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TITLE 7. ENVIRONMENTAL PROTECTION
CHAPTER 26. SOLID WASTE
SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 7:26-1.1 (2017)

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 nonhazardous materials, which would otherwise be handled as solid waste pursuant to this chapter for introduction or reintroduction into the economic mainstream as raw materials for further processing or as products for use, provided that such materials are free from putrescible matter and are not mixed with solid or liquid waste as defined herein. Specifically not exempted are solid waste materials (including fuel and reusable energy), or thermal destruction facilities. These rules shall not apply only if the conditions in (a)1i or ii below are met.

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

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

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

2. Container-pickup facilities as herein defined;

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:

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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.

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.

7:26-1.3 (Reserved)

7:26-1.4 Definitions

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

"Act" means the Solid Waste Management Act, *N.J.S.A. 13:1E-1* et seq., as amended and supplemented.

"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.

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"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.

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"Catch-basin" means a chamber or well, usually built to the curbline 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, 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.

"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 convenience center.

"Contaminated soil" means soil, soil-like material, or mixtures of soil with other material containing concentrations of one or more contaminants that exceed the residential direct contact soil remediation standards or

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non-residential direct contact soil remediation standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D, Remediation Standards.

"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.

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"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, socioeconomic, 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 conditions 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.

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"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.

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"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.

"Legacy landfill" means a sanitary landfill that ceased operations prior to January 1, 1982, and received for disposal:

1. Solid waste; or
2. Waste material that was received for disposal prior to October 21, 1976, and that is included within the definition of hazardous waste adopted by the Federal government pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6921 et seq.

"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;

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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

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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 that 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 that may accept only inert nonputrescible nonhazardous solid waste, ID 13, 13C, 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

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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.

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"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;

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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.

7:26-1.5 (Reserved)

7:26-1.6 Definition of solid waste

(a) A solid waste is any garbage, refuse, sludge, processed or unprocessed mixed construction and demolition debris, including, but not limited to, wallboard, plastic, wood, or metal, or any other waste material except it shall not include the following:

1. Source separated food waste collected by livestock producers, approved by the State Department of Agriculture, who collect, prepare and feed such wastes to livestock on their own farms;
2. Recyclable materials that are exempted from regulation pursuant to *N.J.A.C. 7:26A*;
3. Materials approved for beneficial use or categorically approved for beneficial use pursuant to *N.J.A.C. 7:26-1.7(g)*;
4. Spent sulfuric acid that is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year;
5. Dredged material, from New Jersey's coastal or tidal waters, which is regulated under the provisions of the following statutes: New Jersey Water Pollution Control Act (*N.J.S.A. 58:10A-1 et seq.*), Waterfront Development Law (*N.J.S.A. 12:5-3 et seq.*), Riparian Interests (*N.J.S.A. 12:3-1 et seq.* and *18:56-1 et seq.*), Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977 (*33 U.S.C. § 1251*), and Federal Coastal Zone Management Act (*16 U.S.C. §§ 1451 et seq.*) and/or other relevant statutes and implementing regulations; or
6. Non-water-soluble, non-decomposable, inert solid, such as rock, soil, gravel, concrete, glass, and/or clay or ceramic products that do not contain concentrations of one or more contaminants that exceed the residential direct contact soil remediation standards or non-residential direct contact soil remediation standards, whichever is more stringent, as set forth in *N.J.A.C. 7:26D*, Remediation Standards.

(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

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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 environment 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*.

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

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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:

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

ii. 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 disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the certificate of authority to operate; and

iv. A schedule has been established and incorporated into the certificate of authority to operate for compliance with all the requirements of N.J.A.C. 7:26-2 and 7:26-2B for registration of this facility or of an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

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

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

ii. An emergency environmental and health impact statement pursuant to (e)3 below; and

iii. An engineering design which specifies the following:

(1) Site plan map including layout of the facility buildings or structures, profile and elevation views and interior floor plan;

(2) Access roads;

(3) Fencing;

(4) Scales, if required pursuant to *N.J.S.A. 13:1E-117*;

(5) On site queuing;

(6) Facility and equipment design sufficient to handle specified capacity;

(7) Facility construction plans;

(8) Washdown and control of wastewater;

(9) On-site drainage controls;

(10) Design and surfacing of on-site roadways;

(11) Operational safety and environmental monitoring procedures; and

(12) Housekeeping procedures such as litter, odor, dust and vector control.

