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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM

COMPLIANCE AND ENFORCEMENT

DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT

Hazardous Waste

Readoption with Amendments: N.J.A.C. 7:26G-1 through 13 and 16

Adopted Repeals: N.J.A.C. 7:26G-6.2, and 6.3 and 7:26G-6 Appendix

Proposed: May 21, 2007 at 39 N.J.R. 1953(a)

Adopted _____, 2007 by Lisa P. Jackson, Commissioner,
Department of Environmental Protection

Filed: _____, 2007 as R.2007 d. ____ with **substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 13:1E-1 et seq., 13:1B-3, 13:1D-1 et seq., 13:1E-9, 13:1D-125 et seq., 26:2C-1 et seq., 47:1A-1 et seq., 58:10-23.11, and 58:10A-1 et seq.

DEP Docket No.: 09-07-04/589

Effective Date: _____, 2007

Operative Date: _____, 2007

Expiration Date: _____

The Department of Environmental Protection (Department) hereby readopts the Hazardous Waste Rules, N.J.A.C. 7:26G, with amendments and repeals. The amendments and repeals to Subchapters 1 through 13 and 16: (1) update the date on which prospective incorporation of the Federal RCRA regulations by reference begins; (2) repeal those portions of Subchapter 6, including its Appendix, concerning the New Jersey hazardous waste manifest system, because the March 2005 Federal manifest system regulations are incorporated by reference; (3) amend the penalty tables to incorporate the Federal manifest regulations, to assign compliance grace periods as

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applicable and to assign penalty amounts to these violations; (4) delete the fee for purchasing blank manifests in view of the Federal manifest regulations; (5) clarify that petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (codes D018-D043 only) and that are subject to State underground storage tank corrective action also qualify for the exclusion from the definition of hazardous waste; (6) clarify that hazardous waste accumulation tanks and containers must be marked with the date upon which the hazardous waste accumulation period begins; and (7) require that the copy of the completed manifest (or shipping paper) mailed by the treatment, storage, or disposal (TSD) facility to the Department and to the generator's state agency be postmarked within 10 days of waste receipt (if such state agency requires a copy of the manifest be submitted to it).

The Department published the proposal in the New Jersey Register at 39 N.J.R. 1953(a) on May 21, 2007. The comment period closed on July 20, 2007.

Summary of Hearing Officer Recommendations and Agency Response:

A public hearing was held on June 4, 2007 at the New Jersey Department of Environmental Protection, 401 East State Street, Trenton, New Jersey. Frank Coolick, Administrator, Solid and Hazardous Waste Management Program, served as the hearing officer at the public hearing. No members of the public attended the hearing. The hearing officer recommended that the Department adopt the proposal as proposed with the agency initiated changes discussed below. A record of the public hearing is available in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attn.: DEP Docket No. 09-07-04/589
401 East State Street, P.O. Box 402
Trenton, New Jersey 08625-0402

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Summary of Public Comments and Agency Responses:

The Department received no written comments on the proposal.

Summary of Agency-Initiated Changes:

The civil administrative penalties for violations of the Hazardous Waste rules are codified at N.J.A.C. 7:26G-2.4. N.J.A.C. 7:26G-2.4(g) codifies tables that contain a summary of each of the hazardous waste rules, the monetary penalty for violating each rule, an indication that the violation is minor or non-minor (M or NM) pursuant to the criteria set forth at N.J.A.C. 7:26G-2.5(f)1i through iii and N.J.A.C. 7:26G-2.10(c)1 through 5 (see N.J.A.C. 7:26G-2.5(f)), and a grace period for correcting the violation if the violation is minor.

The penalty table codified at N.J.A.C. 7:26G-2.4(g)3 contains penalties for violations of 40 C.F.R. Part 262 Subpart B – The Manifest. The Department proposed to delete the violation of 40 CFR 262.20(a), failure of a generator to prepare the manifest before transporting or offering for transport hazardous waste off-site, a non-minor penalty with a base penalty of \$5,000 and no grace period. In its place, the Department proposed a penalty for the violation of 40 CFR 262.20(a)1, failure of generator to properly complete the manifest, a minor violation with a base penalty of \$3,000 and a grace period of 30 days. However, the amendments as proposed cause the Department's list of violations to diverge from those established by the cited Federal manifest rules, which are incorporated by reference into the Hazardous Waste rules pursuant to N.J.A.C. 7:26G-1.4(c). Accordingly, on adoption, the Department is restoring the non-minor violation and penalty for failure to prepare a manifest for off-site transport of hazardous waste and revising the description to accurately reflect the substance of 40 CFR 262.20(a), that is failure of a generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for

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transport a rejected hazardous waste load to prepare a manifest. No grace period applies because it is a non minor violation.

The rule summary of 40 CFR 264.71(a)(2)(iv) in the penalty table at N.J.A.C. 7:26G-2.4(g)5 states that the period in which a copy of the manifest must be sent to the generator is 20 days. The Federal regulation, incorporated by reference into the Hazardous Waste rules pursuant to N.J.A.C. 7:26G-1.4(c), provides that the TSD owner, operator, or agent has 30 days after delivery of hazardous waste to send a copy of the manifest to the generator. Upon adoption, the Department is therefore correcting this rule summary in the penalty table to accurately reflect the Federal rule.

