

**ENVIRONMENTAL PROTECTION
SITE REMEDIATION AND WASTE MANAGEMENT
DIVISION OF SOLID AND HAZARDOUS WASTE**

Privately-Owned Sanitary Landfill Facilities

Proposed Amendments: N.J.A.C. 7:26H-1.4, 1.12, 1.16, 1.17, 3.1, 3.10, 3.11, 4.2, 5.15, 5.16, 5.19, 5.20, and 5.21

New Rule: N.J.A.C. 7:26H-8

Authorized By: Bradley M. Campbell, Commissioner,
Department of Environmental Protection

Authority: N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-9, 48:3-1 et seq., specifically 48:3-7, 48:13A-1 et seq., 48:13A-7.1 et seq., specifically 48:13A-7.24 et seq.

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

DEP Docket No:

Proposal Number: PRN 2004-

A public hearing concerning this proposal will be held on

Date:

Time: 9:00 am until close of comments

New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, New Jersey 08625

Submit written comments by (no later than 60 days after publication) to:

Leslie Ledogar, DAG
Attention: DEP Docket Number _____
Office of Legal Affairs
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters who have access to word processing software submit comments on this proposal to the

Department on paper as well as on disk. The Department will use the paper version to ensure that the uploading was accomplished successfully. Submission of the disk is not a requirement; the Department will accept all comments submitted in writing prior to the end of the comment period.

The Department prefers Microsoft Word 97, WordPerfect 5.x or 6.0, and ASCII, but can convert and review many other formats as well. MacIntosh formats should not be used. Any commenter who wishes to use software not mentioned above may contact the Department at (609) 984-6880 to check compatibility. Text enhancements such as underlines and bolds are often not converted correctly between software documents. Therefore, when suggesting text revisions, commenters should show the text as they desire to see it in the rule.

Comments on the proposal summary should be included with comments on the pertinent section of the rule text, wherever possible, to eliminate duplicative comments and facilitate the Department's task of organizing and responding to comments. Since comments will be sorted electronically, the following format should be used for each comment:

Citation(tab)COMMENT: Comment text (Company Name).

For example:

7:26-8.4 COMMENT: Privately owned sanitary landfill facilities should pay a reduced annual assessment because the Department will be performing less oversight of these facilities. (ABC Corporation).

Copies of this proposal document can be downloaded electronically from the Department's web page at www.state.nj.us/dep/dshw.

The agency proposal follows:

Summary

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

The Department of Environmental Protection (Department) is proposing today to amend its current system of economic regulation as it applies to privately-owned sanitary landfill facilities. The Department's proposal codifies the provisions of the "Commercial Landfill Regulatory Reform Act," (Act) N.J.S.A. 48:13A-7.24-7.33 (P.L. 2003, c. 169). In signing this Act into law on September 3, 2003, the State Legislature found and declared that "it is imperative that the State ensure the economic viability and competitiveness of all solid waste disposal facilities in this State whether publicly or privately owned to safeguard the integrity of the State's solid waste management strategy; that it is equally imperative to safeguard the interests of consumers in efficient sanitary landfill services at competitive rates; that to achieve these ends and provide for consumer protection it is necessary to foster competition and this can best be achieved by establishing a responsible State supervisory role and abolishing traditional utility economic restrictions which place New Jersey's commercial landfills at a competitive

disadvantage and threaten their economic viability in today's competitive market for solid waste disposal services.”

In accordance with N.J.S.A. 48:13A-7.33, the Department is required to promulgate rules to implement the provisions of this Act. Therefore the Department is proposing to amend sections of its current utility regulations and to create a new subchapter to specifically address privately owned sanitary landfill facilities as follows:

At N.J.A.C. 7:26H-1.4 the Department is defining the terms “market-based rates” and “privately-owned sanitary landfill facility.” “Market-based rates” are defined as the solid waste disposal rates collected by a privately-owned sanitary landfill facility which do not exceed rates charged at other solid waste facilities in this State or at competing out-of-state facilities. A “privately-owned sanitary landfill facility” is defined as a commercial sanitary landfill facility which is owned and operated by a private person, corporation or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing or disposal of solid waste.

