnership agreement (SWFPPA) with the Department.

1. The eligibility requirements for a SWFPPA follow:

i. The solid waste facility shall have obtained all applicable permits and licenses required by the Department and shall have been in operation for at least one year;

ii. The solid waste facility shall be in substantial compliance with all permit conditions; and

iii. The solid waste facility shall not have a history of substantial noncompliance with environmental obligations as defined in (r) below.

2. The Department shall convene an informational meeting at least annually with the owners and/or operators of the facilities listed in (a) above to outline the SWFPPA planning process.

(b) The SWFPPA shall include the following:

1. A discussion of the operating conditions and requirements in the facility's existing permit, their associated environmental and/or agricultural impacts and the potential to improve operating conditions over those required by the permit. This discussion shall, at a minimum, address:

i. Facility storage requirements;

ii. Litter control;

iii. Fugitive dust controls;

iv. Odor controls;

v. Noise controls;

vi. Equipment and facility on-line availability;

vii. On-site vehicle routing and traffic; and

viii. Off-site vehicle routing;

2. A discussion of the long-term environmental goals and milestones selected by the applicant for inclusion in the SWFPPA. The applicant shall select those goals and milestones which will reduce the existing environmental

and operational impacts of the facility, emissions and discharges from the facility and achieve Federal, State or solid waste management district pollution prevention goals. The applicant shall select from the goals and milestones listed below and/or propose alternative goals and milestones:

i. An accounting of the inputs and outputs of materials at the facility, including estimates of the quantities of raw materials used and wastes generated at each source;

ii. Baselines to be utilized to measure progress towards achieving the goals and milestones established in the SWFPPA;

iii. Methods to increase the recovery of materials from solid waste through the addition of manual or mechanical materials recovery systems in furtherance of State and solid waste management district recycling goals;

iv. Methods to reduce levels of discarded products containing heavy metals, particularly those containing cadmium, lead and mercury from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

v. Methods to reduce levels of discarded products containing volatile organic compounds from the solid waste disposal stream. This reduction shall be based on a materials balance for the facility;

vi. Methods to reduce energy usage by the facility, including both the facility equipment usage and vehicle transportation. This reduction shall be based on an energy balance for the facility and vehicle transportation;

vii. Methods to eliminate or reduce levels of hazardous substances used by facility through material or product substitution or other means;

viii. Methods to reduce the quantity of household hazardous waste, small quantity generator waste and/or universal waste disposed of by the solid waste facility;

ix. Formulation of a landfill mining plan to extract valuable resources for recycling, reduce the size of the landfill footprint, reclaim additional disposal capacity or otherwise improve resource management;

x. Methods to reduce the likelihood of accidental spills or releases of hazardous substances;

xi. Methods to reduce the level of the facility's process residue and/or the development of programs to more effectively treat or use residue as a product;

xii. Methods to reduce water usage by the facility;

xiii. Methods to reduce wastewater discharges by the facility; and

xiv. Methods to reduce direct and/or fugitive air emissions from the facility;

3. A schedule for improving operational conditions identified pursuant to (b)1 above and specific methodologies for effecting the improvements;

4. A schedule for achieving the goals and milestones established pursuant to (b)2 above;

5. A discussion of the policies and procedures established to create a compliance assurance program, including:

i. Internal inspection schedules to ensure that all site conditions and operations are in compliance with internal assurance policies and standard operating procedures and environmental obligations;

ii. Procedures for correcting actual noncompliance observed during inspections; and

iii. Procedures for reporting noncompliance to the appropriate facility official and tracking corrective actions;

6. A discussion explaining the facility specific data and information and direct measurement utilized to develop the goals and milestones established pursuant to (b)2 above. This discussion may also include information based on reasonable calculations and estimates from the best available data and/or experience and judgment; and

7. The SWFPPA shall be developed for a 15 year period, with major goals and milestones scheduled to be reviewed on a five-year basis in accordance with the procedure established at (l) below.

