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**ENVIRONMENTAL PROTECTION
DIVISION OF COUNTY ENVIRONMENTAL
AND WASTE ENFORCEMENT**

Solid Waste Utility Regulations

Readoption with Amendments: N.J.A.C. 7:26H
Adopted New Rules: N.J.A.C. 7:26H-8
Adopted Amendment: N.J.A.C. 7:26-4.1

Proposed: November 5, 2007 at 39 N.J.R. 4477(a)

Adopted May 5, 2008 by Lisa P. Jackson, Commissioner,
Department of Environmental Protection

Filed: _____, 2008 as R.2008 d. _____, **with substantive changes** not requiring additional public notice and comment (N.J.A.C. 1:30-6.3).

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

DEP Docket No: 21-07-10/410

Effective Date: _____, 2008

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Operative Date: _____, 2008

Expiration Date:

The Department of Environmental Protection (Department) hereby readopts, with new rules and amendments the Solid Waste Utility Regulations at N.J.A.C. 7:26H. The rules are being readopted with minor amendments that correct typographical errors, clarify certain provisions, and reflect recent Department reorganizations. Additionally, various amendments are being adopted that comport these rules with the Local Public Contracts Law. Lastly, the adoption codifies rules implementing the Commercial Landfill Regulatory Reform Act, which became effective January 1, 2004 (N.J.S.A. 48:13A-7.24 through 7.33). The adopted amendments and new rules and (1) provide more uniform competitive standards for regulating the economic aspect of all solid waste disposal facilities by introducing the definitions of "market-based rates" and "privately-owned sanitary landfill facility" and redefining the definition of a "peak rate," and (2) deregulate privately-owned sanitary landfill facilities from traditional rate regulations and peak rates.

The Department published the proposed readoption, new rules and amendments in the New Jersey Register at 39 N.J.R. 4477(a) on November 5, 2007. The comment period closed on January 4, 2008.

Summary of Hearing Officer Recommendations and Agency Response:

A public hearing was held on November 26, 2007 at the New Jersey Department of Environmental Protection, 401 East State Street, Trenton, New Jersey. Sukhdev Bhalla, Chief, Bureau of Solid and Hazardous Waste Regulation, served as the hearing officer at the public

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hearing. One person attended the hearing, but did not testify. The hearing officer recommended that the Department adopt the rulemaking as proposed, with amendments not requiring additional public notice and comment. The Department has accepted the hearing officer's recommendations. 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. 21-07-10/410
401 East State Street, P.O. Box 402
Trenton, NJ 08625-0402

Summary of Public Comments and Agency Responses:

The following persons or entities timely submitted written comments:

1. Franklin W. Boenning, Esq., on behalf of Republic Services of New Jersey, LLC.
2. Adam Kaufman, Kaufman Zita Group, LLC, on behalf of the Ocean County Landfill Corp.
3. Michael S. Keszler, Esq., Senior Group Counsel, Waste Management of New Jersey, Inc.

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. **COMMENT:** In the current solid waste service market, bifurcation of a customer's bill into service and disposal components for other than roll-off customers is difficult for the

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First, N.J.A.C. 7:26H-4.4(b)3 requires that solid waste collection invoices contain a number of detailed billing items. A number of these items are easily complied with, regardless of the type of service being provided, for example, the date, time period of service, size and number of containers, frequency of service and waste type. However, the disposal facility and tariff rate applied, county health department surcharge, solid waste service tax, host community benefit surcharge and the sanitary landfill closure and contingency fund tax ((b)3vi-x – collectively “Disposal Service Charges”) often do not apply or are difficult to determine on a customer-specific basis, unless roll-off or compactor service is being provided.

Second, the weight of the customer’s solid waste is only an estimate. Waste volumes generated by customers vary seasonally, and in many cases more frequently. The conversion rate from cubic yardage to tonnage can vary significantly between various commercial accounts, based on the type of waste generated by each customer, for example, office building vs. restaurants vs. apartment complexes. Residential waste volumes are driven by the number of residents in a household, and their ages – senior citizens’ households do not generate as much waste as families with young children.

