

**SHWMP STAKEHOLDER
TRANSFORMATION/MODERNIZATION
WORKGROUP IV: “SPECIAL ISSUES”**

MEETING #1: 1:30PM, March 21, 2012

Topics – Definitions of Solid Waste and Clean Fill

MEETING TOOL KIT

negotiation of long term contracts with municipalities and other solid waste collectors to guarantee the flow of solid waste to such facilities. The Legislature, however, does not intend to encourage or permit the public entity, or its designees, that holds these contracts to permit the or charge rates to municipalities or other solid waste collectors within its jurisdiction which discriminate on the basis of the cost of disposal at a particular facility which has been designated, as the place of disposal for the solid waste of such municipality or other solid waste collector pursuant to an approved solid waste management plan for that district.

L.1970, c. 39, § 2, eff. May 6, 1970. Amended by L.1975, c. 326, § 3, eff. July 1, 1976.

Historical and Statutory Notes

Prior to the 1975 amendment this section read:

"The Legislature finds and declares that the collection, disposal and utilization of solid waste is a matter of grave concern to all citizens and is an activity thoroughly affected with the public interest; that the health, safety and welfare of the people of this State require efficient and reasonable solid waste collection and disposal service or efficient utilization of

such waste; and that the current solid waste crisis should be resolved not only by the enforcement of more stringent and realistic regulations upon the solid waste industry, but also through the development and formulation of State-wide, regional, county, and intercounty plans for solid waste management and guidelines to implement the plans."

For effective date of L.1975, c. 326, see notes under § 13:1E-1.

Library References

American Digest System

Environmental Law ¶345.
Westlaw Topic No. 149E

Notes of Decisions

Policy 1

Transfer stations 2

1. Policy

New Jersey policy against reliance on out-of-state solid waste disposal did not violate commerce clause; thrust of policy was to protect state environment over long term by insuring existence of essential public service of waste disposal and actually burdened New Jersey citizens, rather than citizens of other states; nor did New Jersey's treatment of out-of-state waste disposal discriminate against others or constitute complete ban on out-of-state disposal; short-term, out-of-state disposal was permitted to continue under policy if there were adequate, in-state

342

based on their capital invested and on risks undertaken. Petition of County of Essex, 299 N.J. Super. 577, 691 A.2d 108 (A.D.1997), certification denied 151

N.J. 463, 700 A.2d 876, certiorari denied 118 S.Ct. 1043, 522 U.S. 1111, 140 L.Ed.2d 108.

13:1E-3. Definitions

For purposes of this act, unless the context clearly requires a different meaning:

- a. "Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.
- b. "Solid waste collection" means the activity related to pick-up and transportation of solid waste from its source or location to a transfer station or other authorized solid waste facility.
- c. "Disposal" means the storage, treatment, utilization, processing, resource recovery of, or the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or on any land or water, so that the solid or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- d. "Solid waste management" includes all activities related to the collection and disposal of solid waste by any person engaging in such process.
- e. "Council" means the Advisory Council on Solid Waste Management.
- f. "Department" means the State Department of Environmental Protection.
- g. "Commissioner" means the Commissioner of Environmental Protection in the State Department of Environmental Protection.
- h. "Solid waste facilities" mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by any person 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, including transfer stations, incinerators, resource recovery facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)

Electronic Code of Federal Regulations

e-CFR
TM

e-CFR Data is current as of March 16, 2012

Title 40: Protection of Environment

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

[Browse Previous](#) | [Browse Next](#)

§ 261.2 Definition of solid waste.

(a)(1) A *solid waste* is any discarded material that is not excluded under §261.4(a) or that is not excluded by a variance granted under §§260.30 and 260.31 or that is not excluded by a non-waste determination under §§260.30 and 260.34.

(2)(i) A *discarded material* is any material which is:

(A) Abandoned, as explained in paragraph (b) of this section; or

(B) Recycled, as explained in paragraph (c) of this section; or

(C) Considered inherently waste-like, as explained in paragraph (d) of this section; or

(D) A military munition identified as a solid waste in §266.202.

(ii) A hazardous secondary material is not discarded if it is generated and reclaimed under the control of the generator as defined in §260.10, it is not speculatively accumulated as defined in §261.1(c)(8), it is handled only in non-land-based units and is contained in such units, it is generated and reclaimed within the United States and its territories, it is not otherwise subject to material-specific management conditions under §261.4(a) when reclaimed, it is not a spent lead acid battery (see §266.80 and §273.2), it does not meet the listing description for K171 or K172 in §261.32, and the reclamation of the material is legitimate, as specified under §260.43. (See also the notification requirements of §260.42). (For hazardous secondary materials managed in land-based units, see §261.4(a)(23)).

(b) Materials are solid waste if they are *abandoned* by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are *recycled*—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (4) of this section.

(1) *Used in a manner constituting disposal.* (i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) *Burning for energy recovery.* (i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are themselves fuels.

(3) *Reclaimed.* Materials noted with a "—" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§261.2(a)(2)(ii), or 261.4(a)(17), or 261.4(a)(23), or 261.4(a)(24) or 261.4(a)(25).

(4) *Accumulated speculatively.* Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use constituting disposal (§261.2(c)(1))	Energy recovery/fuel (§261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in §§261.2(a)(2)(ii), 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative accumulation (§261.2(c)(4))
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
By-products (listed in 40 CFR 261.31 or	(*)	(*)	(*)	(*)

261.32)				
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	—	—
Scrap metal that is not excluded under §261.4(a)(13)	(*)	(*)	(*)	(*)

Note: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in §261.1.

(d) *Inherently waste-like materials.* The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Administrator will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) *Materials that are not solid waste when recycled.* (1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at §261.4(a)(17) apply rather than this paragraph.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1) (i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) *Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.* Respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

[50 FR 664, Jan. 4, 1985, as amended at 50 FR 33542, Aug. 20, 1985; 56 FR 7206, Feb. 21, 1991; 56 FR 32688, July 17, 1991; 56 FR 42512, Aug. 27, 1991; 57 FR 38564, Aug. 25, 1992; 59 FR 48042, Sept. 19, 1994; 62 FR 6651, Feb. 12, 1997; 62 FR 26019, May 12, 1997; 63 FR 28636, May 26, 1998; 64 FR 24513, May 11, 1999; 67 FR 11253, Mar. 13, 2002; 71 FR 40258, July 14, 2006; 73 FR 64760, Oct. 30, 2008; 75 FR 13001, Mar. 18, 2010]

[Browse Previous](#) | [Browse Next](#)

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.

For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

[Section 508 / Accessibility](#)

7:26-17.13	Preparation of final public copy
7:26-17.14	Class confidentiality determinations
7:26-17.15	Disclosure of confidential information to other public agencies
7:26-17.16	Disclosure of confidential information to contractors
7:26-17.17	Disclosure to alleviate an imminent and substantial danger
7:26-17.18	Notice to claimants of disclosure of confidential information
7:26-17.19	Disclosure by consent
7:26-17.20	Incorporation of confidential information into cumulations of data
7:26-17.21	Disclosure of confidential information in rulemaking, permitting and enforcement proceedings
7:26-17.22	Hearing before disclosure of information for which a confidentiality claim has been made
7:26-17.23	Nondisclosure of confidential information
7:26-17.24	Safeguarding of confidential information
7:26-17.25	Confidentiality agreements
7:26-17.26	Wrongful access or disclosure; penalties

SUBCHAPTER 1. GENERAL PROVISIONS

Law Reviews and Journal Commentaries

Environmental Crimes: Considerations in Prosecutions. Ed Neafsey, Edward Bonanno, 159 N.J.L.J. 37 (1994).

7:26-1.1 Scope of rules

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

1. The purchase, sale, collection, storage, transport or controlled processing of source separated or commingled source separated recyclable, recycled or secondary non-hazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials (including fuel and reusable energy), or thermal destruction facilities. These rules shall not apply only if the conditions in (a)li or ii below are met.

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

greater risk to human health or the environment than the use of the product or raw material it is replacing.

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

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

2. Container-pickup facilities as herein defined;
3. Source separated food waste fed to livestock in the State of New Jersey as approved by the New Jersey Department of Agriculture;
4. Recycling depots as defined at N.J.A.C. 7:26A-1.3 where individuals or organizations deposit separate materials such as newsprint, bottles, cans, and so forth, prior to transport to the secondary materials industry;
5. Convenience centers as defined at N.J.A.C. 7:26-1.4;
6. The intra-plant transport, temporary storage or other handling of plant generated waste materials. Specifically not exempt are those materials to be, or which are, deposited on or in the lands of this State for periods exceeding six months, or which through transport, storage or other handling will cause pollution of the surface or ground waters of this State, or which may pose a substantial or material threat to the public health, safety or welfare;
7. Any discharge of a mixture of domestic sewage and other waste that are discharged into a sewer system to a domestic treatment works, as defined in N.J.A.C. 7:14A, which is authorized in accordance with N.J.A.C. 7:14A and local ordinances.

- i. This exemption does not include transport or discharge by waste transporters;

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

9. A small vehicle transfer area meeting the following requirements:

- i. Solid waste is transferred from a collection vehicle not exceeding 16,000 pounds gross vehicle weight directly to a registered solid waste collection vehicle;

- ii. Such solid waste is collected in the collection vehicle not exceeding 16,000 pounds gross vehicle weight because the point of generation is not accessible to a registered solid waste collection vehicle (that is,

down a narrow lane or private driveway, or on public property such as a park or beach);

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

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

v. Area operations shall not result in the generation of odors, litter, dust, leachate, or any other negative environmental impacts;

vi. Small vehicle transfer areas shall receive approval from the municipality in which they are located prior to commencing transfer operations. In addition, operators of small vehicle transfer areas shall notify the Department in writing and the respective county health department following municipal approval and prior to commencing operations; and

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

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

(c) The exemptions set out at (a)1 through 9 above are not applicable to activities associated with hazardous waste or regulated medical waste.