(c) At least one year prior to the submission of a draft SWFPPA pursuant to (d) below, the SWF permittee and representatives from the Department shall meet to develop the long-term environmental goals and milestones of the specific SWFPPA and the timeframe for submission.

(d) The SWF permittee shall submit a draft SWFPPA to the Department for review to determine consistency with the statewide solid waste management plan adopted pursuant to N.J.S.A. 13:1E-6 in effect at the time of the submission, and the requirements of (b) above.

1. The Department shall provide comments, in writing, on the draft SWFPPA to the SWF permittee within 90 days of receipt.

2. The SWF permittee may amend the draft SWFPPA accordingly and/or negotiate any contested issue(s) with the Department to reach a consensus.

3. The SWF permittee shall submit the final SWFPPA reflecting the consensus reached by the SWF permittee and the Department, for execution by the Department.

(e) The Department's review shall be coordinated with the appropriate solid waste management district to ensure that the SWFPPA is consistent with existing or established goals for pollution prevention established in the appropriate district solid waste management plan.

(f) Upon joint execution of the SWFPPA, the SWF permittee and the Department shall agree to the following:

1. The SWFPPA shall replace the SWF permit renewal process and requirements set forth at N.J.A.C. 7:26-2.7 and the duration of the SWF permit shall be that established for the SWFPPA unless the SWF permittee is disqualified pursuant to (p) below.

2. The SWFPPA shall replace the SWF compliance monitoring schedule established pursuant to N.J.A.C. 7:26-4. The compliance monitoring schedule in the SWFPPA shall be based on the goals and milestones established in accordance with (b) above and satisfaction of the criteria in (f)3i through iii below.

3. The compliance monitoring schedule in the SWFPPA shall be based on the classification of the solid waste facility. Classification levels range from 1 to 3, with a level 1 facility requiring the least frequent compliance monitoring and a level 3 facility requiring the most frequent compliance monitoring. The classification levels are defined as follows:

i. A level 1 facility operates in substantial compliance with its SWF permit, having incurred only minimal administrative violations, if any.

ii. A level 2 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did not require remediation of the site.

iii. A level 3 facility operates in substantial compliance with its SWF permit, having incurred only administrative violations and/or minor environmental violations, if any, that did require remediation of the site.

(g) For any solid waste facility otherwise eligible under this section that does not enter into an executed SWFPPA, and any other solid waste facility the duration of the SWF permit and the SWF permit renewal process are as set forth at N.J.A.C. 7:26-2.7.

(h) A SWF permittee that has executed and is operating under a SWFPPA pursuant to this section shall modify its SWF permit in accordance with the following:

1. Any minor modification, as defined at N.J.A.C. 7:26-2.6(d)1, that is consistent with the goals and milestones established in the SWFPPA shall be deemed to be effective within 60 days of submission to the Department unless the Department determines, based on the information submitted, that a modification of permit conditions is warranted. In such event, the Department shall notify the permittee within 60 days of the receipt of the submission.

2. Any modification, as defined at N.J.A.C. 7:26-2.6(a)4i, that is consistent with the SWFPPA shall, after review by the Department to ensure compliance with environmental obligations, as defined at (r) below, shall be approved.

(i) Any modification made to a permit pursuant to (h)1 and (h)2 above shall not relieve the SWF permittee from the requirement to comply with environmental obligations as defined at (r) below.

(j) The SWF permittee shall submit an annual progress report addressing the goals and milestones established in the SWFPPA. The annual progress report shall, at a minimum, contain the following:

1. A description of compliance with the facility's internal compliance assurance policies, standard operating procedures and environmental obligations, as defined at (r) below.

2. A description of the progress towards the goals and milestones established in the SWFPPA in accordance with the agreed upon schedule(s). Any change in the schedule(s) shall be explained and a revised schedule(s) set forth.