Third, solid waste collectors invoice residential and commercial customers for solid waste collection services on a monthly or quarterly basis in advance, as permitted under N.J.A.C. 7:26H-4.4(b)1. Should a customer cancel service, a refund is issued for the time period of service not utilized. It is impossible for a collector to know, in advance, precisely which disposal facilities will be utilized for a particular customer’s waste throughout the service period. Collectors will often modify disposal practices based on changes in disposal pricing, wait times at disposal facilities, and the distance to various disposal facilities from collection routes. Even if a collector could determine the disposal facilities or commit to a single facility, s/he does not know the precise weight that will be collected from each customer on the route. This

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Fourth, according to the Department's own website, solid waste generated in twelve counties is not flow controlled; three other counties employ only intra-state flow control, allowing out-of-state disposal. Thus, the disposal facility actually used by a collector for waste generated in these counties can, and does, change frequently. Such changes are driven by the business needs of the collector, by volume limitations at the disposal facility, by wait times at the disposal facility, and by the rates charged at the disposal facilities. Moreover, the disposal rate used in calculation of a disposal component must be based on an assumption about where the waste is disposed, or on some average of available disposal rates. This combination of factors creates a situation where the disposal component may actually be misleading customers, instead of informing them.

As a solution, the rules could allow collectors to provide an estimate to customers, based on the size of container and frequency of collection, which reflects the average weight to be collected, and the range of disposal costs and taxes and fees which would be incurred on that weight given the mix of disposal facilities used by that collector. In such instance, collectors could provide information on the service component of the bill and an estimate only of the Disposal Service Charges based on experience, but it would only be an estimate. Alternatively, the Department could eliminate the N.J.A.C. 7:26H-4.4(b)3 requirements to include detailed information on a customer's bill, but require that more meaningful information be provided to customers on the range of disposal costs in an annual statement, or upon request. This could be done by modifying the Customer Bill of Rights (which is already required to be sent to customers on an annual basis) to include the right to a breakdown of a customer's bill into the service, disposal fees, taxes and other surcharges. Information would then be provided to those customers that request the information. At the collector's option, information on the range of disposal rates can be supplied verbally, by mailing such information to the customer, or by

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RESPONSE: The Department agrees that a bifurcated bill is difficult to produce, especially for those solid waste collection companies that bill three months in advance. Additionally, the Department recognizes that for residential service and small container commercial service, the disposal component is an estimate. This is acceptable. Although it is difficult for a collection company to produce a bifurcated bill, the Department believes the value it provides to customers in terms of selecting a solid waste collection company continues to outweigh the inconvenience. The information provided on such a bill better allows customers to compare the services of different collection companies and choose one that best meets their needs and costs. Additionally, using the customer bill of rights to require collectors to supply detailed billing to customers only upon request does not provide the customer with information in a timely manner. A customer is much more likely to evaluate its solid waste costs when those costs are broken down for the customer on an invoice. The Department believes that few if any customers would go to the trouble of requesting a detailed bill from their collection company. Therefore the Department has decided to retain the bifurcated bill requirement at this time. The Department may revisit this issue at a later date. Solid waste collectors who need assistance in producing an acceptable bifurcated bill should contact the Department for assistance.

2. COMMENT: The proposed amendment to N.J.A.C. 7:26H-5.12(c)7, requiring customer notice only when the rate increase is the result of the collector's service component, is supported. However, the term "service component" is not defined in the Department's regulations. The summary for the proposed amendment suggests that costs which are outside of a collector's control, such as fuel costs, are not to be considered as part of the "service

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RESPONSE: The “service component” is one of three cost components that must be indicated in the disposal facility and tariff rate applied portion of the customer bill. See N.J.A.C. 7:26H-4.4(b)3vi(2). The other two components are the disposal component (actual weight for roll-off services), and any special or additional charges. See N.J.A.C. 7:26H-4.4(b)3vi(1) and (3) respectively. As indicated in the summary, examples of the service component may include the cost of the collector’s services, such as waste pickup and administrative costs. Because the service component can be comprised of a wide variety of costs that can also vary considerably among collection companies, it would be difficult to specifically define “service component,” as it could comprise many and variable factors.