As amended, R.1981 d.84, effective March 6, 1981.
See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

(b) added.

As amended, R.1982 d.433, effective December 6, 1982.
See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

(c) added.

As amended, R.1983 d.610, effective January 3, 1984.
See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

(a)6 added.

Amended by R.1987 d.534, effective December 21, 1987.
See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.

Amended by R.1989 d.54, effective January 17, 1989.
See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).

Substantially amended (a).

Amended by R.1989 d.216, effective April 17, 1989.
See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Added "hazardous" to the description of waste facilities, replaced "collection and haulage" with "solid waste transportation"; specific listing of the fee schedule elements deleted and replaced with generalized statement.

Amended by R.1996 d.500, effective October 21, 1996.
See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a), inserted reference to civil administration penalties; in (a)1, inserted text "which would otherwise . . . to this chapter" and added last sentence; added (a)1i to (a)1iii; substantially amended (a)3; in (a)4, substituted "depots" for "centers" and inserted N.J.A.C. reference; inserted new (a)5; recodified former (a)5 and (a)6 as (a)6 and (a)7; added (a)8; and, in (c), made conforming changes and inserted reference to regulated medical waste.

Amended by R.2001 d.86, effective March 5, 2001.

See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).

In (a), deleted "and hazardous" preceding "waste facilities" throughout.

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (a)9.

Case Notes

New Jersey's waste flow control laws violated commerce clause. *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic County*, D.N.J.1996, 931 F.Supp. 341.

Regulations did not exclude from definition of "sanitary landfill" a sole source facility which ceased operating prior to enactment of modern environmental statutes. *Johnson Machinery Co., Inc. v. Manville Sales Corp.*, 248 N.J.Super. 285, 590 A.2d 1206 (A.D.1991).

DEP complied with all Federal and State statutory and regulatory provisions in issuance of Air Pollution Control Permit and Solid Waste Permit to applicant. In the Matter of NJPDES Permit No. N.J. 0055247, et al., 216 N.J.Super. 1, 522 A.2d 1002 (App.Div.1987) certification denied 108 N.J. 185, 527 A.2d 1390 (1987).

Recycling center operates as solid waste facility where it accepts and buries materials as landfill. *New Jersey Department of Environmental Protection v. South Brunswick Asphalt*, 96 N.J.A.R.2d (EPE) 289.

Solid waste disposal violations debarred collectors from owing and operating any solid waste or recycling business within state. *Department of Environmental Protection v. Chad Lennon*, 95 N.J.A.R.2d (EPE) 33.

7:26-1.2 Construction and severability

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

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

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Formerly the Department and the Bureau of Solid Waste Management.

Amended by R.1992 d.100, effective March 2, 1992.

See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).

Severability clarified that if any provision of a rule is invalidated in any judicial or administrative proceeding, all other provisions of the rule remain in effect.

7:26-1.3 (Reserved)

As amended, R.1984 d.279, effective July 2, 1984.
See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).

Bureau Chief deleted.

Amended by R.1996 d.500, effective October 21, 1996.

See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Repealed by R.1996 d.578, effective December 16, 1996.

"Active life" of a hazardous waste facility means the period from the initial receipt of hazardous waste at the facility until the Department approves certification of final closure of the facility.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of N.J.A.C. 7:26-9.1 et seq. and which is not a closed portion.

"Adequately wet" means sufficiently mixed or penetrated with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Admixture" means two or more materials mixed together to be used as a liner. Admixtures include asphalt concrete, portland cement concrete and mixtures of soil and portland cement or bentonite.

"Applicant" means the person who submits an application for a permit under this chapter and in whose name the permit is to be issued, and for the purposes of N.J.A.C. 7:26-3, the person who files an application for an approved registration statement and in whose name the approved registration statement is to be issued.

"Approved registration" means the registration of a solid waste disposal site, transporter, or any other solid waste or hazardous waste facility issued by the Department after review and approval of the registration statement.

"Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

"Asbestos-containing waste materials" or "ACWM" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 C.F.R. 61.140. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

"Beneficial use" means the use or reuse of a material, which would otherwise become solid waste under this chapter, as landfill cover, aggregate substitute, fuel substitute or fill material or the use or reuse in a manufacturing process to make a product or as an effective substitute for a commercial product. Beneficial use of a material shall not constitute recycling or disposal of that material.

"Boiler" means an enclosed device using controlled flame combustion to recover and export energy in the form of steam, heated fluids, or heated gases which:

1. Has a combustion chamber and primary energy recovery system of integral design (fluidized bed combustion units which are not of integral design will be reviewed by the Department on a case-by-case basis for classification as a boiler after considering the standards set out in 40 CFR Part 266). To be considered of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and super heaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream) and fluidized bed combustion units; and

2. Maintains at least a 60 percent thermal energy recovery efficiency during operation, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

3. Demonstrates to the Department's satisfaction that at least 75 percent of the recovered energy is used annually. Recovered heat which is used internally shall not be counted in the 75 percent.

"Buffer zone" means those on-site areas adjacent to the sanitary landfill property line which shall be landscaped and left undeveloped.

"Bulk liquid or bulk semiliquid" means liquid or semiliquid which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of 20 gallons or more.

"Bulky waste" means large items of solid waste which because of their size or weight require handling other than normally used for municipal waste. Bulky waste includes, but is not limited to, such items as tree trunks, auto bodies, demolition or construction materials, appliances, furniture and drums.

"Burning" or "incinerating" means any method using combustion to decompose or otherwise change the physical, chemical, or biological composition of a solid waste.

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. The term does not include a "co-product" as defined herein.

"Catch-basin" means a chamber or well, usually built to the curblin of a street which admits surface water for discharge into a storm water drain.

"Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos as determined using methods specified in appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy.

"Category II nonfriable asbestos-containing material" means any material, excluding Category I nonfriable asbestos-containing material, containing more than one percent asbestos as determined using methods specified in Appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Cell" means compacted solid wastes that are enclosed by natural soil or cover material in a land disposal site.

"Clay" means a fine grain soil containing sufficient plastic fines (N. 200 sieve), on the order of 20 percent or greater such that the soil acts as a clay and will achieve the required degree of impermeability. The soil should be classified as a CL_c or CH (Unified Soil Classification System), with a liquid limit between 30-60, placed above the A-line on the plasticity chart and a minimum plastic index of 15. The soil should have a cation exchange capacity (CEC) greater than 15 meq/100 grams and be in the neutral pH range.

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products. Clean fill shall not mean processed or unprocessed mixed construction and demolition debris, including, but not limited to, wallboard, plastic, wood or metal. The non-water soluble, non decomposable inert products generated from an approved Class B recycling facility are considered clean fill.

"Co-composting facility" means a solid waste facility which utilizes a controlled biological process of degrading mixtures of nonhazardous solid waste and sewage sludge.

"Collection or collecting" means the act of picking up solid waste at its point of generation or storage.

"Commercial asbestos" means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

"Commissioner" means the Commissioner of the Department of Environmental Protection or any other person designated to act on the Commissioner's behalf.

"Composite liner" means a combination of clay or admixture liner and a geomembrane.

"Composting facility" means a solid waste facility which utilizes a controlled biological process of degrading nonhazardous solid waste.

"Consignee" means the ultimate treatment, storage, or disposal facility in a receiving country to which hazardous waste will be sent.

"Construction and demolition waste" means 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.

"Container" means any portable device in which a solid waste is stored, transported, treated, disposed of, or otherwise handled.

"Containerized solid waste" means solid waste as defined at N.J.A.C. 7:26-2.13 that is completely sealed, locked, or otherwise enclosed in containers of sufficient structural integrity to prevent unauthorized access to the container's contents, spillage and leakage. Containerized solid waste shall not be enclosed by use of a tarp or other cover that does not form a complete seal around the waste, or be accessed in any way while at the facility, or be allowed to emit any contaminants or odors to the air that may reasonably result in citizen complaints, or be in violation of N.J.A.C. 7:27-5.1.

"Container-pickup facility" means a site where one or more containers are located for temporary storage of solid waste at the point of waste generation while awaiting periodic removal to a registered solid waste facility. A container-pickup facility differs from a transfer station and a conveyance center.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or discharge of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Continuous monitoring instrumentation" means a direct reading instrument which measures a given parameter on a continuous basis.

"Controlled processing" means the processing of solid waste in a manner which minimizes the potential discharge of any constituents of the solid waste into the environment.

"Controlling slopes" means slopes on those areas of the liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

"Convenience center" means a site where one or more containers are located for temporary storage of solid waste and/or recyclable materials brought to the site by persons transporting only their own household solid waste and/or recyclable materials in passenger automobiles bearing general registration plates.

"Co-product" means a material that is not a primary product, but is an incidentally produced product, of such quality that its composition is consistently equivalent to, or exceeds the standards for, a manufactured product of the same name. A co-product is used as a commodity in trade by the general public in the same form as it is produced, in lieu of an intentionally manufactured product.

"Cover material" means soil, earth or other material approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14 which is used to cover compacted solid waste in a sanitary landfill for the purpose of rodent and vector control, to minimize moisture entering the fill, to provide a fire break, and in the case of final cover, to grow vegetation for erosion control. The depth or thickness of cover material to be measured after compaction with at least one pass of a bulldozer or other suitable equipment having a gross weight in excess of 10,000 pounds.

"Cutting" means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

"Daily cover" means cover material that is a minimum of six inches of depth or as approved by the Department in accordance with N.J.A.C. 7:26-2A.8(b)14.

"Department" means the New Jersey Department of Environmental Protection.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Director" means the Director of the Division of Solid and Hazardous Waste in the Department or his or her designee, except when specifically noted.

"Discard or discarded" means disposal; burning or incinerating; use or reuse; and/or reclaim or reclamation, all as defined in this section.

"Discharge" or "hazardous waste discharge" means the unintentional or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land, water or air.