3. Notwithstanding any other provision of this chapter, the following shall constitute the requirements for an emergency environmental and health impact statement for a transfer station meeting the exemption criteria in (e)1

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above. An emergency environmental and health impact statement shall be in narrative form and must be approved prior to or concurrent with issuance of the certificate of authority to operate a transfer station. The environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the land use of the area immediately surrounding the proposed facility;

ii. A description of possible environmental impacts on the immediately surrounding area and the facility design elements or other measures that will address them. This description shall address, at a minimum, the following environmental concerns:

(1) Noise;

(2) Air quality;

(3) Traffic;

(4) Stormwater and washdown drainage; and

(5) Any other concerns described in the solid waste disposal regulations, *N.J.A.C. 7:26* which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

4. The proposed owner or operator of the facility shall file copies of the applications for a certificate of authority to operate a transfer station, except for the disclosure statement, in the offices of the municipality and county in which the proposed facility is to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days of filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require that the notice identify a public comment period and specify the address at which the Department will receive public comments.

(f) This subsection sets forth the specific criteria for exempting research, development and demonstration (RD & D) projects.

1. The Department shall issue a certificate of authority to operate an RD&D project provided the project is designed, constructed and operated in a manner consistent with environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, *N.J.S.A. 13:1E-1* et seq., the Water Pollution Control Act, *N.J.S.A. 58:10A-1* et seq., the Air Pollution Control Act, *N.J.S.A. 26-2C-1* et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be constructed and operated in accordance with the specific conditions of the certificate of authority to operate.

2. A certificate of authority to operate shall be granted for an RD & D project which meets the following criteria for exemption:

i. The RD&D project consists of a new or innovative technology or a new or innovative operational process modification made to an existing solid waste facility or operation;

ii. The RD&D project is for a fixed period of time not to exceed one year, unless the RD&D applicant can demonstrate to the satisfaction of the Department that a longer time period is required to adequately assess long term environmental impacts and operational effects of the technology or process being evaluated. In no case shall the duration of the certificate extend beyond five years;

iii. The RD&D project will operate within the Department's standards for air emissions including noise and fugitive dust, water discharges to surface or ground waters and soil quality;

iv. The RD&D project has a design capacity of less than 100 tons per day of any waste or material, unless otherwise approved by the Department;

v. The RD & D project is consistent with any applicable Solid Waste Facility Performance Partnership Agreement established pursuant to *N.J.A.C. 7:26-2.14* or Silver Track II Covenant established pursuant to *N.J.A.C. 7:26-2C* and is not deemed to be a material and significant alteration or addition to the existing facility as set forth at *N.J.A.C. 7:26-2.6(a)4*.

3. A certificate of authority to operate an RD&D project shall not be issued to a demonstrated technology or operation, to a project that would cause an exceedance of air emissions, water quality or soil standards or criteria or be deemed to cause an unacceptable risk to human health and the environment.

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4. The RD & D project shall be included by administrative action within the district solid waste management plan for the county or district within which the project is located or the Statewide Solid Waste Management Plan.