Federal Standards Analysis

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. Since the Department incorporates the Federal RCRA rules by reference, the vast majority of the adopted rules are virtually identical to their Federal counterparts; thus obviating the need for comparison. Other portions of this proposal, which do not require a comparison with Federal law, have no Federal counterpart, set no standards, or are mandated by State statute. These include the general provisions, penalties, fees, definitions, hazardous waste transporter license and registration requirements, and environmental health and impact statement requirements.

As discussed below, the adopted rules do contain some requirements that exceed the requirements and standards set by Federal law.

Hazardous Waste Manifest Regulations

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The Department has compared the standards and requirements of New Jersey's hazardous waste manifest and related regulations at N.J.A.C. 7:26G-6 with the Federal standards and requirements at 40 C.F.R. Part 262. New Jersey's regulations contain requirements that exceed the requirements imposed by Federal rules in the following areas: tracking (contacting the Department when the TSD facility-signed copy of the manifest is not returned to the generator in a timely fashion), and recordkeeping (three year retention of the initial manifest copy). The discussion below explains why the benefits of these requirements in promoting the safe management of hazardous waste justify the small additional cost that the regulated community will incur as a result of the difference between the State and Federal rules.

Hazardous Waste Manifest

Hazardous waste is an inevitable by-product of modern society. Among the many challenges facing state agencies is the management in a safe and environmentally sound manner of hundreds of millions of tons of residual wastes produced each year. Quality information regarding the off-site shipment of hazardous waste to the facility where the waste is ultimately disposed or treated is crucial in carrying out this task.

The hazardous waste manifest, therefore, is an integral part of the nation's cradle-to-grave system of tracking the transport of hazardous waste. The manifest is a shipping document designed to accompany any hazardous waste shipment while in transit. Generators of the hazardous waste are responsible for initiating a manifest for each off-site shipment and for designating an authorized facility for ultimate disposal or treatment of the waste.

Hazardous Waste Manifest Copy Distribution and Retention

The hazardous waste manifest is a multi-copy shipping document that must accompany hazardous waste shipments during transportation. Copies are retained by the

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generator, transporter, and the TSD facility. An additional copy is returned to the generator by the TSD facility, confirming the waste has reached its ultimate destination. Once the signed copy from the TSD facility is received, generators may discard the initial manifest copy signed by the transporter. Generators must keep on file the completed manifest copy signed by the TSD facility for at least three years. The above represents the distribution system and filing requirements under the Federal regulations. States operating their own program may impose additional reporting and filing requirements. For example, states may require that copies of the manifest be sent to their regulatory agencies by the generator or the designated TSD facility or both. Twenty one states, and the Commonwealth of Puerto Rico, have established a program to collect manifest records and compile manifest data.

In addition to the Federal manifest distribution requirements, the current New Jersey regulations require the generator to forward a copy of the initial manifest signed by the transporter to the regulatory agency in both the State of generation and consignment. Generators who do not receive the signed manifest copy from the TSD facility in a timely fashion are required to notify the Department of same. All generators are required to keep on file for three years both the initial manifest signed in accordance with 40 CFR 262.23(a) and the signed copy received back from the TSD facility. All of these additional requirements help to ensure the integrity of the manifest information and the cradle-to-grave tracking of hazardous waste.

Benefits of the Manifest Data Collection

New Jersey uses manifest information from its manifest database to prepare EPA required reports (i.e., the Biennial Report.) In addition, the State uses the data for State-specific purposes such as targeting businesses for inspection, calculating hazardous waste fees, meeting State reporting and management requirements, identifying potentially responsible parties for Superfund site clean-ups, answering public inquires, and sharing information with other states.

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Biennial Reporting

Pursuant to RCRA, each state and territory is required to submit to EPA a detailed report every two years, known as the RCRA Biennial Report. This is a detailed report on RCRA hazardous waste generated and managed, both on-site and off-site, in the United States. In New Jersey, large quantity generators and TSD facilities supply information to the Department by March 1 of the reporting year. The Department compiles the information and submits its report to EPA for entry into the national database. The Biennial Report also contains information on waste stream descriptions, waste treatment methods, and waste minimization practices. Although the Biennial Report requires information not included on a hazardous waste manifest (i.e., on-site hazardous waste management), manifest data helps New Jersey fulfill its reporting requirements. Drawing this information from manifests is much simpler and less resource-intensive than collecting it independently. As a result, the cost of preparing the Biennial Report is kept to a minimum; the minimized cost is reflected in the Department's program's fees.