"Disposal" means the storage, treatment, utilization, processing or final disposition of solid waste, specifically

including the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Disposal facility" means a solid waste facility used for the disposal of solid waste.

"Division" means the Division of Solid and Hazardous Waste in the Department.

"Domestic sewage" means waste or wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Double liner" means a two liner system separated by a leak detection/leachate removal system.

"Dredged material" means the sediments under a body of water such as, but not limited to, a bay, harbor, lake, stream and river, removed during a dredging operation that are displaced or removed to another location.

"Dump" means a land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors and scavengers.

"Empty tank" means a tank that meets the following criteria:

1. All wastes have been removed that can be removed by direct pumping or drainage; and
2. The quantity of residue remaining in the tank after waste removal is no more than one percent of the volume of the tank.

"Engineering design" means reports and drawing, including a narrative operating description, prepared by a New Jersey licensed professional engineer to describe a solid waste facility and its proposed operation.

"Environmental and health impact statement" or "EHIS" means a statement as to the realistically identifiable, probable impact of the proposed solid waste facility upon the geology, soils, hydrology, air quality, ecology, land use, socio-economic, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at the project site and in the surrounding region; a listing of alternatives to all or any part of the project with reasons for their acceptability or nonacceptability; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

"Environmental assessment" means an evaluation of the positive and negative changes to the environmental condi-

tions at and around a particular site which may result from the implementation of a proposed action. Included is a determination of the magnitude of the potential changes and, where applicable, the identification of recommended mitigative measures to be incorporated.

"Environmental inventory" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"Environmentally unsound" means any persistent or continuous condition resulting from the methods of operation or design of the solid waste facility which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated Federal, State, county or municipal standard.

"Environmental upgrading" means the addition or modification of the construction, operation or maintenance of a solid waste facility to abate or prevent the occurrence of an environmentally unsound condition.

"EPA" or "USEPA" means the United States Environmental Protection Agency.

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

"Existing solid waste facility" means that portion of an active solid waste facility which, as of the effective date of these regulations, possesses a valid approved registration from the Department.

"Expansion" means the process of increasing the design and/or permitted capacity, areal or structural dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

"Final cover" means cover material that is a minimum of 24 inches in depth.

"Food waste" means food processing by-products (food processing vegetative wastes and/or food processing residuals generated from food processing and packaging operations or similar industries that process food products), vegetative waste (produce trimmings and over-ripe produce generated by supermarkets, produce brokers and produce distributors), off-spec food products, food product over-runs, and similar food waste materials.

"Foundation" means the supporting soil layers beneath a liner or cutoff wall.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Free moisture" means liquid that drains freely by gravity from solid materials.

"Friable asbestos material" means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. part 763 section 1, polarized light microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), the asbestos content shall be verified by point counting using PLM.

"Generation" means the act or process of producing solid waste.

"Geomembrane" means a prefabricated continuous sheet of flexible polymeric material including synthetic membranes, polymeric membranes, flexible membrane liners and plastic liners.

"Grace period" means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

"Gross vehicle weight" means the weight of the vehicle or combination of vehicles, including load or contents.

"Ground water" means that water below ground, the static pressure of which is equal to or greater than prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

"Hydraulic asphalt concrete" means a controlled mixture of asphalt cement and high quality mineral aggregate compacted into a uniform dense mass.

"Impermeable liner" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of 1×10^{-7} cm/sec at the maximum anticipated hydrostatic pressure.

"Incinerator" means a thermal device in which solid waste is burned for the purposes of volume reduction (an incinerator used to obtain energy shall be classified as a resource recovery facility).

"Incompatible waste" means a solid waste which is unsuitable for:

1. Placement in a particular device or facility because it may cause corrosion or decay of containment materials (for example, container inner liners or tank walls); or

2. Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

"Individual generation site" means the contiguous site at or on which one or more solid wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial boiler" means a boiler for use in a manufacturing process or manufacturing facility.

"Industrial furnace" means an enclosed device which is an integral component of a manufacturing process and which uses controlled flame combustion to recover materials or energy including the following: lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting furnaces, melting furnaces, refining furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, sulfuric acid plant sulfur recovery furnaces and such other devices as the Department may add to this list on the basis of one or more of the following factors:

1. The design and use of the device primarily to accomplish recovery of material products;
2. The use of the device to burn or reduce raw materials to make a material product;
3. The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
4. The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product; and/or
5. Other factors as appropriate.

"Infectious waste" means solid waste that is defined as infectious by the New Jersey State Department of Health.

"Intermediate cover" means cover material that is a minimum of 12 inches in depth.

"Intermodal container facility" means a facility where containerized solid waste is transferred from one mode of transportation, such as trucks, rail cars, ships and barges, to another, or from one vehicle to another within one mode of transportation.

"Leachate" means liquid that has been in contact with solid waste.

"Leak-tight" means that solids or liquids cannot escape or spill out. It also means dust-tight.

"Lethal chemical" means ammunition, chemical or biological warfare agent, pyrotechnic material and military store of any kind capable of being used to inflict death or harm to man or his environment.

"Licensee" shall, for purposes of N.J.A.C. 7:26-3.2, be defined as set forth in N.J.S.A. 13:1E-127i.

"Lift" means a compacted layer of solid waste plus its overlying cover material in a sanitary landfill.

"Marketable residual product" means any residual or material derived from a residual which has been prepared for land application in accordance with a permit issued pursuant to N.J.A.C. 7:14A and which, at a minimum, meets the pollutant concentrations in 40 C.F.R. 503.13(b)(1), the Class B pathogen requirements in 40 C.F.R. 503.32 and one of the vector attraction reduction requirements in 40 C.F.R. 503.33(b)(1) through (b)(8).

"Materials recovery facility" means a solid waste facility such as a transfer station which is primarily designed, operated and permitted to process a nonhazardous solid waste stream by utilizing manual and/or mechanical methods to separate from the incoming waste stream categories of useful materials which are then returned to the economic mainstream in the form of raw materials or product of reuse.

"Modular design" means a design which provides for the sequential construction and filling of discrete units of a sanitary landfill in a phased manner.

"Municipal solid waste" means residential, commercial and institutional solid waste generated within a community.

"New solid waste facility" means any solid waste facility or portion thereof which does not qualify as an existing solid waste facility.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System.

"Non-container plastic materials" means source separated nonputrescible plastic materials other than plastic containers.

"Nonfriable asbestos-containing material" means any material containing more than one percent asbestos as determined using the method specified in Appendix A, Subpart F, 40 C.F.R. part 763 section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is a cross-road intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a

right-of-way which he controls and to which the public does not have access, is also considered on-site property.

“Open burning” means the combustion of any material without the following characteristics.

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion;
3. Control of emission of the gaseous combustion products.

“Pathological waste”: See “Infectious waste.”

“PCB hazardous waste” means any hazardous waste with concentrations of PCBs of 50 parts per million (ppm) or greater by dry weight.

“Permit” means the approval issued by the Department to construct and operate a solid waste facility and means the approved registration statement and engineering design approval described in the Solid Waste Management Act.

“Permittee” shall, for purposes of N.J.A.C. 7:26-3.2, be defined as set forth in N.J.S.A. 13:1E-127i.

“Person” means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), corporate official, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

“Personnel” or “facility personnel” means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

“Precious metals” means gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or a combination consisting of two or more of these eight metals.

“Publicly-owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the State, a municipality or a public authority. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

“Putrescible waste” means any waste liable to enter into a state of putrefaction, the typically anaerobic splitting of proteins by bacteria and fungi with the formation of foul-smelling, incompletely oxidized products.

“Reclaim” or “reclamation” means a procedure whereby a material is treated to recover a usable product, or where a material is regenerated. Examples are recovery of lead values from spent batteries, regeneration of spent solvents and removal of impurities from spent solvents or other hazardous wastes to render them usable as fuels.

“Recycling center” means a facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable material (Class A, Class B, Class C and/or Class D recyclable material as defined at N.J.A.C. 7:26A-1.3). Recycling centers shall not include recycling depot, manufacturers, or scrap processing facility as defined at N.J.A.C. 7:26A-1.3.

“Recyclable materials” means materials which would otherwise become nonhazardous solid waste which can be separated, collected and processed and returned to the economic mainstream in the form of raw materials or products.

“Recycling or reclamation facility” means any place, equipment or plant designed and/or operated for the purpose of recycling or reclamation, as defined above, to collect, store, process or to redistribute separated waste so as to return the material to market.

“Registrant” means an applicant who has obtained an approved registration statement and who has registered solid or hazardous waste cabs, vehicles, trailers, containers, transport units or single-unit vehicles.

“Registration”: See “Approved registration.”

“Registration certificate” means the solid waste transporter vehicle registration card which certifies the name and address of the registered company, decal number, expiration date, vehicle identification number, and the license number assigned to the registered company.

“Registration statement” means an application for approved registration executed on forms provided by the Department and containing such information as may be required.

“Regulated asbestos-containing material” or “RACM” means friable asbestos material, Category I nonfriable asbestos-containing material that has become friable, Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

“Representative sample” means a sample of a universe or whole which can be expected to exhibit the average properties of the universe or whole.

“Residue” means any material that remains after completion of thermal, mechanical or chemical processing.

“Resilient floor covering” means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than one percent asbestos as determined using polarized light microscopy according to the method specified in Appendix A, Subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy.

“Resource recovery facility” means any place, equipment, device or plan designed and/or operated to separate or process solid or liquid waste into usable secondary materials, including fuel and energy.

“Run-off” means the liquid that drains from an area as surface flow.

“Run-on” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

“Salvaging” means the controlled removal of waste materials from a solid waste disposal facility for reuse.

“Sanitary landfill means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste. Sanitary landfills shall be further classified into one of the following classes:

1. “Class I sanitary landfill” means a solid waste facility which may accept all types of nonhazardous solid waste including ID 10, 13, 13C, 23, 25, 27, 27A and 27I.
2. “Class II sanitary landfill” means a solid waste facility which may accept only ID type 27 or a specific category of ID type 27 of nonhazardous solid waste; and
3. “Class III sanitary landfill” means a solid waste facility which may accept only inert nonputrescible nonhazardous solid waste, ID 13 or 23.