5. The owner and/or operator of a proposed RD & D project shall submit an application to the Department that includes:

- i. The location of the RD&D project, including a site plan map;
- ii. A description and process flow diagrams of the proposed project;
- iii. The proposed duration of the project, including a start and end date;
- iv. An outline of the need for the project;
- v. A description of the information or improved operation that this project will provide and/or a description of the data gaps this project will fill;
- vi. A description of the improved environmental effectiveness and/or the economic efficiency of the solid waste facility or operations that will be demonstrated;
- vii. The operational procedures to minimize, control and mitigate impacts such as noise, air quality, traffic, and stormwater runoff;
- viii. A description of the sampling and analytical plan of the material and process being demonstrated and the potential air, water or soil emissions or discharges;
- ix. A description of the quality assurance/quality control plan for the overall demonstration and the sampling and analytical plan; and
- x. A copy of the written approval issued by the designated plan implementation agency which indicates that the project is included by administrative action within the district solid waste management plan for the county/district within which the project is located or as determined by the Department to be consistent with the Statewide Solid Waste Management Plan.

6. The Department may require additional information to establish a demonstration project in order to ensure that the proposed project will meet the requirements of (f)1 and 2 above.

7. The RD&D applicant shall submit semi-annual reports detailing the progress of the RD&D project. A final report addressing the specific goals for the project shall be submitted to the Department. The requirements for the semi-annual and final report shall be set forth in the conditions of the certificate of authority to operate.

8. The Department shall issue a certificate of authority to operate the RD&D project or deny the application for a certificate of authority to operate for an RD&D project, in writing to the applicant, within 90 days of receipt of a complete application.

9. The Department shall order the immediate termination of all operations at a RD&D project if it determines that the RD&D project is operating in contravention of the criteria set forth in (f)2 above, any applicable SWFPPA, or that termination is necessary to protect human health and the environment. The owner or operator of the RD&D project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

10. At the end of the RD&D project and if the RD&D Certificate of Authority to Operate for a new or innovative technology or operation is not terminated as set forth in (f)9 above, the owner and/or operator of an RD&D project shall be required to obtain a SWF permit or a permit modification pursuant to N.J.A.C. 7:26-2, or a recycling approval pursuant to *N.J.A.C. 7:26A-3*, as applicable.

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

1. The Department shall issue a certificate of authority to operate for a beneficial use project, provided the project is designed and managed in a manner consistent with the environmental statutes applicable to the project, including, but not limited to, the Solid Waste Management Act, *N.J.S.A. 13:1E-1* et seq., the Water Pollution Control Act, *N.J.S.A. 58:10A-1* et seq., the Air Pollution Control Act, *N.J.S.A. 26-2C-1* et seq., and the rules adopted thereunder, and any permits or orders issued pursuant thereto. The project shall be developed and operated in accordance with the specific conditions of the certificate of authority to operate.

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

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

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

- i. (Reserved);
- ii. Uncontaminated glass used as a substitute for conventional aggregate in asphalt or concrete applications;
- iii. Tire chips as aggregate for road base materials or asphalt pavements in accordance with New Jersey Department of Transportation standard specifications, or whole tires or tire chips when used for energy recovery;
- iv. Soils for on-site reuse that contain contaminants at levels below the most stringent site clean-up levels established by the Department for a specific site, except for sites located in the Pinelands Area;
- v. Contaminated soil that has been decontaminated to the satisfaction of the Department and is used or reused in a manner acceptable to the Department;
- vi. Nonhazardous solid waste, paper mill fiber (fiber from either virgin pulp or recycled paper mills) or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) approved in advance by the Department for use or reuse as cover material, landfill liner, cap material, or other landfill design and management components;
- vii. Coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as a component in the manufacture of roofing shingles or bituminous asphalt products;
- viii. Coal combustion fly ash, gas scrubbing by-products or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as an ingredient to produce light-weight block, light-weight aggregate, manufactured gypsum or manufactured calcium chloride;
- ix. Coal combustion fly ash, coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused as a cement or aggregate substitute in structural concrete, structural concrete products, or a raw feedstock in the manufacture of cement or as a cement substitute for structural grade products, or subbase in roadway construction; or
- x. Coal combustion fly ash, coal combustion bottom ash or paper fiber combustion ash (ash produced by incineration of paper mill fiber and paper de-inking sludge by-products) used or reused to serve as an aggregate substitute in structural asphalt product.