The Department recognizes that its statement in the proposal summary that “Given the . . . rapid changes in the cost of diesel fuel, the only part of a collector’s bill that tends to remain stable is the service component” could be read to imply that fuel costs are not a part of the service component. Generally, fuel costs are considered a part of the “service component.” However, in the instances where fuel costs increase so rapidly that the provider does not have time to give customers the 10 day advanced notice of incremental cost increases as is required by the rule, the other parts of the “service component” may remain stable, even while fuel costs fluctuate. In such instances, with the Department’s permission, the provider may break out the incremental cost increase of fuel as a line item on the customer’s bill, separate from other costs included in the “service component” and treat these increases as a part of the “special or additional charges.” Accordingly, the sentence in the summary that states “Given . . . rapid changes in the cost of diesel fuel, the only part of a collector’s bill that tends to remain stable is the service component” is accurate as far as it goes, because the cost of fuel is a part of the

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3. **COMMENT:** At N.J.A.C. 7:26H-1.4, in the definition of “internal cost of service,” the parenthetical exclusion of debt service on financing is inconsistent with the phrase as used in the Commercial Landfill Regulatory Reform Act (Act) (N.J.S.A. 48:13A-7.24-7.33). Debt costs are an integral component of any commercial landfill’s overall cost of service. The Act provides that the facility’s internal cost of service is not relevant to a determination of just and reasonable rates under the market-based standard, or where rates are fixed to stabilize in-coming flows. The exclusion for debt service in the proposed definition mistakenly suggests that debt service costs are relevant, a result wholly at odds with the intent of the Legislature, see N.J.S.A. 48:13A-7.25, 7.30(a), (b)(1), and (c). The exclusion should therefore be deleted. (3)

RESPONSE: Debt service is a part of a facility’s operating margin, and accordingly, is included in the definition of “operating margin.” The Department excluded debt service from the definition of “internal cost of service” to ensure that it is not double counted, that is, both as a part of the calculation of internal cost of service and as a part of the calculation of operating margins. These terms become relevant when a privately-owned sanitary landfill raises a revenue requirement defense in a contested case proceeding. In such a proceeding, the facility owner or operator may establish a reasonable profit margin using either the return on rate base OR operating margin methodology, or any alternative methodology which is consistent with market practices. Accordingly, debt service could conceivably be relevant in a revenue defense that is based on the operating margin methodology. Therefore, the Department is not amending the definition of internal cost of service as the commenter suggests.

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4. **COMMENT:** The proposed definition of “operating margin” needs to be amended to avoid misinterpretation. Operating margin is not a rate, nor is it added to a rate. It refers to a market-based methodology for establishing just and reasonable rates in which a margin over-and-above operating expenses including debt service and depreciation is allowed to ensure a sufficient profit margin, and maintain financial integrity, notwithstanding major fluctuation in expenses. To make this clear, the definition should be revised as follows:

“Operating margin” means a [rate established] **market-based methodology used to establish just and reasonable rates** by determining the reasonableness of known and measurable operating expenses, including debt service [and], depreciation[,], and taxes, and [then including a profit] **adding a revenue** margin calculated as a percentage of these **expenses which ensure a reasonable profit margin**. [This margin is then added into the utility’s tariff rates.] (3)