Manifest data has also proven to be vital in verifying and correcting information submitted by generators and facilities on their Biennial Report. For instance, New Jersey compares the Biennial Report information with manifest data through a computer system. Discrepancies are identified in quantities and types of hazardous waste generated and identifying the off-site handlers of the waste. Differences are noted and manifest data assists in resolving the discrepancies. Typically the manifest data has proven to be more accurate, requiring the correction of the Biennial report. Facilities who have not submitted a Biennial Report despite manifest data indicating they may be handling large quantities of waste can be targeted for appropriate action. Likewise, manifest data in conjunction with waste minimization information from the Biennial Report can identify facilities requiring technical assistance in developing or improving waste minimization plans.

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Program Management

Many states collect manifest data to meet their own special informational needs. New Jersey's manifest distribution system helps to ensure that these states are provided with the accurate information they need. Also, New Jersey uses manifest data to produce annual reports on State imports and exports of hazardous waste at State and county levels. The Department uses manifest data to provide complete information on waste types generated in the State and to more accurately monitor the movement of hazardous waste. New Jersey also uses its manifest data to develop up-to-date facility plans and support regulatory initiatives. For example, in developing new regulations or amending current hazardous waste regulation, the Department is required to assess the impact of the proposed regulatory changes. Manifest data, which the Department has found to be more accurate than biennial report data, is used to determine the number of companies impacted by answering questions such as "Who in New Jersey is currently handling a particular waste?" or "How much of a particular waste is moving in and out of New Jersey?" Often the Department needs to search the manifest database for generators of a particular type of hazardous waste or a specific type of hazardous waste treatment. This type of search is especially important when the Department adopts a newly listed Federal hazardous waste code into its administrative code. This type of information helps the Department develop fair and environmentally sound regulations. Also the Department uses manifest information to generate mailing lists for Department information outreach series and seminars.

Enforcement

The manifest can be a very effective tool in efficiently carrying out enforcement activities. Nearly all states with programs use the data for enforcement related purposes. Department inspectors use manifest data to develop a waste profile on a facility or generator prior to a site inspection and can also make a preliminary regulatory status determination of a generator prior to a site visit. Conversely, manifest data makes it less

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burdensome for both the Department and the regulated community to establish that generators/facilities/transporters are in compliance. Manifest discrepancy reports comparing the reported amount of waste shipped to a facility and amount actually received can be generated using manifest data; thus more quickly identifying potentially mismanaged hazardous waste. New Jersey uses manifest data to more quickly identify unauthorized TSD facilities or facilities receiving waste in excess of their authorized capacity. All this information generated from manifest data provides a clear focus for the inspector's record review. Although the Department is the primary user of its manifest data, New Jersey State Police have used manifest data for their own enforcement purposes.

Manifest data has been used to enforce land ban restriction regulations at 40 C.F.R. Part 268. New Jersey develops historical profiles of waste types generated and managed by specific handlers. These profiles help the Department identify facilities that suddenly reclassify the hazardous waste it has historically managed; such a change may indicate that a facility is misclassifying its hazardous waste to elude the treatment standards pursuant to land disposal restrictions. Waste profiles can be used to monitor hazardous waste shipment patterns. An abrupt drop in the number of waste shipments may indicate that the facility is not managing its waste properly.

Manifest data can also be used to decrease Department contract laboratory analysis time and expenses associated with an enforcement action. In New Jersey, for example, inspectors often require laboratory work for certain waste streams to verify compliance with permit conditions. Manifest data can assist the laboratory in classifying the waste stream and narrowing the analysis. Therefore the results of such analysis can be obtained faster and less expensively.

Cost Recovery/Site Mitigation

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In addition to RCRA compliance activities, a manifest system can support Federal and State clean-up initiatives. The legal viability of the manifest has been demonstrated in court on numerous occasions to identify potential responsible parties (PRPs) for recovering clean-up costs expended by the Department or EPA. PRPs are any individuals involved in the ownership, operation, generation, or transportation of hazardous wastes at sites where hazardous waste has been abandoned or dumped, such as Superfund sites. Once a responsible party is identified, State officials can use the State's manifest information to assess the liability of other potential parties.

Data Sharing

New Jersey frequently receives requests for information pursuant to the Open Public Records Act and the New Jersey common law on public documents. In 2005, the Hazardous Waste Program received 4,860 inquires (an average of 405 per month). By law, New Jersey State agencies must respond to all requests within a reasonable time period. Many information requests concern the type and amount of waste that companies are generating or receiving from off-site. The Department's manifest data can be used to quickly answer these inquiries. States, including New Jersey, typically respond to these inquiries by providing printed reports, computer tapes or disks, or copies of individual manifests. As hazardous waste management issues become more regionalized, states are finding the need to share manifest data. A large majority, including New Jersey, already do.

Costs

Like agencies of neighboring states, the Department has been authorized to assess fees for services it performs. Fees associated with the New Jersey manifesting program for the processing of completed hazardous waste are as follows:

- Generators in the State of New Jersey manifest processing fee: \$10.00 per manifest.