The Department is amending N.J.A.C. 7:26H-1.12 by adding section (f) which states that the rates for privately owned sanitary landfill facilities are just and reasonable if they meet the requirements of new rule N.J.A.C. 7:26H-8.5.

At N.J.A.C. 7:26H-1.16(a) and (b) the Department is amending the regulatory text to allow privately owned sanitary landfill facilities to sell or transfer assets, or issue stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior Department approval in accordance with N.J.A.C. 7:26H-8.7

At N.J.A.C. 7:26H-1.17(b) the Department is amending the regulatory text to allow a privately-owned sanitary landfill facility to be consolidated or merged with another solid waste disposal utility or be dissolved without prior Department approval in accordance with N.J.A.C. 7:26H-8.7.

At N.J.A.C. 7:26H-3.1(a) the Department is amending the regulatory text to specify that privately-owned sanitary landfill facilities are only subject to the following sections of Subchapter 3: Management Agreements at N.J.A.C. 7:26H-3.6, Petitions for authority to change depreciation rates at N.J.A.C. 7:26H-3.7, Petitions for authority to exercise power of eminent domain at N.J.A.C. 7:26H-3.8, and Petitions for permission to keep books and records outside the State of New Jersey at N.J.A.C. 7:26H-3.9.

The Department is amending N.J.A.C. 7:26H-3.10 by adding new section(b). N.J.A.C. 7:26H-3.10(b) provides that tariff filings and rate adjustment filings for privately-owned sanitary landfill facilities are not subject to the requirements of this section but to the provisions at N.J.A.C. 7:26H-8.2 and 8.3.

The Department is amending N.J.A.C. 7:26H-3.11 by adding new section (f). N.J.A.C. 7:26H-3.11(f) provides that tariff filings and rate adjustment filings for privately-owned sanitary landfill facilities are not subject to the requirements of this section but to the provisions at N.J.A.C. 7:26H-8.2 and 8.3.

At N.J.A.C. 7:26H-4.2(b) the Department is amending the regulatory text to exempt a privately-owned sanitary landfill facility's rates from the peak rate system. Privately-owned sanitary landfill facility rates are subject to the requirements proposed at N.J.A.C. 7:26H-8.3.

Throughout N.J.A.C. 7:26-5.15, 5.16, 5.19, 5.20, and 5.21 the Department is deleting references to the “Solid Waste Utility Control Act,” the “Solid Waste Regulatory Reform Act” and simply “the Act” and replacing them with the “Solid Waste Utility Control Act, the Solid Waste Collection Regulatory Reform Act, or the Commercial Landfill Regulatory Reform Act.”

These amendments will clarify the Department's statutory authority with respect to non-compliance.

In addition to the amendments described above, the Department is proposing a new subchapter – Subchapter 8 – which addresses requirements specific to privately-owned sanitary landfill facilities. The provisions of Subchapter 8 – entitled “Privately-owned sanitary landfill facilities” – are as follows:

Proposed N.J.A.C. 7:26H-8.1 establishes the purpose of these regulations as expressed in the aforementioned legislation, i.e., to enable privately-owned sanitary landfill facilities to participate on a level playing field with publicly-owned disposal facilities in the State and out-of-state landfills.

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

Proposed N.J.A.C. 7:26H-8.3 governs the adjustment of disposal rates collected by privately-owned sanitary landfill facilities. This proposal would permit the owner or operator of a privately-owned sanitary landfill facility to give notice of adjustments in its disposal rates to current customers and publish notice of the adjustments in a newspaper of general circulation in its service area at least 30 days before putting the new rates into effect, and to file the notice of rate adjustments with the Department within three days thereafter.

Proposed N.J.A.C. 7:26H-8.4 requires the owner or operator of a privately-owned sanitary landfill facility to pay an annual fee not in excess of the annual assessment authorized under N.J.A.C. 7:48:2-59 to cover the costs of supervising these facilities. Privately-owned sanitary landfill facilities are also required to file with the Department not later than May 1st of each year a certification of gross operating revenues received from intrastate utility services during the preceding calendar year.

Proposed N.J.A.C. 7:26H-8.5 establishes a new, market-based standard for ensuring that the solid waste disposal rates charged by a privately-owned sanitary landfill facility are just and reasonable. Rates which exceed this market-based standard would not be deemed unjust and unreasonable if they are designed to: (1) stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity (needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located); or (2) recover sufficient revenues to meet the facility's revenue requirement. Additionally, this section places restrictions on the Department's ability to consider the internal cost of service or financial condition of a privately-owned sanitary landfill facility in determining whether or not that facility's rates are just and reasonable.