RESPONSE: The Department’s role in utility regulation is to ensure that the methodology used to determine just and reasonable rates is one that results in sufficient funding to enable a utility to provide safe, adequate and proper service at a fair rate to the ratepayer, while ensuring that the utility is adequately compensated for its investment and risks in providing such service. The Department has reviewed the commenter’s suggested amendments to the definition of “operating margin” and compared these suggestions with N.J.S.A. 48:13A-7.30c, the provision of the statute that invokes the concept of operating margins, and believes that the suggested amendments more closely comport the definition of operating margin to the statute and provide needed clarification. The statute uses the term “operating margin methodology,” and states that it is a methodology available to an owner or operator for use in establishing a reasonable profit margin in a contested case proceeding. Thus, operating margin is not, as the proposed definition at N.J.A.C. 7:26H-1.4 states, a rate, in and of itself. Note that the term is only used in the rules at N.J.A.C. 7:26H-1.12, concerning rates. The Department is therefore

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changing the defined term to “operating margin methodology” and is making the other suggested changes upon adoption.

5. **COMMENT:** Proposed N.J.A.C. 7:26H-1.12(f) should be amended to ensure clarity and consistency with the terms of the Act. Pursuant to subsection (f)2i, rates designed to stabilize incoming flows and prevent the premature exhaustion of landfill capacity may be deemed just and reasonable if the capacity in question is “needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located.” While this might be the primary reason for stabilizing rate increases, the Legislature did not include such a restriction in the Act. Accordingly, the caveat should be deleted to avoid any unauthorized limiting effect. In addition, to avoid any confusion, rates that are statutorily defined as just and reasonable need to be separately enumerated. Therefore, N.J.A.C. 7:26H-1.12(f) should be amended as follows:

. . . solid waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable if:

1. Those rates are market-based rates; or
2. If the rates exceed [the] market-based rates [authorized pursuant to (f) above] **they are designed** either:
 - i. [Are designed] to stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity [needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located]; or
 - ii. [Recover] To recover sufficient revenues to meet the revenue requirements of the privately-owned sanitary landfill facility. (3)

RESPONSE: The Department agrees that certain changes on adoption should be made to more closely comport this subsection with the statute at N.J.S.A. 48:13A-7.30b. The rates are

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Accordingly, the cross reference at N.J.A.C. 7:26H-1.12(f)2 should be to (f)1, not just to (f). The Department also agrees that the addition of the phrase “they are designed” at (f)2 and the deletion of “are designed” from (f)2i is a more artful way of codifying these provisions. The Department also understands how the phrase “needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located” could be viewed as have a limiting effect, one that is not contained in the statute. Accordingly, although the Department intended that the phrase be simply a declaration that the county in which a privately owned sanitary landfill is located will benefit from the prolonged life of the landfill, the Department will modify the rule on adoption to delete this phrase.

6. **COMMENT:** N.J.A.C. 7:26H-1.12(g), as proposed, is unclear, in part because the terminology “market-based rates” is misused. This subsection should be amended as follows:

The internal cost of service or [the] financial condition of a [the] privately-owned landfill facility is relevant to the determination of whether the facility’s solid waste disposal rates [collected by a privately-owned sanitary landfill facility] are just and reasonable [market-based rates] only if the owner or operator of the affected facility raises a revenue requirement defense in a contested case proceeding initiated by the Department pursuant to N.J.A.C. 7:26H-8.5. (3)

RESPONSE: The inclusion of the phrase “collected by a privately-owned sanitary landfill facility” N.J.A.C. 7:26H-1.12(g) could be considered redundant. Accordingly, to avoid any potential confusion, the Department will delete this phrase on adoption. However, the Department disagrees that the term “market-based rates” is misused in this subsection. The phrase “market-based rates” is defined at N.J.A.C. 7:26H-1.4 as “the solid waste disposal rates collected by a privately-owned sanitary landfill facility that do not exceed rates charged at other solid waste facilities in this State or at competing out-of-State facilities.” The determination as

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7. **COMMENT:** N.J.A.C. 7:26H-1.14(c) needs to be amended to bring it into conformity with the Act. This rule addresses the Department’s authority to order an extension of a utility’s services and states that, when doing so, the Department shall establish just and reasonable rates for the new services. With respect to the rates of facilities governed by the Act, however, the Department has no such authority. See N.J.S.A. 48:13A-7.32(a). Subsection (c) should therefore be amended as follows:

. . . and the Department shall permit just and reasonable rates to be charged for such service in the extended areas as found by the Department in the same manner as its determination for initial rates **except in the case of rates collected by a privately-owned sanitary landfill, which may be as provided at N.J.A.C. 7:26H-7.12(f).** (3)

RESPONSE: N.J.A.C. 7:26H-1.14(c) does address the Department’s authority to order an extension of a utility’s services and does state that, when doing so, the Department shall establish just and reasonable rates for the new services. However, what the commenter is missing is the cross-reference at the end of N.J.A.C. 7:26H-1.14(c) to N.J.A.C. 7:26H-1.12. That is, the just and reasonable rates for any new services shall be those rates that the Department found to be just and reasonable in its determination for initial rates under N.J.A.C. 7:26H-1.12. One of the purposes of the amendments adopted herein is to codify just how those rates would be initially set for privately owned sanitary landfill facilities. To effectuate this purpose, the Department is adopting amendments to N.J.A.C. 7:26H-1.12 at subsections (f) through (h) that specifically apply to setting initial rates for privately owned sanitary landfill facilities. Accordingly, amending N.J.A.C. 7:26H-1.14 is unnecessary.

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8. **COMMENT:** N.J.A.C. 7:26H-8.5(b) needs to be amended to implement an omitted procedural right of importance under the Act. The Act states that in noticing its intent to initiate a contested case proceeding in the Office of Administrative Law (OAL) challenging the rates collected at a privately-owned sanitary landfill, the Department “shall . . . afford the owner or operator an opportunity to be heard on why further action on the matter is not warranted.” N.J.S.A. 48:13A-7.31(b). The required opportunity to dispel the Department’s belief that the rates in question are not just and reasonable before transmittal to the OAL is neither acknowledged nor provided for in the proposed rules. Subsection (b), therefore, should be amended as follows:

(b) 1.-2. (No change.)

3. A schedule affording the owner or operator an opportunity to be heard prior to transmittal to the Office of Administrative Law on why further action on the matter is not warranted.

4. The anticipated date for transmittal to the Office of Administrative Law, which date may be extended by agreement with the owner or operator.

5. A statement informing the owner or operator that he or she will have an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on the rates at issue, if the matter is not resolved prior to transmittal to the Office of Administrative Law. (2)

RESPONSE: N.J.S.A. 48:13A-7.31(b) provides as follows:

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

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N.J.S.A. 48:13A-7.31(c) sets forth the obligations of the Administrative Law Judge, to be carried out “[w]ithin thirty days of the close of the hearing before the Office of Administrative Law. . . .” The Department believes that, when N.J.S.A. 48:13A-7.31(b) and (c) are read together, the “opportunity to be heard” is in the Office of Administrative Law (OAL). The statute does not contain any provisions for a pre-hearing prior to transmittal to the OAL, as is suggested by the commenter.

Moreover, the Department believes that the reason that N.J.S.A. 48:13A-7.31(b) requires the Department to give at least 30 days notice of its intent to send the matter to OAL as a contested case is so that the owner or operator may approach the Department to discuss why “further action on the matter is not warranted,” that is, why the matter should not be transmitted to the OAL as a contested case. From a practical standpoint, to the extent that the Department and an owner or operator are engaged in such discussions, it would serve no purpose for the Department to forward the matter to the OAL.

9. **COMMENT:** N.J.A.C. 7:26H-8.5(e) and (f) should be deleted. The Act states that the contested case proceeding provided for therein shall be conducted in accordance with the rules of the OAL except as expressly modified. See N.J.S.A. 48:13A-7.31(f). This provision is reiterated in subsection (h) of the proposed rule. References to certain OAL rules, like those in subsections (e) and (f), are therefore superfluous and create unnecessary confusion. Moreover, the statement in subsection (f) that procedural deadlines may be extended for good cause appears to be inconsistent with the mandatory deadline fixed in the Act for the Department to act on an OAL initial decision. In this regard, the Act clearly states that the Department must act within 90 days or the initial decision is final for the purposes of appeal, and any action taken by the Department thereafter “shall be of no effect.” N.J.S.A. 58:13A-7.31(f). To the extent that subsection (f) suggests that the Department may unilaterally extend this deadline, it is in conflict with this