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- Hazardous waste facilities manifest processing fee: \$10.00 per manifest for waste received from generators outside of the State of New Jersey; no fee for waste received from New Jersey generators

Based on current data available on the average number of manifest per generator, the fee ranges from \$40.50 annually for generators of small quantities of hazardous waste to \$810.00 for large quantity generators. Hazardous waste facilities that accept hazardous waste from out-of-state generators pay \$900.00 to \$91,820.00 annually; however, the majority of facilities pay on average \$34,361.00 annually.

The total cost for manifest processing is small for the vast majority of the regulated community. Most of the fees are collected from the facilities that profit from the disposal of hazardous waste. Facilities which pay the most in fees can also spread these costs among a large number of hazardous waste shipments without significantly increasing the cost of accepting any one waste shipment.

In addition to the costs described above, generators of hazardous waste may also incur minimal costs associated with two more stringent provisions of the New Jersey Manifest System as follows:

- Telephonically contacting the Department when the TSD facility is late in returning the signed manifest copy to the generator; and
- Filing and/or storage costs associated with retaining the initial manifest signed by the transporter in addition to the manifest copy signed by the receiving facility.

The Department has determined that costs associated with telephonically contacting the Department for late manifest copies are statistically \$0 for in-State generators. The Department receives approximately two calls a month for these

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situations, totaling 24 calls per year. Although there are approximately 10,000 generators in the State, only about 4,000 are active (i.e., manifest waste) in any given year.

Therefore only 0.006 percent of generators per year will need to comply with this requirement.

Should a generator be required to call, the Department notes that these calls average 3 minutes per call. This call may cost nothing if the call is local. For non-local calls, the cost will vary depending on the generator's long distance company's rates. In addition, the Department has allowed the regulated community to meet this requirement by fax, giving the generator 24-hour access to the Department. Generators using the fax method may be able to do so at a time when telephone rates are cheapest.

Lastly, generators may incur additional expense in retaining the initial manifest copy for three years. The Department has estimated this cost also to be statistically \$0. Ninety percent of all New Jersey generators use 10 manifests or less per year. Each generator, therefore, will need to have a means to store these additional 10 manifest copies. Department experience shows that approximately 1,200 to 1,400 manifests can be stored in a cardboard storage box. Even generators who use three or more times the average number of manifests per year will take many years to fill up just one storage box.

$$\$10.00/\text{box} \quad \$1,200 \text{ manifests}/\text{box} = \$0.008/\text{manifest copy}$$

The Department has not included filing costs in the above cost estimate. The Department notes that even without the requirement to retain the initial manifest copy, generators would have had to expend filing time to match up the original manifest copy with the signed copy from the receiving facility. The additional New Jersey requirement, therefore, requires no additional filing time and may save time by facilitating the matching process.

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In developing these manifest regulations, the Department has balanced the costs of compliance for companies doing business in New Jersey and the need to protect the environment and has determined that to lessen the requirements would negatively impact the environment. The Department has further determined that the readoption of these manifest rules will have a negligible negative economic impact on business in New Jersey. The fees collected by the Department, such as the manifest processing fee, allow the Department to maintain its hazardous waste program. This program is essential to protect human health and the environment as mandated by State and Federal laws.

Hazardous Waste Transporter Regulations

Under the adopted rules at N.J.A.C. 7:26G-7, hazardous waste transportation in New Jersey will continue to be governed primarily by the EPA's RCRA transporter rules and relevant USDOT rules, which are incorporated by reference. No cost benefit analysis is required for the provisions incorporated by reference because they are identical to the corresponding Federal rules.

As required under the SWMA, the readopted rules continue to require the registration of hazardous waste transportation facilities and operations. The EPA's RCRA rules do not contain a corresponding registration requirement. In addition, N.J.S.A. 13:1E-126 et seq., the A-901 law requires the Department to continue to implement the disclosure program, which is an essential part of the licensing of persons involved in hazardous waste transportation; again, the EPA's rules do not contain a corresponding requirement.

These regulatory provisions are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under State statute that incorporate or refers to Federal law, standards or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 do not require a Federal Standards Analysis.

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The adopted rules at N.J.A.C. 7:26G-7.4, however, regulate hazardous waste transfer facilities more stringently than the corresponding provisions of the EPA rules. Analysis of the costs and benefits associated with that more stringent regulation follows.

Analysis

The Federal RCRA regulations at 40 C.F.R. §263.12 allow a transporter to store manifested shipments of hazardous waste in containers at a transfer facility for a period of ten days or less without being subject to hazardous waste permitting requirements. According to 40 C.F.R. §260.10, a "transfer facility" is defined as "any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation."

While the Department, through its manifest tracking system, is able to identify the movement of hazardous waste from a particular generator to a specific designated TSD facility, the manifest does not include information as to where a transporter's hazardous waste transfer facility is located. It should also be noted that generally EPA assigns EPA ID numbers to a transportation company as a whole and not on an individual site basis, unlike the manner in which EPA ID numbers are assigned to generators and TSD facilities. All of a particular hazardous waste transporter's trucks and terminals use the same company-wide EPA ID number unless the transporter specifically requested or notified otherwise.