(k) The SWF permittee shall conduct a facility wide benchmark audit not less than once every five years.

1. The facility wide benchmark audit shall include;

i. An evaluation of site conditions and facility operations to determine compliance with the facility's internal compliance assurance policies, standard operating procedures and environmental obligations, as defined at (r) below; and

ii. An evaluation of the adequacy of the management systems, internal compliance assurance policies and standard operating procedures.

2. The facility wide benchmark audit shall be performed by persons who possess the skills, training and technical competence necessary to perform the audit functions required by this section.

(l) The SWF permittee shall submit a five-year SWFPPA update setting forth the findings of the facility wide benchmark audit to the Department for review in accordance with the timeframes established in the SWFPPA. The SWFPPA update shall, at a minimum, include:

1. A description of conditions, activities and/or practices that do not comply with internal compliance assurance policies;

2. A description of corrective action that is necessary to achieve, maintain or improve compliance, and schedules for implementing such corrective action;

3. A description of weaknesses in management systems and lapses in internal compliance assurance policies and standard operating procedures that cause or contribute to noncompliance;

4. A recommendation for correcting any such weaknesses in management systems or lapses in internal compliance assurance policies or standard operating procedures; and

5. A recommendation for revising any preexisting goals, milestone schedules or methods of measuring progress, if necessary.

(m) All annual progress reports and five-year SWFPPA updates shall be signed and certified by the SWF permittee as follows:

1. For a corporation, by a principal executive officer of at least the level of vice president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

3. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

4. All annual progress reports and five-year SWFPPA updates shall contain the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments 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 submitting false information, including the possibility of fine and imprisonment. I understand that, in addition to criminal penalties, I may be liable for a civil administrative penalty pursuant to N.J.A.C. 7:26-5 and that submitting false information may be grounds for denial, revocation or termination of any solid waste facility permit or vehicle registration for which I may be seeking approval or now hold."

(n) The Department shall review the SWFPPA update submitted pursuant to (l) above in accordance with the procedures set forth at (d) above. Upon the Department's acceptance of the SWFPPA update, the SWFPPA shall be deemed extended for an additional five-year period. The duration of the SWFPPA shall be re-established at 15 years with the acceptance of each SWFPPA update for the life of the facility.

(o) The SWFPPA annual progress report and/or the five year SWFPPA update may include a request to renegotiate any provision established therein, including, but not limited to, alteration in the compliance monitoring schedule or the reporting schedule.

1. Compliance with the SWFPPA and progress towards the goals and milestones established in the SWFPPA as documented in the annual progress report or the five year SWFPPA update may enable the SWF permittee to negotiate an altered compliance monitoring schedule negotiated pursuant to (f)2 and 3 above.

2. Compliance with the SWFPPA and progress towards the goals and milestones established in the SWFPPA as documented in the annual progress report or the five-year SWFPPA update may enable the SWF permittee to negotiate reduced reporting requirements required by (j) above.

(p) The following shall be grounds for disqualification from the SWFPPA program.

1. Failure to submit an annual progress report in accordance with the requirements of (j) above;

2. Failure to submit a five-year SWFPPA update in accordance with the requirements of (l) above;

3. Failure to initiate or implement the goals and milestones established in the SWFPPA according to schedule(s) set forth;

4. Unnecessary delay in taking other action(s) agreed to in the SWFPPA; or

5. Substantial noncompliance with environmental obligations as defined at (r) below.

(q) Solid waste facilities disqualified or voluntarily withdrawing from the SWFPPA program shall submit a SWF permit renewal application pursuant to N.J.A.C. 7:26-2.7.

(r) For the purposes of this section, "environmental obligations" means the environmental statutes applicable to the facility, including but not limited to, the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26-2C-1 et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto.

(s) A solid waste facility classified as a level 1 facility pursuant to (f)3i above may be eligible for a facility wide permit if the Department formally adopts a facility wide permit program.