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

- i. A description of the beneficial use project including:
 - (1) The specific location of the site of origin of the material to be beneficially used, including a description of the location of the material at the site of origin;
 - (2) A general description of the site of origin of the material to be beneficially used, including its current use or activity and its historical uses and a discussion of the reasons for creating or excavating the material at the site of origin, the dates of material generation, and the process by which the material was generated;

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(3) A description of any regulatory activity at the site of origin undertaken by the Department or any other agency;

(4) A description of any regulatory activity at the site of destination undertaken by the Department or any other agency; and

(5) The quantity of material for the beneficial use project;

ii. A site location map where the material are to be used plotted on a USGS topographic map. The site plan map shall, at a minimum, indicate wetlands, tidal water limits, and the depth to the mean seasonal high ground water table across the entire site;

iii. A site location map of the site of origin plotted on a USGS topographic map;

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

(1) An evaluation of the general quality of the material including a contaminant profile of the material in relation to current Department soil cleanup criteria (SCC) guidance levels and other standards as specified by the Department on a case-by-case basis, and in accordance with the sampling, quality assurance, analytical and other technical requirements of *N.J.A.C. 7:26E*, and/or other guidance as specified by the Department;

(2) A narrative description of the characteristics of the material and all sampling conducted in relation to the material. Material Safety Data Sheets (MSDS), all studies or analytical characterizations performed by any person on the material, and any other material specification information shall be included;

(3) Documentation of all contaminants and their concentrations of any such contaminants contained in the material in comparison to current Department SCC guidance levels, or as specified by the Department pursuant to (g)5iv(1) above, sampled and analyzed in accordance with *N.J.A.C. 7:26E* or as otherwise specified by the Department on a case-by-case basis, including field observations and all available field analytical data. The documentation shall include the results of all samples (screening, post-excavation, and waste pile/classification) collected during investigation of the area, excavation, or generation of the material including all historical analyses;

(4) The concentration limits for contaminants in the material during the proposed use or reuse and the rationale for those limits, and a description of the quality assurance procedures that will be used to monitor material produced in the future for use or reuse;

(5) A scaled site map depicting all sample locations and the location of the proposed use or reuse of the material; and

(6) A determination of the waste classification of the material and the rationale used for that classification;

v. Copies of the analytical package (chain of custody, sampling methods, QA/QC data) used to evaluate the material;

vi. A description of any treatment undertaken prior to the use of the material;

vii. A description of the measures to be taken during handling and transportation of the material to minimize environmental and human health impacts;

viii. The schedule for initiation and completion of the beneficial use project; and

ix. The generator and/or owner who originally produced the material shall provide the Department with evidence that the material provides a beneficial use either as a raw material or directly as a product in the uses to which it is applied. The material must be able to meet the same general physical character and chemical composition that is consistently equivalent to or exceeds the character and composition of the intentionally-manufactured product that it is replacing unless the applicant demonstrates to the Department's satisfaction that the material will not pose a greater risk to human health or the environment than the use of the product or raw material it is replacing.

6. The Department may require additional information in order to ensure that the proposed in-State beneficial use project will meet the requirements of (g)1 and 2 above.

7. The Department shall issue a certificate of authority to operate for a beneficial use project in the State of New Jersey or deny the application for a certificate of authority to operate for a beneficial use project in the State of New Jersey, in writing to the applicant, within 90 days of receipt of a complete application.

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8. The New Jersey generator and/or owner who originally produced the material considered for a beneficial use project outside the State of New Jersey shall submit an application to the Department that includes the following:

i. Documentation in the form of a letter to the Department from the applicant certifying that the material has been analyzed or is known, in accordance with N.J.A.C. 7:26G-5, not to contain contaminants that would cause the material to be classified as hazardous waste;

ii. Documentation in the form of a letter to the Department from the receiving facility stating that its owner agrees to accept the specified amount of material and indicating the receiving facility owner's intention to beneficially use or reuse the material and the time frame for such activity from the date of receipt of the material at the facility;