In accordance with its statutory duty, the Department intends to continue to monitor (through periodic inspection) a transporter's hazardous waste transfer facility activities. Notification as to the location of these facilities, therefore, is necessary. The Department also performs investigations of a hazardous waste transporter's activities in response to a generator's notification to the Department of a failure to receive a signed

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copy of a manifest from the designated facility. Notification as to the location of a transporter's hazardous waste transfer facility is necessary to determine that the generator's waste is not being improperly stockpiled by the transporter.

The Department believes that the Federal RCRA regulations at 40 C.F.R. 263.12 fail to include sufficient precautionary measures for New Jersey to minimize the environmental risks associated with the temporary storage, consolidation or commingling of hazardous waste at a hazardous waste transfer facility. Although 40 C.F.R. 263.30 contains requirements for immediate notification of and action to mitigate releases of hazardous waste, EPA has not established standards for preventative measures at these transfer facilities. When incidents occur at such facilities (for example, the release of hazardous wastes), the financial costs associated with them include cleanup costs, disposal costs, potential increase insurance rates, potential fines and potential lawsuits. The costs in terms of environmental harm would far exceed these costs. The avoidance of incidents at these facilities, therefore, would be a benefit should New Jersey retain its more stringent regulations.

The Department, therefore, proposes to readopt the regulations at N.J.A.C. 7:26G-7.4 which establish preventative measures for the environmentally sound operation of a hazardous waste transfer facility for the storage, consolidation and commingling of hazardous waste for ten days or less by a licensed New Jersey hazardous waste transporter. The readopted amendments include definitions for the terms "consolidation" and "commingling" as they are used in the rule, at N.J.A.C. 7:26G. These definitions do not have comparable Federal definitions. They are used by the Department at N.J.A.C. 7:26G-7.4(f) through (h) to identify categories of activity and their associated regulation. Definitions in themselves do not impose any requirements upon the regulated community and, therefore, do not impose any additional economic burden on a transporter. Other terms used in the proposal such as: "transfer facility," "storage," and "container" have the same meaning as the definitions found at 40 C.F.R. §260.10.

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N.J.A.C. 7:26G-7.4(f) through (h) enable any transporter to store manifested shipments of hazardous waste in containers at a hazardous waste transfer facility for a period of ten days or less and also enable a licensed transporter to consolidate and commingle in a limited fashion without having to obtain a permit or any other form of prior approval. This is substantially the same as the Federal regulation at 40 C.F.R. §263.12. However, there is a notification requirement, which is discussed below.

The Department does not require a hazardous waste transporter to purchase a site in New Jersey, in spite of the fact that many licensed hazardous waste transporters already own such facilities. Approximately 104 licensed hazardous waste transporters presently own and operate terminals located in New Jersey. Of these 104 transporters, 26 have established transfer facilities and will benefit from continuation of these regulations. The Department anticipates that hazardous waste transporters not located in New Jersey will continue to make arrangements with New Jersey based transporters to utilize hazardous waste transfer facilities located in New Jersey. If a transporter chooses to acquire or lease property in order to operate a hazardous waste transfer facility, this will entail a cost to that transporter. However, this same transporter may realize benefits should other transporters pay to use the hazardous waste transfer facility. In addition, those transporters making arrangements to use a hazardous waste transfer facility will incur costs associated with the benefits of having a transfer facility available to them.

While not all hazardous waste transporters using the hazardous waste transfer facility need be an “owner or operator,” each transfer facility must have one licensed New Jersey hazardous waste transporter who is either the owner or lessee and is responsible for the operation of the hazardous waste transfer facility; it is this transporter who must notify the Department as the owner or operator of the transfer facility. Notification shall be given prior to commencing transfer facility operations, on the initial license application, the license renewal, or as necessary to update the current license information. Other hazardous waste transporters who wish to use a particular hazardous waste transfer facility must make arrangements regarding use of the transfer facility with

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the hazardous waste transporter who has notified the Department. N.J.A.C. 7:26G-7.4(a) requires that a hazardous waste transfer facility be owned or leased by a licensed New Jersey hazardous waste transporter. The lease must be a written agreement between the property owner and the notifying hazardous waste transporter and must reveal the hazardous nature of the activity and be submitted to the Department with the notification. There is no comparable Federal regulation requiring the hazardous waste transporter to notify EPA as to the location of a hazardous waste transfer facility. The SWMA at N.J.S.A. 13:1E-4a and 5, however, mandates that the Department supervise hazardous waste transfer facilities. The Department is requiring notification from already licensed transporters as to the identity and address of all such transfer facilities so their activities can be monitored. Once this notification is initially provided, updated information is submitted on forms supplied by the Department used to renew hazardous waste transporter licenses. This notification adds negligible additional costs to a licensed hazardous waste transporter.