“Scrap metal” means bits and pieces of metal parts (for example, bars, turnings, rods, sheets, wire) or metal pieces which may be combined together with bolts or soldering (for example, radiators, scrap automobiles, railroad box cars) which when worn or superfluous, can be recycled. Materials not covered by this term include residues generated from smelting and refining operations (that is, drosses, slags, and sludges), liquid wastes containing metals (that is, spent acids, spent caustics, or other liquid wastes with metals in solution), liquid metal wastes (for example, liquid mercury), or metal-containing wastes with a significant liquid component, such as spent batteries.

“Scrap metal shredding facility” means an industrial facility which:

1. Receives and stores motor vehicles, appliances, other source separated, non-putrescible ferrous and non-ferrous metals;

2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and

3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or reuse.

“Segregation” means the systematic division of solid waste into components.

“Semiliquid” means a mixture consisting of solid matter suspended in a liquid media (for example, a slurry).

“Septic waste” means a mixture consisting of sewage solids combined with water and dissolved materials in varying amount.

“Sewage sludge” means solid, semi-solid or liquid residue generated by the processes of a domestic treatment works as defined at N.J.A.C. 7:14A. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. For the purposes of this chapter, scum which is not combined with the solids removed in primary, secondary or advanced wastewater treatment processes is not considered to be sewage sludge.

“Sludge” means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

“Small scale solid waste facility” means a facility which is limited by its SWF permit in capacity to less than 100 tons per day in a six day per week operation for transfer stations and material recovery facilities and to a processing rate that results in annual emissions of air contaminants at an amount below the threshold levels of a major facility as defined at N.J.A.C. 7:27-8.1 for thermal destruction facilities.

“Small vehicle transfer area” means an area where solid waste is transferred from a small collection vehicle not exceeding 16,000 pounds gross vehicle weight directly to a conventional solid waste collection vehicle or other solid waste container in accordance with the requirements of N.J.A.C. 7:26-1.1(a)9.

"Soil cement" means a mixture of soil portland cement and water. As the cement hydrates the mixture forms a hard, durable, low strength concrete.

"Solid waste" see N.J.A.C. 7:26-1.6.

"Solid waste cab" means any powered device to which a solid waste transport unit can be attached for transporting solid waste excluding hazardous waste off-site or to a solid waste facility.

"Solid waste container" means any nonpowered, portable detachable device that is used to contain and transport solid waste excluding hazardous waste offsite or to a solid waste facility by road, rail, water, or air and that is not normally disposed of with its cargo. A container is normally used in conjunction with a solid waste cab and trailer or a solid waste single-unit vehicle and includes, but is not limited to, roll-off boxes, dumpsters, hoppers, lugger boxes, portable tanks, or any similar appurtenance, except that it shall not include metal, fiber, or plastic containers with a capacity of less than 100 gallons.

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6.

"Solid waste facility performance partnership agreement" or "SWFPPA" means the document executed by a solid waste facility permittee and the Department setting forth the voluntary goals and milestones by which the permittee is to reduce the environmental impacts of the solid waste facility below the approved environmental limits established in the permit for the facility.

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

"Solid waste management" means the purposeful, systematic control of the generation, storage, collection, processing, transfer, transportation, separation, recycling, recovery and disposal of solid wastes.

"Solid waste single-unit vehicle" means any self-propelled device, with either a detachable or non-detachable cargo compartment, which is used to carry solid waste excluding hazardous waste off-site or to a solid waste facility. A solid waste single-unit vehicle includes, but is not limited to, front and rear loading compactor vehicles, straight roll-off vehicles, straight vans, dump trucks, pick-up, straight flat beds, and straight tank and vacuum trucks.

"Solid waste trailer" means any non-powered device that normally has a permanently attached receptacle or area for carrying a solid waste payload. A solid waste trailer is usually employed in conjunction with a solid waste cab and includes, but is not limited to, flat bed trailers, box trailers, vans, open top trailers, compactor trailers, dump trailers, tank trailers, vacuum trailers, roll-off trailers, rail cars, and barges.

"Solid waste transport unit" means any portable non-powered device that is used to contain and transport solid waste excluding hazardous waste off-site or to a solid waste facility. Solid waste transport unit includes, but is not limited to, solid waste roll-off containers, dumpsters, hoppers, rail cars, barges, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs.

"Solid waste vehicle" means any device used to carry solid waste excluding hazardous waste off-site or to a solid waste facility. A solid waste vehicle includes, but is not limited to, a solid waste single-unit vehicle, solid waste cab and/or solid waste transport unit.

"Source separated" means recyclable materials were separated from the solid waste stream at the point of generation.

"Spent material" means any material that has been used, and as a result of contamination, can no longer serve the purpose for which it was intended without being processed, reprocessed or reclaimed.

"Standby letter of credit" means an irrevocable engagement by an issuing bank, at the request of an owner or operator, that it will honor demands for payment made by the New Jersey Department of Environmental Protection for the period of the letter of credit and under terms specified for letter of credit in this chapter.

"Subgrade" means the foundation of supporting soil layer beneath a constructed liner other than a recompacted in situ clay liner.

"Surety bond" means a contract by which a surety company engages to be answerable for the default or debts by an owner or operator on responsibilities relating to closure or post-closure care, and agree to satisfy these responsibilities if the owner or operator does not, in accordance with the terms specified for surety bonds in this chapter.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface water" means water at or above the land's surface which is neither ground water nor contained within the unsaturated zone, including, but not limited to, the ocean and its tributaries, all springs, streams, rivers, lakes, ponds, wetlands, and artificial waterbodies.

"Tank" means a stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials which provide structural support.

"Thermal destruction facility" means a nonhazardous solid waste facility which utilizes a thermal device to either burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere. Energy recovery systems may be utilized in conjunction with the thermal device.

"Toe" means the bottom of the working face or side slope of a land disposal site where deposited solid waste is in contact with virgin ground or previous lift.

"Transfer station" means a solid waste facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle, including a rail car, for transportation to an off-site solid waste facility, or a solid waste facility at which ID 72 liquid waste (as defined at N.J.A.C. 7:26-2.13(h)) is received, stored, treated or transferred, except that a "transfer station" shall not include any solid waste facility at which only site-generated solid waste is received for onsite transfer and processing or disposal utilizing facility-owned or operated equipment and vehicles operated therefor.

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transporter" means a person engaged in the act of collecting and/or moving of solid waste off-site by road, rail, water, or air.

"Treat" or "treatment" means any method, technique, or process, including neutralization or other pH adjustment, designed to change the physical, chemical, or biological character or composition of a material so as to:

1. Neutralize or otherwise change the pH of such material;
2. Recycle energy or material resources from the material;
3. Render such material non-hazardous, or less hazardous;
4. Render the material safer to transport, store, or dispose of; or

5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

"Trust fund" means a fund established by an owner or operator and held by a financial institution (licensed by the State of New Jersey) as the trustee with a fiduciary responsibility to carry out the terms of the trust as specified in this chapter for the benefit of the New Jersey Department of Environmental Protection.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil that has been used, and as a result of such use, storage or handling is contaminated by physical or chemical impurities.

"Vector" means an organism, including insects, other arthropods or rodents, that is capable of transmitting pathogen from one organism to another.

"Vicinity" means the area encompassing one half mile from the perimeter of a nonhazardous solid waste facility.

"Visible emissions" means any emissions that are visually detectable without the aid of instruments, coming from regulated asbestos-containing material or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

"Working face" means that portion of a sanitary landfill site where solid waste is discharged by a solid waste vehicle and is spread and compacted prior to placement of cover material.

As amended, R.1978 d.72, effective February 27, 1978.

See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

As amended, R.1981 d.281, effective August 6, 1981.

See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).

Substantially amended.

As amended, R.1981 d.370, effective October 8, 1981.

See: 12 N.J.R. 511(a), 13 N.J.R. 706(b).

Substantially amended.

As amended, R.1982 d.324, effective October 4, 1982.

See: 13 N.J.R. 567(a), 14 N.J.R. 1089(d).

"Authorized facility" and "Incinerator" amended; "Hazardous waste incinerator" and "New hazardous waste incinerator" defined.

As amended, R.1982 d.433, effective December 6, 1982.

See: 14 N.J.R. 1138(a), 14 N.J.R. 1367(a).

"Container", "Disposal", "Generator", "Hazardous waste", "Hazardous waste landfill", "Leachate", "Opening burning", and "Personnel", amended.

As amended, R.1983 d.25, effective February 7, 1983.

See: 15 N.J.R. 146(a), 15 N.J.R. 333(a).

"Authorized facility": last sentence added.

As amended, R.1983 d.192, effective June 6, 1983.

See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).

"Sanitary landfill" revised.

As amended, R.1983 d.350, effective September 6, 1983.

See: 15 N.J.R. 390(a), 15 N.J.R. 1474(a).

"Authorized facility" revised; "Gas cylinder facility" added.

As amended, R.1983 d.570, effective December 5, 1983.

See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).

"Chemical waste" deleted; "Infectious waste" revised.

As amended, R.1983 d.610, effective January 3, 1984.

See: 15 N.J.R. 1800(a), 16 N.J.R. 47(b).

"Permit" and "Publicly-owned treatment works" added.

As amended, R.1983 d.623, effective January 17, 1984.