Proposed N.J.A.C. 7:26H-8.6 provides the basis for and procedures by which the Department may initiate contested case proceedings before the Office of Administrative Law when the Department has reasonable grounds for belief that the solid waste disposal rates collected by a privately-owned sanitary landfill facility are not in compliance with the market-based rate standard. The Department will serve a notice on the owner or operator of the affected facility at least 30 days prior to transmittal of the contested case to the Office of Administrative Law. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted. Within 30 days of the close of the hearing

before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the Department order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized, if the Department shows that the solid waste disposal rates identified in the notice of transmittal are not in compliance with the market-based rates authorized and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows or are needed to meet the revenue requirements of the privately-owned sanitary landfill facility. The administrative law judge's initial decision shall be simultaneously served on the Department and the owner or operator of the affected facility. Within 30 days of receipt of the initial decision, the Department shall issue a final order affirming or rejecting the recommendations of the administrative law judge and describing with specificity the basis in the record for any findings or conclusions which are contrary to those set forth in the initial decision. If the Department fails to act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge would be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the Department thereafter would be of no effect. Except to the extent expressly modified in the provisions of the substitute bill, the contested case proceeding would be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

Proposed N.J.A.C. 7:26H-8.7 allows an owner or operator of a privately-owned sanitary landfill facility to sell or otherwise dispose of its assets without the approval of the Department, except in the following circumstances: (1) the sale of all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (2) the sale of a controlling ownership interest in the sanitary landfill facility; or (3) the merger or consolidations of the landfill's property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal. Any owner or operator seeking approval for any of these transactions must file with the Department an application for approval of the transaction, on forms and in a manner prescribed by the Department. The Department will review all such applications and serve requests for information regarding any transaction within 30 days following the filing of an application if the Department deems that such information is necessary. The Department must approve or deny the transaction within 60 days of receipt of all requested information. In the event that the Department fails to take action on a transaction within the 60-day period, then the transaction shall be deemed to have been approved.

Proposed N.J.A.C. 7:26H-8.8 is intended to clarify the jurisdiction of the Department with respect to its supervision of privately-owned sanitary landfill facilities. The Department may regulate solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the Act, and may not extend its authority to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly authorized under the Act. However, the Act does not alter the authority of the Department to regulate privately-owned sanitary landfill facilities with respect to the provision of solid waste disposal services under the "Solid Waste Utility Control Act," with respect to environmental standards and requirements under the

"Solid Waste Management Act," or with respect to licensing standards and requirements under the "A-901" solid waste licensing law.

Social Impact

The Department expects a positive social impact from the proposed amendments and new rules. The amendments and new rules will continue to ensure that sufficient regulatory authority and enforcement powers are maintained by the Department to deter anti-competitive activities, while continuing the positive effect of not over regulating the industry. The public will benefit from the adoption of regulations which will continue these benefits and ensure continued safe, adequate, and proper solid waste collection services at competitive prices. The proposed amendments and new rules will reduce overall compliance requirements on privately-owned sanitary landfill facilities where the Legislature believes modifying the requirements is appropriate and will not adversely impact either the regulated community or the general public. Such reduction in regulation will not negate the Department's authority to investigate effective competition issues and to insure safe adequate and proper service at reasonable rates.

Economic Impact

All solid waste utilities including privately-owned sanitary landfills will continue to pay an annual assessment based on their gross operating revenues. Such assessments are necessary to provide the Department with sufficient funds to oversee and enforce the public utility regulations. Therefore, the Department will experience a positive economic impact from this proposal, as it will continue to receive sufficient revenue to continue its statutory functions. Privately-owned sanitary landfill facilities should also experience a positive economic impact from the proposed amendments and new rule. Owners and operators of these facilities will be subject to reduced recordkeeping and reporting requirements as many transactional filings will no longer be subject to prior Department approval. Therefore, these facilities will not need to expend the funds previously required to gather, prepare, and submit the information necessary to petition the Department for approval of various transactional filings, for example, mergers, asset sales, and stock transfers.