iii. Documentation from the applicant that the information required at (g)8ii above has been sent to the Solid Waste Coordinator of the county of the material's origin;

iv. A letter from the appropriate regulatory agency of the state where the receiving facility is located verifying that the facility is operating in accordance with all applicable rules and regulations and can lawfully accept the material for the declared use or reuse purpose and a current copy of the receiving facility's authorization to operate (that is, a permit);

v. Evidence that the material provides a beneficial use either as a raw material or directly as a product in the uses to which it is applied. The material must be able to meet the same general physical character and chemical composition that is consistently equivalent or exceeds the character and composition of the intentionally manufactured product it is replacing. The beneficial use of the material shall not cause harm to human health and the environment; and

vi. Any additional information required by the Department to ensure that the proposed beneficial use project will meet the requirements of this section.

9. The Department shall either issue to the New Jersey generator and/or owner a certificate of authority to operate for an out-of-State beneficial use project or deny a certificate of authority to operate for an out-of-State beneficial use project, in writing to the applicant, within 45 days of receipt of a complete application.

10. The generator and/or owner who originally produced the material for use in a beneficial use project shall submit, on an annual basis, a report to the Department detailing the amount of material used, the date(s) of such use, the location(s) of the use, and any other information as required by the Department in the certificate of authority to operate.

11. The Department shall order an immediate termination of all operations related to a beneficial use project if it determines that termination is necessary to protect human health and the environment. The generator and/or owner who originally produced the material for use in a beneficial use project shall be provided the opportunity for a hearing on the termination within 20 days of issuance of the order to terminate.

7:26-1.8 Exemption from registration--land application and sewage sludge operations

(a) The following class of solid waste operations is hereby exempted from registration as required under *N.J.S.A. 13:1E-4* and *N.J.A.C. 7:26*.

1. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludge) and storage facilities for such non-hazardous solid waste which receive:

i. A temporary emergency or final New Jersey Pollutant Discharge Elimination system (NJPDES) permit issued pursuant to *N.J.A.C. 7:14A*; and

ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDES permit.

(b) All sewage sludge management equipment and operations for which permits are obtained pursuant to *N.J.A.C. 7:14A* and/or *7:27*, except operations involving the transportation of sewage sludge or the commingling of sewage sludge with municipal solid waste, are exempt from the registration requirements of *N.J.S.A. 13:1E-4* and *N.J.A.C. 7:26*.

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(c) Transporters of marketable residual product are exempt from the registration requirements of *N.J.S.A. 13:1E-4* and *N.J.A.C. 7:26*.

7:26-1.9 Temporary exemption from solid waste facility permit modification procedures for permitted solid waste facilities

(a) General criteria for all exemptions are as follows:

1. Any exemption granted to a permitted solid waste facility 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 for a significant modification which will pose a threat to public health or the environment.

(b) This subsection sets forth the specific criteria for temporarily exempting modifications to permitted solid waste facilities, which are not small-scale solid waste facilities as defined at *N.J.A.C. 7:26-1.4* or are Class I sanitary landfill as defined at *N.J.A.C. 7:26-1.4*, from the solid waste permit modification procedures at *N.J.A.C. 7:26-2.6*.

1. A temporary permit modification approval shall be granted to a solid waste facility provided that:

i. The temporary permit modification approval shall not be issued for a period exceeding six months and may, in the Department's discretion, be extended for one additional consecutive six month period;

ii. Issuance of a temporary permit modification approval prior to the time that such modification to the solid waste facility permit can be issued pursuant to *N.J.A.C. 7:26-2.6* is essential in order to ensure the viability of the facility to avoid a disruption in the provision of solid waste services. Such a disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act and the District Solid Waste Management Plan;

iii. The modification to facility engineering design and/or operation shall be consistent with the protection of public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility engineering design and/or operational modification(s) to be implemented shall be those specified as conditions in the temporary permit modification approval;

iv. All preparatory work necessary to permit safe and environmentally sound operation of the facility can be accomplished prior to implementing the proposed modification(s) to the facility engineering design and/or its operations; and

v. A schedule has been established and incorporated into the temporary permit modification approval which provides for the formal processing of the request for facility modification of engineering design and/or operation in accordance with all requirements of *N.J.A.C. 7:26-2.6*. The schedule may call for accomplishing one or more milestones related to procedural requirements outlined at *N.J.A.C. 7:26-2.6* after modification(s) of the facility engineering design and/or operation have been implemented.