See: 14 N.J.R. 1435(a), 16 N.J.R. 132(a).
 "Recycling" and "reclamation" defined; "reclamation" added
 "Recycling facility".
 As amended, R.1984 d.198, effective May 21, 1984.
 See: 15 N.J.R. 1997(a), 16 N.J.R. 1230(a).
 "Waste pile" added to "Hazardous waste landfill".
 As amended, R.1984 d.279 effective July 2, 1984.
 See: 16 N.J.R. 986(a), 16 N.J.R. 1766(a).
 Revised to reflect Division of Waste Management jurisdiction.
 Amended by R.1985 d.65, effective February 19, 1985.
 See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).
 Added definition "Friable asbestos material"; deleted "Non-friable
 asbestos-containing waste".
 Amended by R.1985, d.620, effective June 17, 1985.
 See: 17 N.J.R. 1501(a), 17 N.J.R. 2885(a).
 Added definition "empty tank".
 Amended by R.1986 d.160, effective May 5, 1986.
 See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).
 Added definition "tolling agreement".
 Amended by R.1986 d.347, effective August 18, 1986.
 See: 17 N.J.R. 2716(a), 18 N.J.R. 1701(a).
 Added definitions "Use or reuse", "waste reuse facility" and "waste
 reuse facility identification number".
 Amended by R.1987 d.235, effective June 1, 1987.
 See: 18 N.J.R. 883(a), 19 N.J.R. 928(b).
 Substantially amended.
 Amended by R.1987 d.234, effective June 15, 1987.
 See: 18 N.J.R. 878(a), 19 N.J.R. 1091(a).
 The text deleted from "waste oil" definition was "after sale to a
 customer".
 Amended by R.1987 d.534, effective December 21, 1987.
 See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).
 Substantially amended.
 Amended by R.1988 d.377, effective August 1, 1988.
 See: 19 N.J.R. 1936(a), 20 N.J.R. 1908(a).
 Changed CFR parts in definition "Authorized facility" from 122 to
 270 and 123 to 271.
 Emergency amendment, R.1988 d.547, effective October 26, 1988
 (expires December 25, 1988).
 See: 20 N.J.R. 2817(a).
 Amended definition "leaf composting facility" by deleting text "or in
 combination ..." and adding "and shall also ..."; added "vegetative waste
 composting facility".
 Amended by R.1989 d.54, effective January 17, 1989.
 See: 20 N.J.R. 1995(a), 21 N.J.R. 190(a).
 Substantially amended.
 Adopted concurrent proposal, R.1989 d.55, effective December 23,
 1988.
 See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).
 Provisions of emergency amendment R.1988 d.547, readopted
 without change.
 Amended by R.1989 d.206, effective April 17, 1989.
 See: 20 N.J.R. 2650(a), 21 N.J.R. 991(a).
 Added definitions "active life", "final closure", "hazardous waste
 management unit" and "partial closure".
 Amended by R.1989 d.216, effective April 17, 1989.
 See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).
 Deleted definitions for "collection-hauler" and "collection-vehicle";
 amended definitions "collection" by adding "or collecting", "transfer
 station" by referring to solid waste vehicle and "working face" by
 changing land disposal to sanitary landfill site; and added new
 definitions for "solid waste cab", "solid waste container", "solid waste
 single-unit vehicle", "solid waste trailer", "solid waste vehicle", "trans-
 portation" or "transporting" and "transporter".
 Amended by R.1990 d.228, effective May 7, 1990.
 See: 21 N.J.R. 3705(a), 22 N.J.R. 1362(a).
 Added "Treatability study".
 Amended by R.1990 d.260, effective May 21, 1990.
 See: 21 N.J.R. 1047(a), 22 N.J.R. 1565(a).
 Added "PCB hazardous waste" and "Polychlorinated biphenyls".
 Amended by R.1990 d.445, effective September 4, 1990.
 See: 22 N.J.R. 1472(a), 22 N.J.R. 2826(a).
 Definition of hazardous waste hauler changed to hazardous waste
 transporter, definitions added for consignee, EPA, EPA acknowl-

edgement of consent, primary exporter, receiving country and transit
 country.
 Amended by R.1992 d.100, effective March 2, 1992.
 See: 23 N.J.R. 2453(b), 24 N.J.R. 788(a).
 Corrected formula in "impermeable liner".
 Amended by R.1993 d.27, effective January 4, 1993.
 See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).
 Defined "scrap metal shredding facility".
 Emergency Amendment R.1996 d.114, effective January 26, 1996
 (operative January 29, 1996, to expire March 26, 1996).
 See: 28 N.J.R. 1305(a).
 Amended by R.1996 d.169, effective April 1, 1996.
 See: 27 N.J.R. 801(a), 28 N.J.R. 1834(a).
 Added "containerized solid waste" and "intermodal container
 facility", and amended "solid waste facility".
 Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.
 See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).
 Deleted "demolition waste" and rewrote "construction waste" as
 "construction and demolition waste".
 Amended by R.1996 d.500, effective October 21, 1996.
 See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).
 Amended by R.1996 d.578, effective December 16, 1996.
 See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).
 Added and amended numerous definitions; and deleted definitions
 for "administration", "asbestos containing waste", "bureau", "bureau
 chief", "commingled recyclable material", "degree of uncertainty of
 strength measurement-high", "degree of uncertainty of strength meas-
 urement-low", "leaf composting facility", "polychlorinated biphenyls",
 "regional", "scavenging", "set back", "vegetative waste composting
 facility", and "waste oil".
 Administrative change.
 See: 30 N.J.R. 3948(a).
 Amended by R.2000 d.75, effective February 22, 2000.
 See: 31 N.J.R. 1429(a), 32 N.J.R. 693(a).
 Inserted "Exempt transporter", "Licensee" and "Permittee".
 Amended by R.2001 d.86, effective March 5, 2001.
 See: 32 N.J.R. 2536(a), 33 N.J.R. 880(a).
 In "Expansion", inserted "and/or permitted" following "the design";
 rewrote "Recycling center"; in "Sanitary landfill", inserted "13C" and
 substituted "27, 27A and 27I" for "27, 72" at the end of paragraph 1.
 Amended by R.2002 d.181, effective June 17, 2002.
 See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).
 Amended "Approved registration", "Director", "Small scale solid
 waste facility", "Solid waste cab", "Solid waste container", "Solid waste
 single-unit vehicle", "Solid waste vehicle", and "Transfer station";
 added "Dredged material", "Gross vehicle weight", "Registration certif-
 icate", "Small vehicle transfer area", and "Solid waste transport unit".
 Amended by R.2006 d.343, effective September 18, 2006.
 See: 37 N.J.R. 3130(a), 38 N.J.R. 3782(b).
 Added definition "Grace period".

Law Review and Journal Commentaries

Environmental Law—Administrative Procedure—Solid Waste. P.R.
 Chenoweth, 134 N.J.L.J. No. 13, 54 (1993).

Case Notes

Landfill was "sanitary landfill" within meaning of Sanitary Landfill
 Closure and Contingency Fund Act; facilities "approved for disposal of
 hazardous waste". State of N.J. Dept. of Environmental Protection and
 Energy v. Gloucester Environmental Management Services, Inc.,
 D.N.J.1994, 866 F.Supp. 826.

Landfill was "sanitary landfill facility" within meaning of New
 Jersey's Sanitary Landfill Facility Closure and Contingency Fund Act;
 disclosure in purchase agreement. National-Standard Co. v. Clifton Ave.
 Corp., D.N.J.1991, 775 F.Supp. 151.

Unlicensed facility was properly enjoined from operating without a
 permit in violation of Solid Waste Management Act; penalty. State,
 Dept. of Environmental Protection v. Interstate Recycling, Inc., 267
 N.J.Super. 574, 632 A.2d 526 (A.D.1993).

Operator of hazardous waste facility could not construct new incinerator without submitting Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Department of Environmental Protection (DEP) must strictly construe its own regulations. Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Construction of new incinerator changed existing hazardous waste facility into "new facility" requiring submission of Environmental Impact Statement (EIS). Matter of Hazardous Waste Facility Permit No. 0901D21HP01 by Dept. of Environmental Protection to ICI Americas, Inc., 258 N.J.Super. 483, 610 A.2d 420 (A.D.1992).

Sludge Management Plan exempted sludge-only thermal reduction facilities from permitting requirement of the Solid Waste Management Act. Terminal Const. Corp. v. Hoboken-Union City-Weehawken Sewerage Authority, 244 N.J.Super. 537, 582 A.2d 1288 (A.D.1990), certification denied 126 N.J. 323, 598 A.2d 883.

Owners of land upon which unauthorized solid waste landfill was located came within authority of Department of Environmental Protection and County Health Department. Middlesex County Health Dept. v. Roehsler, 235 N.J.Super. 262, 561 A.2d 1212 (L.1989).

Purchaser of closed, nonhazardous landfill could maintain action to require township operator of landfill to fulfill its responsibilities for closing landfill. Port of Monmouth Development Corp. v. Middletown Tp., 229 N.J.Super. 445, 551 A.2d 1030 (A.D.1988), certification denied 115 N.J. 59, 556 A.2d 1206.

Surface of landfill upon which detinning facility was built was not "landfill," as defined by Solid Waste Management Act. Matter of Vulcan Materials Co., ECRA Case No. 84379, 225 N.J.Super. 212, 542 A.2d 25 (A.D.1988).

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co., 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

Transfer station definition cited in determination that municipal operation of solid waste transfer facility was not the operation of a public utility requiring public referendum approval. Hughes v. Twp. of Ewing, 137 N.J.Super. 119, 348 A.2d 199 (App.Div.1975).

Former N.J.A.C. 7:1-4.1 definition of hazardous waste falls into the category of nonmerchantable material not subject to Commerce Clause restrictions on regulation. Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974), reversed 68 N.J. 451, 348 A.2d 505, (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

Corporate successor to tank facility strictly liable to comply with hazardous waste requirements. Department of Environmental Protection v. Warner, 95 N.J.A.R.2d (EPE) 245.

7:26-1.5 (Reserved)

As amended, R.1984 d.40, effective February 21, 1984.
See: 15 N.J.R. 2017(a), 16 N.J.R. 367(b).

"Repealed or regulations" not readopted.
Amended by R.1990 d.261, effective May 21, 1990.
See: 21 N.J.R. 1053(a), 22 N.J.R. 1573(b).