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RESPONSE: The Administrative Procedure Act (N.J.S.A. 52:14B-1, et seq.) and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1 et seq. are not in conflict with the provisions of the Commercial Landfill Regulatory Reform Act (the Act). The Act at N.J.S.A. 48:13A-7.31d requires the Department to “act on the ALJ’s initial decision within 30 days of the close of the hearing before the Office of Administrative Law.” The rule at N.J.A.C. 7:26H-8.5(e) allows each party to file exceptions and replies to any initial decision in accordance with the APA. Note that, under the APA rules at N.J.A.C. 1:1-18.4(a), exceptions are due within 13 days of the date the initial decision was mailed to the parties, and under N.J.A.C. 1:1-18.4(d), any party may file a reply within five days from the receipt of exceptions. Accordingly, exceptions and replies would have to be filed well before the 30 day requirement to “act on the ALJ’s initial decision.”

That being said, the Act at N.J.S.A. 48:13A-7.31e provides that the Department has 90 days in which to act on an initial decision, or more, if agreed by the parties in writing, by stating as follows:

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

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Accordingly, contrary to the commenter's suggestion, the rule at N.J.A.C. 7:26H-8.5(f), which allows time frames to be extended, is specifically contemplated by the Act, and it is instructive to also include it in the implementing rules.

Federal Standards Analysis

Executive Order No 27(1994) and P.L. 1995, c.65 require administrative agencies that adopt, readopt or amend any State regulations that exceed any Federal standards or requirements to include in the rulemaking a comparison between the two sets of standards and an explanation of the costs and benefits associated with adopting a State standard that exceeds a Federal standard. The readopted rules, adopted amendments and adopted new rules implement various State statutes including N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:3.1 et seq., N.J.S.A. 48:13A.1 et seq. and N.J.S.A. 48:13A-7.1 et seq. There are no analogous Federal standards for regulation for solid waste utilities. Accordingly, no Federal Standards Analysis is required.

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

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

CHAPTER 26H

7:26H-1.4 Definitions

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 5, 2008 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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

* * *

“Operating margin methodology” means a [rate established] market-based methodology used to establish just and reasonable rates by determining the reasonableness of known and measurable operating expenses, including debt service [and] depreciation [,] and taxes and [then including a profit] adding a revenue margin calculated as a percentage of these expenses which ensure a reasonable profit margin. [This margin is then added into the utility’s tariff rates.]

* * *

7:26H-1.12 Rates

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

(f) Notwithstanding the provisions of any other law, rule or regulation, court decision or order of the Board of Public Utilities or Department to the contrary, the solid waste disposal rates collected by a privately-owned sanitary landfill facility shall be deemed just and reasonable if:

1. (No change from proposal.)

2. If the rates exceed the market-based rates authorized pursuant to [(f)] (f)1

above and they are designed to either:

i. [Are designed to stabilize] Stabilize incoming waste flows and prevent the premature exhaustion of landfill capacity [needed for the disposal of residential and municipal solid waste generated in the county in which the facility is located]; or

ii. (No change from proposal.)

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(g) The internal cost of service or the financial condition of the privately-owned sanitary landfill facility is relevant to the determination of whether the solid waste disposal rates *[collected by a privately-owned sanitary landfill]* are market-based rates only if the owner or operator of the affected facility raises a revenue requirements defense in a contested case proceeding initiated by the Department pursuant to N.J.A.C. 7:26H-8.5.

(h) (No change from proposal.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) permit the public to accurately and plainly understand the purposes and expected consequences of this readoption with amendments and new rules. I hereby authorize this adoption.

Date: _____

Lisa P. Jackson, Commissioner
Department of Environmental Protection