Environmental Impact

The Department's current rules have promoted the environmentally sound management of solid waste collection and disposal utilities. The proposed amendments and new rule do not establish a significant change in the policies or the regulations of the Department governing the solid waste disposal industry in the State. Moreover, the Department retains its oversight function with respect to privately-owned sanitary landfill facilities and these facilities must continue to provide disposal services which are safe, proper, and adequate. Therefore the Department expects the proposed amendments and new rule to have a neutral environmental impact.

Federal Standards Analysis

Executive Order No 27(1994) and P.L. 1995, c.65 require administrative agencies which adopt, readopt or amend any State regulations that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. The current proposed amendments and new rule fall within the purview of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:3.1 et seq., N.J.S.A. 48:13A.1 et seq., N.J.S.A. 48:13A-7.1 et seq., and N.J.S.A. 48:13A-7.24 et seq. There are no analogous Federal standards for regulation for solid waste utilities. Executive Order 27 (1994) therefore, does not require a comparison with Federal Law.

Jobs Impact

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

Agriculture Industry Impact

Pursuant to P.L. 1998, c.48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments and new rule on the agriculture industry. Because agricultural operations generally are not subject to the solid waste utility regulations at N.J.A.C. 7:26H, and sanitary landfill facilities are not owned or operated by the agricultural industry, the proposed amendments and new rule are not expected to have a significant impact upon the agriculture industry.

Regulatory Flexibility Statement

In accordance with the New Jersey Flexibility Act, (Act) N.J.S.A. 52:14B-16 et seq. small businesses are those which are resident in the State, independently owned and operated, not dominant in their field and which employ fewer than 100 full time employees. The Department has determined that the proposed exemption will not impose additional reporting, record keeping, or other compliance requirements on small businesses, rather they will reduce these requirements on privately-owned sanitary landfill facilities which are likely to qualify as a small business under the Act. Many other disposal facilities are also small businesses as defined above. The proposed amendments and new rule will not alter or reduce the reporting, record-

keeping and compliance requirements on these small businesses as well as other solid waste utilities.

Smart Growth Impact Statement

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)) to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (“State Plan”). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments’ and new rule’s impact on smart growth and the implementation of the State Plan and finds that the proposed amendments and new rule will have no appreciable impact on the achievement of smart growth or implementation of the State Plan.

Full text of the proposed amendments follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SOLID WASTE UTILITY REGULATIONS N.J.A.C. 7:26H-1 et seq.

7:26H-1.4 Definitions

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

* * *

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

* * *

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

* * *

7:26H-1.12 Rates

(a) – (e) (No change.)

(f) Rates for privately-owned sanitary landfill facilities shall be deemed to be just and reasonable provided they meet the requirements of N.J.A.C. 7:26H-8.5.

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

(a) No sale or transfer of assets of a solid waste disposal utility or any change in majority control of such disposal utility shall be consummated without prior authorization of the Department, **except that privately owned sanitary landfill facilities may sell or transfer**

assets without prior Department approval in accordance with N.J.A.C. 7:26H-8.7. Filings for authority shall be in accordance with N.J.A.C. 7:26H-3.2 (Petitions for the approval of the sale or lease of property) and 3.3 (Petitions for authority to transfer capital stock).

(b) No solid waste disposal utility shall issue any stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior authorization of the Department, **except that privately owned sanitary landfill facilities may issue stocks, bonds, notes or other evidence of indebtedness or issue a mortgage without prior Department approval in accordance with N.J.A.C. 7:26H-8.7.** Petitions for authority to issue stock, bonds, notes, other evidence of indebtedness or to execute mortgages shall be filed in accordance with N.J.A.C.

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

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

7:26H-3.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the economic transactions of solid waste collection and solid waste disposal utilities and sets forth the means by which persons engaged in the business of solid waste collection and solid waste disposal shall petition for Department approval of such transactions. **With the exception of Management Agreements at N.J.A.C. 7:26H-3.6, Petitions for authority to change depreciation rates at N.J.A.C. 7:26H-3.7, Petitions for authority to exercise power of eminent domain at N.J.A.C. 7:26H-3.8, and Petitions for permission to keep books and records outside the State of New Jersey at N.J.A.C. 7:26H-3.9, the economic transactions of privately-owned sanitary landfill facilities are not subject to this subchapter, but are subject to N.J.A.C. 7:26H-8.7.**

(b) – (c) (No change.)