Revised "Existing hazardous waste facility".

Case Notes

Former regulation banning disposal of out-of-state wastes in Hackensack Meadowlands sanitary landfills held unconstitutional as an undue

burden on interstate commerce. Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, 127 N.J.Super. 160, 316 A.2d 711 (Ch.Div.1974), reversed 68 N.J. 451, 348 A.2d 505, (1975), vacated and remanded 97 S.Ct. 987, 430 U.S. 141, 51 L.Ed.2d 224, on remand 73 N.J. 562, 376 A.2d 888 (1977).

7:26-1.6 Definition of solid waste

(a) A solid waste is any garbage, refuse, sludge, or any other waste material except it shall not include the following:

1. Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms;
2. Recyclable materials that are exempted from regulation pursuant to N.J.A.C. 7:26A;
3. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26-1.7(g);
4. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated in recycled in one year; or

5. Dredged material, from New Jersey's coastal or tidal waters, which is regulated under the provisions of the following statutes: New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), Waterfront Development Law (N.J.S.A. 12:5-3 et seq.), Riparian Interests (N.J.S.A. 12:3-1 et seq. and 18:56-1 et seq.), Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. § 1251), and Federal Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.) and/or other relevant statutes and implementing regulations.

(b) Any "other waste material" is any solid, liquid, semi-solid or contained gaseous material, including, but not limited to spent material, sludge, by-product, discarded commercial chemical products, or scrap metal resulting from industrial, commercial, mining or agricultural operations, from community activities, or any other material which has served or can no longer serve its original intended use, which:

1. Is discarded or intended to be discarded; or
2. Is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of, being discarded;
3. Is burned for energy recovery;
4. Is applied to the land or placed on the land or contained in a product that is applied to or placed on the land in a manner constituting disposal; or
5. Is recycled.

(c) A material is also a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environ-

ment or be emitted into the air or discharged into ground or surface waters.

(d) The definition of solid waste contained in this section applies only to wastes that are not also hazardous for purposes of the Department's hazardous waste regulations set forth at N.J.A.C. 7:26G.

R.1981 d.281, effective August 6, 1981.

See: 12 N.J.R. 511(a), 13 N.J.R. 484(b).

Amended by R.1986 d.160, effective May 5, 1986.

See: 17 N.J.R. 1968(a), 18 N.J.R. 981(a).

Amended by R.1987 d.534, effective December 21, 1987.

See: 19 N.J.R. 1035(a), 19 N.J.R. 2426(a).

Substantially amended.

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)1, substituted "livestock" for "swine" and "approved" for "licensed"; in (a)2, amended N.J.A.C. reference; inserted new (a)3; recodified former (a)3 as (a)4; and rewrote (d).

Amended by R.2002 d.181, effective June 17, 2002.

See: 33 N.J.R. 4218(a), 34 N.J.R. 2049(a).

Added (a)5.

Case Notes

Proposed sludge management facility was "facility" within meaning of the Solid Waste Management Act; sewage sludge to be handled by facility was "solid waste" within meaning of the Act; the Act preempted local zoning and planning regulations. *Ocean County Utilities Auth. v. Planning Bd. of Berkeley Twp., Ocean Co.*, 221 N.J.Super. 621, 535 A.2d 550 (Law Div.1987) affirmed 223 N.J.Super. 461, 538 A.2d 1307.

7:26-1.7 Exemption from SWF permitting

(a) Pursuant to N.J.S.A. 13:1E-4a, the Commissioner may exempt, from the requirement of Solid Waste Facility permitting as set forth in N.J.A.C. 7:26-2, and may grant a permanent or temporary certificate of authority to operate, with or without conditions, to these classes of solid waste collection or disposal facilities or operations which in the Commissioner's opinion meet the general and applicable specific criteria set forth in this section.

(b) The owner or operator of any facility or operation of a class exempted pursuant to this section shall comply with all conditions set forth in its certificate of authority to operate. Noncompliance with a certificate of authority to operate shall subject the holder to a penalty pursuant to N.J.S.A. 13:1E-9 and/or suspension or revocation of authority to operate.

1. The owner or operator of a facility for which authority to operate has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 51:14B-1 et seq., subsequent to the revocation or suspension. 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.

2. In no way shall the granting of a temporary certificate of authority to operate be interpreted as entitling the holder to final registration and engineering design approval.

(c) General criteria for all exemptions:

1. Any exemption granted to a class of facilities or operations pursuant to this section shall be consistent with the purpose and intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; and

2. No exemption shall be granted to a class of facilities or operations which will pose a threat to public health or the environment.

(d) This subsection sets forth the specific criteria for exempting sanitary landfills:

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

i. The proposed owner or operator of the facility is determined by the Department, after a preliminary review of such information as the Department may require, to demonstrate sufficient integrity, expertise and competence to operate a sanitary landfill facility in compliance with the Solid Waste Management Act and the certificate of authority to operate;

ii. It would be possible for the facility to qualify for a registration pursuant to the Solid Waste Management Act;

iii. All preparatory work necessary to permit safe and environmentally sound operation can be accomplished prior to the commencement of operations at the site;

iv. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the operation of one or more solid waste management plans or in order to comply with a judicial decree or statutory requirement to provide disposal facilities in a particular district; and

v. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements for registration under N.J.S.A. 7:26-2. The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

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

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

(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 interment 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 nonhaz-

ardous 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.

R.1976 d.303, effective November 1, 1976.

See: 8 N.J.R. 374(d), 8 N.J.R. 509(a).

Amended by R.1978 d.72, effective February 27, 1978.

See: 9 N.J.R. 459(d), 10 N.J.R. 146(a).

Amended by R.1983 d.192, effective June 6, 1983.

See: 14 N.J.R. 883(a), 15 N.J.R. 894(c).

(a)5 and new (c) added; existing (c)-(e) recodified (d)-(f).

Amended by R.1983 d.570, effective December 5, 1983.

See: 15 N.J.R. 660(a), 15 N.J.R. 2040(b).

(d)-(f) Substantially amended.

Emergency Amendment, R.1984 d.148, effective April 2, 1984.

See: 16 N.J.R. 930(a).

(a)6 and new (c) and (d) added, existing (c)-(f) redesigned (e)-(h); inspection by local health department added to (b), monthly summary submittal deleted.

Adopted concurrent proposal, R.1984 d.231, filed June 4, 1984.

See: 16 N.J.R. 930(a), 16 N.J.R. 1497(a).

Provisions of emergency amendment R.1984 d.148 readopted with technical and substantive changes, requiring solid waste transporters to provide landfill operators with documentation of origin and contents of waste load.

Amended by R.1985 d.65, effective February 19, 1985.

See: 16 N.J.R. 440(a), 17 N.J.R. 446(a).

(a)7 added.

Correction: Added text in (a) "resource recovery facilities and transfer stations".

See: 18 N.J.R. 983(a).

Amended by R.1988 d.73, effective February 16, 1988.

See: 19 N.J.R. 171(a), 20 N.J.R. 393(a).

Section title was Sanitary landfills, resource recovery facilities and transfer stations; records.

In (a), the above was repealed and "Each solid waste facility permittee" was substituted.

Correction: Added text to (g)1vi "oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous".

See: 20 N.J.R. 1958(b).

Emergency Amendment, R.1988 d.547, effective October 26, 1988 (expires December 25, 1988).

See: 20 N.J.R. 2817(a).

Added text to (g)1 in "Also included are . . .".

Adopted Concurrent Proposal, R.1989 d.55, effective December 23, 1988.

See: 20 N.J.R. 2817(a), 21 N.J.R. 198(a).

Provisions of emergency amendment R.1988 d.547, readopted without change.

Amended by R.1989 d.216, effective April 17, 1989.

See: 20 N.J.R. 2668(a), 21 N.J.R. 1002(b).

Added tonnage as an available description for the capacity of a solid waste vehicle; replaced vehicles with solid waste vehicle and changed 15th to 20th day of month for submitting daily records; changed address.

Public Notice: Notice of receipt of petition for rulemaking.

See: 23 N.J.R. 2187(c).

Action on Petition for Rulemaking: Amend Type 27 waste and amend certain classes of waste from interdistrict and intradistrict waste flow orders.

See: 23 N.J.R. 2428(b).

Amended by R.1993 d.27, effective January 4, 1993.

See: 24 N.J.R. 1995(a), 25 N.J.R. 92(a).

Revised the description of dry industrial waste, ID 27, to specifically state that the residue from the operations of a scrap metal shredding facility is included within this class of solid waste.

Amended by R.1993 d.508, effective October 18, 1993.

See: 24 N.J.R. 3286(c), 25 N.J.R. 4763(a).

Emergency Amendment R.1996 d.114, effective January 26, 1996 (operative January 29, 1996, to expire March 26, 1996).

See: 28 N.J.R. 1305(a).

Adopted concurrent proposal, R.1996 d.202, effective March 26, 1996.

See: 28 N.J.R. 1305(a), 28 N.J.R. 2380(a).

Amended by R.1996 d.500, effective October 21, 1996.

See: 28 N.J.R. 1693(a), 28 N.J.R. 4606(a).

Amended by R.1996 d.578, effective December 16, 1996.

See: 28 N.J.R. 2114(a), 28 N.J.R. 5248(a).

In (a)2, added reference to solid waste decal number; in (a)7 and (e), amended Department and Division references; and added (g)viii and (g)ix.

Amended by R.1997 d.510, effective October 31, 1997 (operative November 10, 1997).

**SHWMP STAKEHOLDER TRANSFORMATION/MODERNIZATION
WORKGROUP IV : “SPECIAL ISSUES”**

MEETING #1 : TOPICS – Definitions of Solid Waste and Clean Fill

DRAFT POTENTIAL REGULATORY CHANGES for CLEAN FILL for DISCUSSION

Blending Fill Prohibition Clarification

7:26-1.1 Scope of rules

(a)1.i. The use or reuse of material, which would otherwise become solid waste under this chapter, directly as a product or incorporated into any form of raw material to be used in the manufacturing of a product shall meet the generally accepted product specifications and standards for similar manufactured products or raw materials. The used or reused material shall not present a greater risk to human health or the environment than the use of the product or raw material it is replacing.