The rules at N.J.A.C. 7:26G-7.4 continue to allow an interim status or permitted hazardous waste facility, which is also a licensed New Jersey hazardous waste transporter or which has opted to lease a portion of its facility to a licensed New Jersey hazardous waste transporter, to establish a hazardous waste transfer facility at the location of its TSD facility for the temporary storage of waste which is awaiting further transportation and designated for another hazardous waste facility in the normal course of transportation. The requirements at N.J.A.C. 7:26G-7.4(f)2, 7.4(g)2, and 7.4(h)2 however, prohibit the operation of a hazardous waste transfer facility at the site of the designated facility to store, consolidate or commingle hazardous waste destined for that same designated facility. A manifested shipment cannot be stored for 10 days or less under N.J.A.C. 7:26G-7.4(f) once it arrives at the designated hazardous waste facility. This clarification is consistent with Federal interpretation of the distinction between hazardous waste transfer facilities and designated hazardous waste facilities as provided in a memorandum from EPA Director Sylvia Lowrance, Office of Solid Waste to David Ullrich, Acting Director, Waste Management Division dated October 30, 1990.

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N.J.A.C. 7:26G-7.4(d) requires the owner or operator (a licensed New Jersey hazardous waste transporter), of a hazardous waste transfer facility to maintain a written operating log (or logs, as necessary) at the transfer facility documenting the storage, transfer, consolidation and commingling of hazardous waste, in compliance with N.J.A.C. 7:26G-7.4(f) and (g). Some companies have set up computerized tracking systems to comply with this requirement. The Department is not requiring nor prohibiting their use. The existence of such a system fulfills the log requirement only if a Department representative can obtain printed copies of information contained in the computerized log from the hazardous waste transfer facility when requested. This requirement can be satisfied simply by maintaining a written log book which documents the storage, transfer, consolidation or commingling of hazardous waste once it enters and/or leaves the hazardous waste transfer facility. The written log requirement can be satisfied through the purchase of a log book(s) which is(are) generally available from office supply stores for less than \$30.00.

Without the maintenance of a log book with the required entries, the Department's enforcement program is unable to determine if a transporter has complied with the hazardous waste transfer facility requirements as set forth in N.J.A.C. 7:26G-7.4(f) through (h). Each transporter utilizing the hazardous waste transfer facility is required to enter the information pertaining to its particular vehicle's load in the written log book, as required by N.J.A.C. 7:26G-7.4(d). As of September 5, 2006, when the new Federal hazardous waste manifest rule becomes effective, state required fields will no longer be present. As such, transporters utilizing a hazardous waste transfer facility will have to copy the decal number of the waste bearing portion of the vehicle from the vehicle, as it will no longer be marked on the hazardous waste manifest. The remaining information required in the log book is readily available from manifests and the time required to copy this information into the written log book is minimal. The Department therefore has concluded that this requirement places a negligible economic and regulatory burden upon a transporter. Similarly, the requirement to retain these logs for three years

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on site places a negligible economic and regulatory burden upon the transporter. The Department has estimated this economic cost to be statistically \$0. The majority of transfer facilities will use no more than 20 log sheets per year. Many of these facilities keep the logs electronically.

While hazardous waste is stored or consolidated at a hazardous waste transfer facility, N.J.A.C. 7:26G-7.4(f)3 requires that the waste remain in closed containers meeting RCRA and applicable USDOT packaging regulations specified in 49 C.F.R. §§171-180. N.J.A.C. 7:26G-7.4(f)4 requires the transporter to maintain containers of hazardous waste in good condition in order to prevent leakage. These requirements are the same as Federal EPA regulations at 40 C.F.R. §263.12 and USDOT regulations at 49 C.F.R. § 173.24(b), which presently regulate hazardous waste transporters. N.J.A.C. 7:26G-7.4(f)5 requires the storage and consolidation of containers of hazardous waste be in conformance with USDOT and EPA regulations. Moreover, N.J.A.C. 7:26G-7.4(f)6 requires containers to remain closed, and no waste or other materials be removed from or added to the containers except if necessary to respond to an emergency situation, or during commingling. This is substantially the same as Federal USDOT regulations at 49 C.F.R. §§171.2(g)2 and 177.834(h)

A licensed hazardous waste transporter utilizing a hazardous waste transfer facility is allowed to commingle hazardous wastes with identical USDOT shipping descriptions provided this commingling does not constitute treatment and the transporter complies with the requirements of N.J.A.C. 7:26G-7.4(g). At a minimum, this allows a licensed hazardous waste transporter to perform activities such as transferring hazardous wastes from one container to another or combining small or partially filled containers of hazardous waste into one or more containers and also allows the transfer of containers of liquid waste only into bulk packages, such as sludge box roll off containers, cargo tanks or rail freight cars. N.J.A.C. 7:26G-7.4(g)3 allows a hazardous waste transporter to commingle only hazardous wastes designated on the generator's manifest for the same designated hazardous waste facility. A hazardous waste transporter choosing to

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commingle hazardous waste, must also amend the generator's hazardous waste manifest to reflect that the generator's waste was commingled with another generator's waste in conformance with N.J.A.C. 7:26G-7.4(g)4. The transporter must also modify the generator's manifest to reflect changes in container count, size, type, or quantity shipped after commingling occurred. By commingling hazardous waste, the size, number or type of container changes from the information originally indicated on the manifest by the generator. For this reason, N.J.A.C. 7:26G-7.4(g)4 requires the hazardous waste transporter who performs commingling, to reflect the changes in quantity and containers which have occurred on the manifest.