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

(a) (No change.)

(b) Tariff filings and rate adjustment filings for privately-owned sanitary landfill facilities are not subject to the requirements of this section, but to the provisions at N.J.A.C. 7:26H-8.2 and 8.3.

7:26H-3.11 Tariff filings or petitions which propose increases in charges to customers above the peak rate; solid waste disposal utilities

(a) (No change.)

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

7:26H-4.2 General

(a) (No change.)

(b) All solid waste disposal utility tariffs on file and approved by the Department as of the date of the final disposition of *Atlantic Coast Demolition and Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, Civil Action No. 93-cv-02669 (D.N.J., May 1, 1997) case by the United States Supreme Court, November 10, 1997 shall constitute the peak rates for each solid waste type accepted at each facility, **except that privately-owned sanitary landfill facilities' rates are not subject to the peak rate system[,] but shall be adjusted in accordance with N.J.A.C. 7:26H-8.3.**

7:26H-5.15 Sanctions for non-compliance

(a) The Department may assess a penalty pursuant to N.J.S.A. 48:13A-12 when the Department determines that a solid waste collector has violated any provision of the Solid Waste Utility Control Act, N.J.S.A. 48:13-1 et seq. [or], the Solid Waste Collection Regulatory Reform Act, N.J.S.A. 48:13A-7.1 et seq. **or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, including any violation of any rule or any administrative order adopted pursuant thereto.

(b) Any person who violates any provision of the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), **or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.** or any rule, regulation or administrative order issued pursuant thereto, or who engages in the solid waste collection business or solid waste disposal business without having been issued a Certificate of Public Convenience and Necessity, shall be liable to pay a penalty of not more than \$10,000 for a first offense, not more than \$25,000 for a second offense and not more than \$50,000 for a third and every subsequent offense.

(c) Any person or any officer or agent thereof who knowingly violates any of the provisions of [this Act] **the Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.** or aids or advises in such violation, or who, as principal, manager, director, agent, servant or employee knowingly does any act comprising a part of such violation, is guilty of a crime of the fourth degree and may be punished by imprisonment for not more than 18 months or by a fine of not more than \$50,000 or both; and if a corporation, by a fine of not more than \$100,000.

(d) – (e) (No change.)

(f) Nothing in this subchapter is intended to affect the Department's authority to revoke or suspend any permit, license or other operating authority issued under the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.** Specifically, in addition to any other cause set forth in this chapter, the Department may revoke or suspend a solid waste collector's Certificate of Public Convenience and Necessity for any of the following causes:

1. – 4. (No change.)

(g) (No change.)

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

(a) In order to assess a penalty under the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, for

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

1. Identify the section of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, rule, administrative order, permit, license violated;

2. – 4. (No change.)

(b) (No change.)

7:26H-5.19 Matrix penalty determination

(a) (No change.)

(b) Each violation of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, or any rule promulgated, any administrative order, permit, license or other operating authority issued shall constitute an additional, separate and distinct violation.

(c) (No change.)

(d) Where any requirement of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, or any rule promulgated, any administrative order, permit, license or other operating authority issued may pertain to more than one act, condition, occurrence, item, unit, waste or parameter, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, unit, waste or parameter shall constitute an additional, separate and distinct violation.

(e) (No change.)

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

1. Major seriousness shall apply to any violation which:

i. (No change.)

ii. Seriously deviates from the requirements of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, or any rule promulgated, any administrative order, permit, license or other operating authority issued; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation which:

i. (No change.)

ii. Substantially deviates from the requirements of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et**

seq., or any rule promulgated, any administrative order, permit, license or other operating authority issued; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement; and

3. (No change.)

(g) – (i) (No change.)

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

(a) The Department may assess a penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained pursuant to the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.** or any rule promulgated, any administrative order, permit, license or other operating authority issued pursuant to [the Act] **these Acts.**

(b) – (d) (No change.)

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

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building or facility which the Department may enter and inspect pursuant to the provisions of the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, shall be an additional, separate and distinct violation.