2. Notwithstanding any other provision of this chapter, the facility permittee shall submit the following in an application for a temporary permit modification approval:

i. Amendments to the approved environmental and health impact statement (if applicable) or a complete and detailed description of changes in environmental impacts that will result from the proposed modification(s) in facility engineering design and/or operation and additional mitigation measures being or proposed to address such impacts. Traffic impacts shall be re-evaluated if the proposed modification results in an increase in waste acceptance;

ii. Amendments to the approved Operations and Maintenance Manual for the facility, that reflect changes made necessary due to the proposed modification(s) in facility engineering design and/or operation; and

iii. Amended engineering design(s) for the facility, reflecting changes proposed that are the result of the proposed modification(s) subject to review.

(c) The owner or operator of any solid waste facility exempted pursuant to this section shall comply with all conditions set forth in its temporary permit modification approval. Noncompliance with a temporary permit

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modification approval shall subject the holder to a penalty pursuant to *N.J.S.A. 13:1E-9* and/or suspension or revocation of authority to implement engineering design and/or operational modification(s).

1. The owner or operator of a facility for which temporary approval has been revoked or suspended shall be afforded the opportunity for a hearing pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., subsequent to the revocation or suspension. The request for a hearing shall be submitted to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, NJ 08625-0402.

2. The granting of a temporary permit modification approval shall not be interpreted as entitling the holder to a solid waste facility permit modification.

7:26-1.10 Transfer station facility master performance permits

By June 16, 1997, every facility holding a transfer station master performance permit shall submit an application for a solid waste facility permit in accordance with the procedures set forth in *N.J.A.C. 7:26-2.4* and *7:26-2B*.

7:26-1.11 (Reserved)

7:26-1.12 Public access to information and requirements for Department determination of confidentiality

(a) Any confidential information obtained or used in the administration of the State solid waste program shall be treated in accordance with *N.J.A.C. 7:26-17*.

(b) Pursuant to *N.J.S.A. 47:1A-2* of the Right to Know Law, *N.J.S.A. 47:1A-1* et seq., the reports submitted to the Department by transporters of regulated medical wastes pursuant to *N.J.A.C. 7:26-3A.35(a)* shall not be deemed to be public records and the public shall not have the right to inspect, copy, or obtain a copy of the same. Upon receipt of these reports, the Department shall keep these reports in a secure storage facility and take the appropriate measures to maintain these reports in confidence. Access to such reports shall be limited to agents, employees and attorneys of the Department, and, in the discretion of the Department, other governmental enforcement agencies with a legitimate need to know, to local health agencies certified by the Department pursuant to *N.J.S.A. 26:3A-2*, or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste.

1. In order to obtain access to these reports, a certified local health agency or local board of health shall submit a written request to the Department setting forth the information requested and the reasons for the request.

2. The Department in its discretion may deny a request for a release of a report if the Department determines for any reason that granting the request would not be in the public interest.

7:26-1.13 Burden of proof

(a) In an enforcement action, or on specific request of the Department, persons claiming that they qualify for any exclusion or exemption in *N.J.A.C. 7:26* or that they are not otherwise subject to the rules in *N.J.A.C. 7:26* shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of *N.J.A.C. 7:26*.

(b) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste.

(c) In an enforcement action, or on specific request of the Department, persons claiming that a certain material is conditionally exempt from *N.J.A.C. 7:26* shall demonstrate and appropriately document that they satisfy all terms of the law that renders the material conditionally exempt from *N.J.A.C. 7:26*.