Blending any materials in order to meet health-based or other environmental criteria or standards is strictly prohibited unless approved by the Department.

Description:

The Department is proposing to amend N.J.A.C. 7:26-1.1(a)1.i., to codify the Department’s longstanding policy of prohibiting the intentional dilution (i.e., through blending) of contaminants below the Department’s specified acceptable level in order to meet health-based or other environmental criteria or standards. The Department is specifying that such blending is strictly prohibited unless approved by the Department. Prohibiting blending to meet environmental criteria and standards will protect the environment by preventing generators of contaminated materials and solid wastes from spreading the contamination in the environment by mixing the contaminated materials with less contaminated materials which adds to the total pollutant loading in the environment. The Department recognizes that in certain cases the bona fide use of a contaminated material will effectively dilute contaminants and therefore the Department will allow blending only when the contaminated material proposed for the beneficial use project is specifically intended for use in a product or raw material at a rate or quantity acceptable to these standards, is still protective of human and environmental health standards and is approved by the Department pursuant to the requirements at N.J.A.C. 7:26-1.7(g) et seq. for a Beneficial Use Project.

Six-month Storage Period Clarification (New)

(d) Any post-consumer and used materials, or nonpost-consumer or abandoned waste materials that are or will be deposited on or in the lands of this State for periods exceeding six months unless the storage period is otherwise specified by any specific storage limits in permits or Certificates of Authority to Operate or other written approval by the Department, or that through transport, storage or other handling will cause pollution of the surface or ground waters of this State, or that may pose a substantial or material threat to the public health or safety or welfare are considered solid waste that require management in accordance with the full requirements of N.J.A.C. 7:26 et seq..

Description:

At N.J.A.C. 7:26-1.1(d), the Department is proposing language to specify time limits for storage, stockpiling or staging of post-consumer, used or abandoned waste materials unless those materials are managed under an approved CAO or other approval of the Department. While the Department is specifying post-consumer materials as these are most likely to be wastes after serving their original intended purpose in use it is also mentioning that used or abandoned waste materials are affected by this rule. The Department also recognizes that any material, whether used or unused may be abandoned and then at some point become waste material if the material is no longer intended to be used. Such abandonment may endanger human health or the environment or pose a public nuisance under which circumstances the Department would consider the material solid waste and require its disposal or management in accordance with the requirements of N.J.A.C. 7:26 et seq. The rule authorizes storage for a period of six months. The Department believes that six months is a reasonable and sufficient time to properly store waste. The Department is using six months because six months is also the standardized period the Department has long established in its regulations for determining when a material that is abandoned or not processed becomes solid waste. This period is presently specified in the definition of a Sanitary Landfill at N.J.A.C. 7:26-1.4 and the exemption for intraplant transfers at N.J.A.C. 7:26-1.1(a)6. The Department is specifying that any accumulation or abandonment of products from Recycling Centers, or facilities exempt from obtaining a General Approval per N.J.A.C. 7:26A-1.4, for periods longer than six months and for which the owner cannot show proof of bona fide sale for use of the material, either in entirety or on an ongoing basis, is considered the operation of an unpermitted solid waste facility.

Clean Fill Definition Expanded

7:26-1.4 Definitions

“Clean Fill” means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products that has not been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and its implementing rules, and has no visible staining (not including staining from normal vehicular use and the dripping of small amounts of vehicular lubricant), odor, other sensory nuisance resulting from chemical contaminants associated with the materials, produce no sheen when placed in water and contain no asbestos. Blending any materials in order to meet health-based or other environmental criteria or standards for clean fill is strictly prohibited except as may be approved by the Department. Clean fill shall not mean processed or unprocessed mixed construction and demolition debris[,] including, but not limited to, wallboard, plastic, wood or metal. [The nonwater soluble, nondecomposable inert products generated from an approved Class B recycling facility are considered clean fill.]

Description:

At N.J.A.C. 7:26-1.4 the Department proposes to amend the definition of “Clean fill”. The Department is proposing to specify that materials must not have been affected by a spill or release, have no visible staining (visible staining does not include staining resulting from normal vehicular use and dripping of small amounts of vehicular lubricant), odor or other sensory nuisance resulting from chemical contaminants associated with the material in order to qualify as clean fill. This will help to ensure that only clean materials suitable for widespread use without environmental controls are used by persons as clean fill. The Department is also specifying that the fill material not contain decomposable putrescible material that could cause nuisance odors or water pollution when the material is stored or used. The Department is also proposing to add regulatory language that will codify the Department’s longstanding policy of prohibiting the intentional dilution (i.e., through blending) of contaminants below the Department’s specified acceptable level in order to meet health-based or other environmental criteria or standards. The Department is specifying that such blending is strictly prohibited unless approved by the Department. Prohibiting blending to meet environmental criteria and standards will protect the environment by preventing generators of contaminated materials and solid wastes from spreading the contamination in the environment by mixing the contaminated

materials with less contaminated materials which adds to the total pollutant loading in the environment. The Department is also proposing to remove language that stipulates that clean fill may include materials generated from Class B recycling facilities. Materials produced by Class B recycling centers are regulated pursuant to N.J.A.C. 7:26A as recycled products.

Speculative Accumulation Definition (New)

“Speculative accumulation” and “accumulated speculatively” means accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled such that - during the calendar year (commencing on January 1) - the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., some nonhazardous material) that is recycled in the same way (e.g., from which the same material is recovered or that is used in the same way). Materials that are already defined as solid wastes are not to be included in making the calculation. Materials are no longer in this category once the materials are removed from accumulation for recycling.

Description:

At N.J.A.C. 7:26-1.4 the Department is adding a definition of "Speculative Accumulation", which includes "Accumulated Speculatively" to define when materials that are stockpiled and not recycled or beneficially used in accordance with the requirements of N.J.A.C. 7:26 and N.J.A.C. 7:26A in a reasonable time are solid waste. The Department is taking this action to help to clarify that materials must be recycled or used beneficially in a reasonable time or are regulated as solid waste to protect human health and the environment. The Department is also specifying that materials are not accumulated speculatively if the person accumulating the material can show that the material is potentially recyclable or beneficially used and has a feasible means of being recycled or beneficially used; and that during the calendar year (commencing on January 1) the amount of material that is recycled or beneficially used is more than the additional amount accumulated during the period. The Department believes that requiring recycling or beneficial use in the next calendar year of at least the amount of material initially accumulated will ensure that recyclers and users of materials beneficially

comply with the intent of the recycling and beneficial use regulations and do not stockpile unnecessary amounts of materials beyond which the persons can use in a reasonable amount of time.

Uncontaminated Definition (New)

“Uncontaminated” means that a material contains levels of Department-recognized contaminants below the most restrictive levels recognized by the Department’s codified criteria and standards, including, but not limited to: the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Radiation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B, and published criteria such as Impact to Groundwater Criteria.

Description:

At N.J.A.C. 7:26-1.4, the Department added the definition of “uncontaminated”. Uncontaminated means that a material contains levels of Department-recognized contaminants below the most restrictive levels recognized by the Department’s published guidance criteria and adopted standards for: direct contact residential use, vapor intrusion, sediment quality and impact to groundwater for all current uses and expected future uses of the site where the material will be used. These standards and criteria include, but are not limited to: the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Radiation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B, and published criteria such as Impact to Groundwater Criteria. The Department is applying its environmental criteria conservatively in defining when materials must be uncontaminated in order to be protective of human and environmental health.

TILCON NEW YORK INC.
CLEAN FILL MATERIAL ACCEPTANCE CERTIFICATION FORM
INSTRUCTIONS AND INFORMATION

- Clean Fill Material Acceptance Certification Forms are being required for all loads of fill being imported into the Millington Quarry in Bernards Township, New Jersey, in order to comply with the requirements of Bernards Township Ordinance #2001.
- Clean Fill Material Acceptance Certification Forms are also being required by Tilcon for all loads of fill being imported into other Tilcon quarry locations.
- A separate Clean Fill Material Acceptance Certification Form must be completed for each individual fill source location. Contractors providing fill from multiple sources must provide a separate Clean Fill Material Acceptance Certification Form for each fill source location.
- A separate Clean Fill Material Acceptance Certification Form must be completed for each different soil type being provided from any one fill source location.
- A separate Clean Fill Material Acceptance Certification Form must be completed for every 5,000 cubic yards of material being provided from an individual fill source location.
- Every load of incoming fill material must meet current NJDEP residential direct contact soil remediation standards, which became effective June 2, 2008, and be certified by the Generator/Agent as clean fill consistent with NJDEP regulations, including NJAC 7:26E-2.
- Every Clean Fill Material Acceptance Certification Form must include Clean Fill and Geotechnical testing results certifying every incoming load. **Test results must be supplied for all incoming fill prior to delivery.**
- Testing must be done strictly in compliance with the Laboratory Analytical Testing Data sheet attached to the Clean Fill Material Acceptance Certification Form.
- Testing results must be provided in the form of a letter and/or report from a New Jersey licensed professional engineer, licensed geologist, and/or Certified Hazardous Materials Handler certifying that the applicable soil/fill has been tested by a New Jersey licensed analytical laboratory in good standing.
- If testing results were obtained prior to June 2, 2008, the above-referenced letter and/or report, or a supplemental letter and/or report from a New Jersey licensed PE, PG or CHMH, must certify that the applicable soil/fill meets the NJDEP Residential Direct Contact Soil Remediation Standards, which became effective on June 2, 2008.
- Every Clean Fill Material Acceptance Certification Form must attach the following:
 - Sampling Diagram – identifying the exact locations on the source site where samples were taken, the number of samples taken and the dates on which they were taken.
 - Chemical Analysis of sampled fill material, based on NJDEP Residential Direct Contact Soil Remediation Standards.
 - Geotechnical Analysis
- By signing the Clean Fill Material Acceptance Certification Form, you certify that all fill you are supplying to Tilcon New York Inc. and/or Millington Quarry Inc. meets the criteria established on the Laboratory Analytical Testing Data sheet attached to the Clean Fill Material Acceptance Certification Form.
 - If any fill provided by you does not comply with the specified environmental or geotechnical index standards, you will be liable for any damages to Tilcon New York Inc. and Millington Quarry Inc.
 - In the event that any fill you are supplying to Tilcon New York Inc. and/or Millington Quarry Inc. is determined not to comply with these standards, you will be solely responsible for removing it from Tilcon's facility. All fill removed from a Tilcon facility must be removed in full compliance with all applicable federal, state and local regulations.
- Tilcon reserves the right to reject fill material(s) at any time.
- Fax completed form and supporting documentation to (908) 325-0043

TILCON NEW YORK INC.

CLEAN FILL MATERIAL ACCEPTANCE CERTIFICATION FORM

1. Salesperson Name/ Tracking Number: Tilcon _____
Millington Quarry Inc. _____
2. Job Contact Name _____
3. Generator/Fill Source Owner(s) and Location
Name _____ Phone Number _____
Street Address _____ County _____
City or Town _____ State _____ Zip Code _____
Agent or Contact: _____ Phone Number _____
Name of Company: _____
4. Billing/ Contractor Name _____ Phone Number _____
Street Address _____ County _____
City or Town _____ State _____ Zip Code _____
5. Location of Fill Material Origin/ Site Description:
Street Address _____ County _____
City or Town _____ State _____ Zip Code _____
Existing Site Land Use:
_____ Residential _____ Commercial _____ Industrial _____ Municipal/Public _____ Other
(attach explanation)
How Many Years Has Site Been Used for Purpose Identified Above? _____
- Is this Site a State or Federal Superfund Site or listed on any known contaminated Site lists? _____ Yes
_____ No If Yes, provide details on the attached sheet(s) describing the nature of the fill material,
including precisely where clean fill is being removed from the Site, along with procedures for removal.
6. Estimated Volume of Fill Covered by this Form: _____
(Each Form, including testing requirements, is valid for up to 5,000 CY maximum)
Estimated Time Frame For Completion of Delivery of Fill Covered by this Form: _____
7. Clean Fill and Geotechnical testing results must be enclosed consistent with the attached "Laboratory Analytical Testing Data Sheet." In addition, please provide:
A sampling diagram which details the location of all samples taken.
Number of samples for analysis: _____ Dates of sampling: _____

8. For each fill source owner/location, please attach additional pages with responses to Questions 5 to 7 above.
9. AS AN AUTHORIZED REPRESENTATIVE OF THE OWNER OF THE ABOVE DESCRIBED FILL MATERIAL, OR AUTHORIZED REPRESENTATIVE OF THE SITE OPERATOR/CONTRACTOR DESIGNATED BY THE OWNER OF SAID MATERIAL, I HEREBY CERTIFY AND WARRANT THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION PROVIDED HEREIN IS TRUE AND ACCURATE AND THAT IT ACCURATELY REPRESENTS ALL FILL MATERIAL INTENDED FOR SHIPMENT TO TILCON NEW YORK INC. I FURTHER CERTIFY THAT THE SAMPLES OBTAINED AND DESCRIBED ABOVE AND ATTACHED TO THIS FORM WERE COLLECTED IN ACCORDANCE WITH THE NJDEP REGULATIONS, INCLUDING TECHNICAL REGULATIONS (NJAC 7:26E-2), AND THAT SAMPLE COLLECTION HAS BEEN PERFORMED IN ACCORDANCE WITH THE NJDEP'S FIELD SAMPLING PROCEDURES MANUAL. I FURTHER CERTIFY THAT EVERY LOAD OF FILL MATERIAL BEING PROVIDED FOR SHIPMENT TO TILCON NEW YORK INC. FROM THE ABOVE-IDENTIFIED FILL SOURCE CONSTITUTES CLEAN FILL. SHOULD AT ANY TIME AFTER DELIVERY, THE MATERIAL ACCEPTED BY TILCON NEW YORK INC. BE FOUND TO BE NON-CONFORMING TO THE INFORMATION CERTIFIED IN THIS FORM AND REPRESENTED BY DOCUMENTATION ATTACHED HERETO, IT BECOMES THE SOLE AND EXCLUSIVE RESPONSIBILITY OF GENERATOR/AGENT TO REMOVE THE MATERIAL FROM THE DESIGNATED TILCON NEW YORK INC. FACILITY WITHIN FIVE (5) DAYS OF NOTIFICATION, AT ITS SOLE COST AND EXPENSE. IT IS THE GENERATOR/AGENT'S SOLE RESPONSIBILITY TO ABIDE BY ALL FEDERAL, STATE AND LOCAL REGULATIONS ASSOCIATED WITH THE REMOVAL OF SUCH MATERIAL. IF THE MATERIAL IS NOT TIMELY REMOVED BY GENERATOR/AGENT, REMOVAL SHALL BE ARRANGED BY TILCON NEW YORK INC. ON A COST PLUS BASIS. FURTHERMORE, THE GENERATOR/ AGENT WILL BE RESPONSIBLE FOR ANY AND ALL COST OF DECONTAMINATION REQUIRED BY THE TILCON NEW YORK INC. FACILITY THAT RECEIVED SUCH NON-CONFORMING MATERIAL FROM GENERATOR/AGENT AND ALL LIABILITY FOR SUCH NONCONFORMING MATERIAL SHALL REVERT TO GENERATOR/AGENT. IF THE INFORMATION PROVIDED HEREIN IS INACCURATE, I RECOGNIZE AND AGREE THAT I AM SUBJECT TO LEGAL CLAIMS, INCLUDING CLAIMS FOR DAMAGES, BY TILCON.

I AM FULLY AUTHORIZED TO MAKE THESE CERTIFICATIONS AND WARRANTIES.

Name: _____ Title/Company _____

Address: _____ Phone Number: _____

Signature _____ Date _____

Please ensure the following documents/reports have been enclosed pursuant to Question 6 above and as required by the attached Laboratory Analytical Testing Data Sheet:

- (1) Chemical Analysis Based on NJDEP Residential Direct Contact Soil Remediation Standards
- (2) Geotechnical Analysis
- (3) Sampling Diagram

A list of NJDEP certified sampling laboratories can be found at: <http://www.state.nj.us/dep/oqa/certlabs.htm> or by calling the NJ DEP Office of Quality Assurance at (609) 292-3950

Fax completed form and supporting documentation to (908) 325-0043

LABORATORY ANALYTICAL TESTING DATA SHEET*

Contractor/Agent must attach a letter and/or report from a New Jersey licensed professional engineer, licensed geologist, and/or Certified Hazardous Materials Handler, certifying that the applicable soil/fill has been tested by a New Jersey licensed analytical laboratory in good standing, and that such soil/fill meets the NJDEP's residential direct contact soil remediation standards and the geotechnical index testing criteria, as noted below. Copies of all applicable data/results must be included in the attachments as well.

NJDEP Soil Remediation Standards (SRS) List

SCC Volatiles 8260B
SCC Base Neutral /Acid Extractables 8270C
PCB 8082
TCL Pesticides 8081A
PP Metals + Ba & V 7000 Series / 6020
Hexavalent Chromium 3500-Cr D / 7196A
Trivalent Chromium Calculation
Total Cyanide 9014
Corrosivity (as pH) / pH (S.U.) 150.1 / 9040B / 9045C
Phenols 9066

Geotechnical Index Testing

Grain Size with Hydrometer ASTM C422
USCS Description w/Munsell Soil Description ASTM D2488 (+ Munsell)
Moisture Content ASTM D2216
Organic Content ASTM D2974

***Tests results must be provided for all incoming fill. Regardless of whether a source site has been tested, additional tests must be conducted and results provided for every 5,000 cubic yards of fill, rounded up to the nearest 5,000 cubic yards, and for each different soil type.**

Incoming Fill Information Checklist

1. Soil Remediation Standards Sampling Results
 - Sampling must be to New Jersey standards (not standards for another State)
 - Samples must meet new NJDEP Residential Direct Contact Soil Remediation Standards which went into effect on June 2, 2008
 - Sampling results must include Chain of Custody documentation

2. Geotechnical Analysis
 - Must include complete Sieve Analysis
 - Material description must include Munsell color HUE code, as well as layman's description of color, i.e., dark yellowish brown, etc.

3. Sampling Diagram
 - Map/diagram must indicate precise location from which each sample was taken on job-site
 - If more than one sample was taken, map/diagram must show location of each sample, identifying it by sample number
 - Map/diagram must include cross streets and name of municipality

4. Cover Letter
 - Cover letter for Sampling Results must be signed by a New Jersey licensed Professional Engineer, Professional Geologist or Certified Hazardous Materials Handler (no exceptions)
 - Cover letter must be dated after June 2, 2008 (effective date of new Soil Remediation Standards)
 - Cover letter must specify that the fill material sample:
 - came from the source site,
 - was analyzed to and meets the NJDEP Residential Direct Contact Soil Remediation Standards, and
 - was subject to geotechnical testing including sieve analysis, organic content, Munsell Color and in-situ moisture testing, and the material is suitable for structural fill
 - Please note: Not all labs do both Soil Remediation Standard testing and Geotechnical testing. If you cannot find a lab that does both forms of testing, you will need to submit two separate cover letters.

5. Completed Tilcon Fill Material Acceptance Certification Form
 - Must be signed by an Authorized Representative of the Owner of the fill material or the Owner's designee (i.e., Project Manager)
 - Must include complete lab data from NJDEP certified lab and sampling diagram