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

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or facility for which an administrative order, permit, license or other operating authority requirement exists under the [Act] **Solid Waste Utility Control Act (N.J.S.A. 48:13A-1), the Solid Waste Collection Regulatory Reform Act (N.J.S.A. 48:13A-7.1), or the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq.**, the penalty shall be in an amount of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and every subsequent offense; and

2. (No change.)

(d) (No change.)

SUBCHAPTER 8. PRIVATELY-OWNED SANITARY LANDFILL FACILITIES

7:26H-8.1 Purpose

This subchapter codifies the provisions of the Commercial Landfill Regulatory Reform Act, N.J.S.A. 48:13A-7.24 et seq., P.L. 2003, c.169 which was enacted to enable privately-owned sanitary landfill facilities to participate economically on a level playing field with publicly-owned in-state disposal facilities and out-of-state landfills that are not regulated in the more competitive marketplace created by the Court's invalidation of State waste flow control in Atlantic Coast Demolition & Recycling v. Board of Chosen Freeholders of Atlantic County, 112 F. 3d 652 (3rd Cir. 1997), amended by 135 F. 3d 891 (3rd Cir. 1998), cert. denied sub nom. Essex County Utilities Authority v. Atlantic Coast Demolition & Recycling, Inc. 522 U.S, 966, 118 S. Ct. 412 (1997).

7:26H-8.2 Certificate of Public Convenience and Necessity and Tariff Filings

(a) The owner or operator of every privately-owned sanitary landfill shall hold a Certificate of Public Convenience and Necessity issued by the Department pursuant to the provisions of section 7 of P.L. 1970, c.40 (C.48:13A-6) and N.J.A.C. 7:26H-1.6 and 1.8.

(b) The terms and conditions of solid waste disposal services at a privately-owned sanitary landfill facility shall be set forth in a tariff filed with the Department.

(c) Within ten (10) days of any deletion or addition of a service, a tariff amendment shall be filed with the Department.

7:26H-8.3 Adjustment of Rates

(a) The solid waste disposal rates collected by a privately-owned sanitary landfill facility may be adjusted upon 30 days' notice to current customers and publication in a newspaper of general circulation in the service area once a week for two consecutive weeks, with the first notice being 30 days in advance of the effective date of the adjustments, and following their effective date the rates shall be posted in a prominent location at the entrance to the facility.

(b) The notice of solid waste disposal rate adjustments shall be filed with the Department within three (3) days of their effective date.

7:26H-8.4 Annual Fee

(a) The total annual fee collected by the Department from the owner or operator of a privately-owned sanitary landfill facility to cover the costs of supervising the facility pursuant to the provisions of P.L. 1970, c.40 (C.48:13A-1 et seq.) shall not exceed the annual assessment authorized under the provisions of P.L. 1968, c.173 (C.48:2-59 et seq.).

(b) For the purposes of the annual assessment authorized under the provisions of P.L. 1968, c.173 (C.48:2-59 et seq.), the owner or operator of a privately-owned sanitary landfill facility shall file with the Department not later than May 1 of each year a certification of gross operating revenues received from intrastate utility services during the preceding calendar year.

7:26H-8.5 Solid Waste Disposal Rates Deemed Just and Reasonable

(a) Notwithstanding the provisions of any other law, rule or regulation, court decision or order of the Board of Public Utilities or Department to the contrary, the solid

waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable for the purposes of section 8 of P.L. 1970, c.40 (C.48:13A-7) if those rates are market-based rates.

(b) The solid waste disposal rates collected by a privately-owned sanitary landfill facility which exceed the market-based rates authorized pursuant to subsection (a) of this section shall not be deemed unjust and unreasonable if the solid waste disposal rates are designed to:

1. stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity; or

2. recover sufficient revenues to meet the revenue requirements of the privately-owned sanitary landfill facility.

(c) The internal cost of service or financial condition of a privately-owned sanitary landfill facility shall be deemed relevant only if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the Department pursuant to section 8 of P.L. 2003, c.169 (C.48:13A-7.31). In such a case, the owner or operator of the privately-owned sanitary landfill facility, at the owner's sole discretion, may establish a reasonable profit margin using either the return on rate base or operating margin methodology, or any alternative methodology which is consistent with market practices.