The regulations at N.J.A.C. 7:26G-7.4(g) place requirements on the transporter to protect the integrity of the information found on the manifest. The generator initiates the manifest to document the safe and proper disposal of hazardous waste from "cradle to grave." The Department requires both the generator and the designated facility to forward copies of the manifest when hazardous waste is initially shipped and again when it is received or rejected by the designated facility. Once these copies are received by the Department, information on the manifests is entered into the Department's manifest database which is used to track the movement of hazardous waste from the generator to the designated facility. A transporter's failure to note that commingling of a generator's waste occurred or to describe accurately the containers and quantity shipped would seriously undermine the quality of the information contained in the Department's database. The Department has determined that the requirements of N.J.A.C. 7:26G-7.4(g) place a negligible burden on the transporter and help to maintain the integrity of the Department's manifest database. The potential cost involved for transporters wishing to commingle who are not licensed New Jersey hazardous waste transporters would be the cost of obtaining the New Jersey license.

Failure to prohibit a hazardous waste transporter from commingling hazardous waste destined for different designated facilities would also seriously undermine the quality of information collected in the Department's hazardous waste manifest database.

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Generators select a specific designated facility for a number of reasons. Among these reasons are cost of disposal, the treatment or disposal methods employed by the designated facility and, more importantly, the potential liability associated with choosing an inappropriate designated facility. Generators wishing to discourage a licensed hazardous waste transporter from commingling their hazardous waste with another generator's hazardous waste are encouraged to clearly do so, through contractual agreements with their transporters.

Once a hazardous waste transporter commingles, the transporter runs the risk of producing a waste with a different USDOT shipping description. A new USDOT shipping description would warrant the transporter completing a new hazardous waste manifest. Although the transporter would be required to complete a new hazardous waste manifest, the transporter would be obligated to use the same designated facility as that selected by the original generator. This interpretation is similar to the interpretation of Federal 40 C.F.R. Part 263 requirements as provided in a memorandum from EPA Director Sylvia Lowrance, Office of Solid Waste to David Ullrich, Acting Director, Waste Management Division dated October 30, 1990. Further, 49 C.F.R. 171.3(b)3 requires the transporter to "deliver[s], as designated on the manifest by the generator, the entire quantity of the waste received from the generator...to...(i) The designated facility or, if not possible to the designated alternate facility." This USDOT requirement further emphasizes a hazardous waste transporter's inability to select a designated facility or an alternate designated facility other than that selected by the generator (but see the explanation below of transporters who assume generator responsibilities). For all of the above reasons, the Department is continuing to limit a licensed New Jersey hazardous waste transporter to commingling of hazardous waste with identical USDOT shipping descriptions.

N.J.A.C. 7:26G-7.4(j) requires licensed hazardous waste transporters who choose to commingle a generator's hazardous waste to also assume responsibility for the disposal of the waste, if the waste is rejected by the designated facility. A designated facility must

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reject a shipment of commingled hazardous waste if facility is not authorized to accept the waste mixture. A designated facility may choose to reject a commingled waste shipment if the composition of the commingled waste is sufficiently different from the information specified on each generator's waste profile so as to cause a potential problem with the subsequent management of the waste by the facility. In the event of a waste rejection, the transporter would then have to assume the role of the generator and have the "new" waste analyzed and properly disposed at an authorized facility. Often, it is very difficult and time consuming to determine if the generator(s) may have inaccurately represented its (their) wastes on a hazardous waste manifest or if it is the result of a transporter's act of commingling which resulted in a new waste stream with a different USDOT description being created. Costs involved include the waste analysis, potential higher disposal cost at the newly designated facility, higher transportation costs due to increased travel, and management of the waste until it can be properly disposed. Further economic impact of this situation is discussed later in this Analysis. Since the transporter is not required to obtain approval from the generators prior to commingling hazardous wastes with the same USDOT shipping description, hazardous waste transporters are cautioned: first, that commingling hazardous wastes may result in a different USDOT shipping description which may require the transporter to ship the waste to a designated facility not indicated on the original manifest; and second, that they would be well advised to seek instructions and approval from designated facilities prior to performing commingling.

N.J.A.C. 7:26G-7.4(h) prohibits a hazardous waste transporter from commingling dissimilar wastes, that is shipments of hazardous waste with different USDOT shipping descriptions, at a hazardous waste transfer facility. This is a general prohibition on this type of commingling. In contrast, under 40 C.F.R. §263.10(c)2, a transporter may mix hazardous wastes of different USDOT shipping descriptions by placing them into a single container provided that the transporter also complies with 40 C.F.R. Part 262.

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Essentially, under Federal RCRA regulations, the transporter becomes the generator of the waste. Further, EPA in Sylvia Lowrance's October 30, 1990 memorandum to David Ullrich does not encourage transporters to commingle hazardous waste with different USDOT shipping descriptions. She writes in her memo: "The Agency does not intend to encourage transporters to combine wastes of different USDOT descriptions. On the contrary, the imposition of the generator requirements should provide sufficient cause for the transporter to avoid such waste combinations whenever possible. The transporter who mixes hazardous waste of different [US]DOT descriptions is obligated to re-manifest the waste." The Department believes that a more solid prohibition on this type of mixing will be more effective than the EPA's cautionary memo. Prohibition of the commingling of hazardous wastes of different USDOT descriptions may increase costs of transportation due to having less than full vehicles travel to the same authorized facility.

The Department believes that the Federal RCRA regulations, which allow transporters to mix hazardous wastes having different USDOT shipping descriptions provided that they comply with generator requirements, are not sufficient to deal with the potential negative environmental repercussions from commingling dissimilar hazardous wastes. Hazardous waste transfer facilities are not subject to requirements intended to minimize the risk of fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. Transfer facilities need not comply with requirements for waste analysis, personnel training, access to communications or alarm systems, arrangements with local authorities, and emergency procedures; only an authorized interim status or permitted facility is subject to these requirements. Accordingly, an interim status or permitted facility is much better prepared than a transfer facility to deal with the risks of commingling dissimilar wastes. Avoiding the costs associated with these risks far outweighs the additional transportation costs which transporters will incur if vehicles that are less than full travel to the same designated facility.

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In developing these regulations, the Department has balanced the costs of compliance for companies doing business in New Jersey and the need to protect the environment and has determined that to lessen the requirements would negatively impact the environment. The Department has further determined that the readoption of these hazardous waste transfer facility regulations will have a negligible negative economic impact on hazardous waste transporters doing business in New Jersey and that transporters will continue to more easily store, consolidate or commingle shipments, resulting in transportation efficiencies and an overall reduction in operating costs. Hazardous waste transporters may also continue to experience a reduction in transportation costs for situations where they are turned away from a TSD facility, but are able to temporarily hold their shipment at a hazardous waste transfer facility, thereby saving the cost of returning the shipment to the generator. The only other anticipated negative economic impact would occur when a load of hazardous waste is rejected by the designated facility after transporter commingling for a reason which can not be easily resolved. The transporter would then have to assume the role of the generator and have the waste analyzed and properly disposed. Obviously, these costs could be avoided if the transporter avoids commingling. The adopted rules place no new technological burdens on a hazardous waste transporter, who will instead realize a significant economic benefit by being able to store, consolidate and commingle hazardous waste at a hazardous waste transfer facility.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:26G.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

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SUBCHAPTER 2. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADMINISTRATIVE HEARINGS

7:26G-2.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a) through (f) (No change from proposal.)

(g) The following summary of rules contained in N.J.A.C. 7:26G 2 through 7:26G 12 is provided for informational purposes only. In the event that there is a conflict between the rule summary in this subsection and a provision in N.J.A.C. 7:26G 2 through 7:26G 12, then the provision in N.J.A.C. 7:26G 2 through 7:26G 12 shall prevail. The citations beginning with the symbol “§” identify the rule section found in 40 C.F.R. Parts 124, 260 266, 268 and 270. Citations beginning with "7:26G" signify a State requirement not found in 40 C.F.R. Parts 124, 260 266, 268 and 270. The word “matrix” appearing in the “Base Penalty or Matrix” column refers to the penalty calculation matrix in 7:26G-2.5, which shall be applied in lieu of a “base penalty.” In the “Type of Violation” column, “M” identifies a violation as minor and “NM” identifies a violation as non-minor. The length of the applicable grace period for a minor violation is indicated in the “Grace Period” column.

1. through 2. (No change from proposal.)

3. The violations of N.J.A.C. 7:26G-6, Standards Applicable to Generators of Hazardous Waste, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

(40 C.F.R. Part 262 Subpart A-General)

(No change from proposal.)

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(40 C.F.R. Part 262 Subpart B – The Manifest)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
§262.20(a)(1)	Failure of generator to properly complete the manifest.	\$3,000	M	30 days
<u>*§262.20(a)1*</u>	<u>*Failure of a generator who transports, or offers for transport, a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, to prepare a manifest.*</u>	<u>*\$5,000*</u>	<u>*NM*</u>	

* * *

4. (No change from proposal).

5. The violations of N.J.A.C.7:26G-8, Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, whether the violation is minor or non-minor, the length of the grace period, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

(40 C.F.R. Part 264 Subparts B through D)

(No change from proposal.)

(40 C.F.R. Part 264 Subpart E – Manifest System, Recordkeeping, and Reporting)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
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§264.71(a)(2)(iv)	Failure of facility owner, operator, or agent to send a copy of manifest to generator within *[20]* <u>*30*</u> days after delivery of hazardous waste.	\$3,000	M	30
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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this readoption with amendments and repeals. I hereby authorize this readoption with amendments and repeals.

Date

Lisa P. Jackson, Commissioner
Department of Environmental Protection