7:26H-8.6 Contested Case Proceedings

(a) Whenever, on the basis of available information, the Department has reasonable grounds to believe that the solid waste disposal rates collected by a privately-owned sanitary landfill facility are not in compliance with the market-based rates authorized in subsection a. of section 7 of P.L. 2003, c.169 (C.48:13A-7.30), the Department may initiate contested case proceedings before the Office of Administrative Law.

(b) At least 30 days prior to transmittal of the contested case to the Office of Administrative Law pursuant to subsection (a) of this section, the Department shall serve a notice on the owner or operator of the affected facility. The notice shall identify the solid waste disposal rate or rates at issue, describe and attach copies of the evidence relied upon, and afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.

(c) Within 30 days of the close of the hearing before the Office of Administrative Law, the administrative law judge shall issue an initial decision which may recommend that the Department order the owner or operator of the affected facility to adjust the solid waste disposal rates collected by the privately-owned sanitary landfill facility to bring the rates into compliance with the market-based rates authorized in subsection a. of section 7 of P.L. 2003, c.169 (C.48:13A-7.30), if the Department shows that the solid waste disposal rates identified in the notice of transmittal are:

1. not in compliance with the market-based rates authorized in subsection a. of section 7 of P.L. 2003, c.169 (c.48:13A-7.30) and the owner or operator of the affected facility has not demonstrated that the rates are designed to stabilize incoming waste flows; or

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

(d) the administrative law judge's initial decision shall be simultaneously served on

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

(e) If the Department fails to act on the initial decision within 90 days of its receipt, or within any extended period agreed to, in writing, by the owner or operator of the affected facility, the recommendations of the administrative law judge shall be deemed affirmed and the final agency decision in the case for the purposes of appeal. Any order on the initial decision issued by the Department thereafter shall be of no effect.

(f) Except to the extent expressly modified herein, the contested case proceeding authorized pursuant to this section shall be conducted in accordance with the rules and regulations applicable to such proceedings promulgated by the Office of Administrative Law, including rules applicable to summary judgment motions.

7:26H-8.7 Sale or Disposal of Assets of Privately-Owned Sanitary Landfill Facilities

(a) The owner or operator of a privately-owned sanitary landfill facility may, without the approval of the Department, sell or otherwise dispose of its assets except that the prior approval of the Department shall be required to:

1. sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator;

2. sell a controlling ownership interest in the sanitary landfill facility; or

3. merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal pursuant to the provisions of P.L. 1970, c.39 (C.13:1E-1 et seq.), P.L. 1970, c.40 (C.48:13A-1 et seq.) or any other act.

(b) Any owner or operator seeking approval for any transaction enumerated above shall file with the Department an application on forms therefore and in the manner prescribed by the Department.

7:26H-8.9 Jurisdiction of the Department

(a) The provisions of section 18 of P.L. 1975, c.326 (C.13:1E-27), Title 48 of the Revised Statutes, P.L. 1970, c.40 (C.48:13A-1 et seq.), or any other law, rule or regulation adopted pursuant thereto, or order issued by the Board of Public Utilities or the Department, to the contrary notwithstanding, the jurisdiction of the Department with respect to the State supervision of privately-owned sanitary landfill facilities shall be exercised with respect to the solid waste disposal rates collected by privately-owned sanitary landfill facilities solely in the manner and to the extent expressly provided in the provisions of P.L. 2003, c.169 (C.48:13A-7.24 et seq.), and shall not extend to the financial or business affairs of any privately-owned sanitary landfill facility or the owner or operator thereof, except to the extent expressly provided in the provisions of R.S. 48:3-7 and section 12 of P.L. 1970, c.40 (C.48:13A-11).

(b) Nothing contained in the provisions of P.L. 2003, c.169 (C.48:13A-7.24 et seq.) shall be construed to limit the authority of the Department to regulate privately owned

sanitary landfill facilities with respect to the provision of solid waste disposal services pursuant to P.L. 1970, c.40 (c.48:13A-1 et seq.), environmental standards and requirements pursuant to P.L. 1970, c.39 (C.13:1E-1 et seq.) and licensing standards and requirements pursuant to P.L. 1983, c.392 (C.13:1E-126 et seq.) and P.L. 1991, c.269 (C.13:1E-128.1 et seq.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection