

**ENVIRONMENTAL PROTECTION  
SITE REMEDIATION AND WASTE MANAGEMENT  
SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM  
COMPLIANCE AND ENFORCEMENT  
DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT  
Hazardous Waste  
Proposed Readoption with Amendments: N.J.A.C. 7:26G-1 through 13 and 16**

Proposed Amendments: N.J.A.C. 7:26G-1.4, 2.4, 3.3, 4.1, 5.1 6.1, 7.1, 7.3, 7.4, 8.1, 9.1, 10.1, 11.1, 12.1, and 13.1

Proposed Repeals: N.J.A.C. 7:26G-6.2, 6.3, Appendix to Subchapter 6

Authorized By: Lisa P. Jackson, Commissioner,  
Department of Environmental Protection

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.

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

DEP Docket No:

Proposal Number: PRN 2007-\_\_\_\_\_

A public hearing concerning this proposal will be held on:

Date: 2007

Time:

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

Submit written comments by (60 days after publication) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket Number: \_\_\_\_\_

Office of Legal Affairs

New Jersey Department of Environmental Protection  
401 East State Street  
P.O. Box 402  
Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone presenting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at [www.state.nj.us/dep/srp/regs](http://www.state.nj.us/dep/srp/regs).

The agency proposal follows.

### **Summary**

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

New Jersey has regulated the handling of solid and hazardous waste since 1970 pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the SWMA). The Hazardous Waste rules at N.J.A.C. 7:26G incorporate by reference and prospectively incorporate by reference the Federal hazardous waste regulations which were mandated by the Resource Conservation and Recovery Act (RCRA) of 1976, (the base RCRA program), as amended by the 1984 Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C. §§ 6901, et seq. These regulations govern the following: managing hazardous waste generation; registration, operation, maintenance and closure of hazardous waste treatment, storage, or disposal (TSD) facilities; registration, operation and maintenance of hazardous waste transportation vehicles; the operation of transfer facilities; fees charged for services provided by the Department to hazardous waste facilities, generators and transporters; and civil administrative penalty assessments and requests for adjudicatory hearings. The rules ensure that these wastes are handled in an environmentally sound manner from "cradle to grave" by tracking their movement on a shipping paper known as a hazardous waste manifest.

In 1985, New Jersey received authorization and a funding commitment from the United States Environmental Protection Agency (EPA) to implement the State hazardous waste program in lieu of the base RCRA program. See 50 Fed. Reg. 5260 (1985). Authorization assures the compatibility of the State and Federal regulations and relieves hazardous waste handlers in New Jersey from some of the burdens of dual regulation. However, while the Federal and State programs are similar, they are not identical. The variations stem from differing concerns governing the two programs, as well as State statutory mandates. For example, the State has more stringent 10 day transfer facility requirements.

The Hazardous Waste rules were scheduled to expire on April 15, 2007, pursuant to the provisions of N.J.S.A. 52:14B-5.1. The expiration date was extended by 180 days to October 12, 2007, pursuant to N.J.S.A. 52:14B-5.1c, as a result of the timely filing of this proposal to readopt the rules. The Department has examined the Hazardous Waste rules (including those aspects that

are more stringent than the Federal program) to determine whether the rules remain necessary and reasonable for the protection of the environment and the public health, safety and welfare and are proper for the purpose for which they were originally promulgated. The Department determined that changes are necessary to reflect current disposal technologies, increase administrative flexibility, and ensure consistency with the analogous Federal programs. The amendments and repeals proposed herein are a result of this review.

Subchapter 15 of the Hazardous Waste rules was promulgated by the Hazardous Waste Facilities Siting Commission (the Commission), under the authority accorded to it in the Major Hazardous Waste Facilities Siting Act (the Siting Act), N.J.S.A. 13:1E-49 et seq., specifically, N.J.S.A. 13:1E-53j. N.J.A.C. 7:26G-15 contained the Commission's procedures for the siting of new major commercial hazardous waste facilities and for conducting the business of the Commission. The Commission has not met since 2002, and no longer operates. Legislation to amend the Siting Act to abolish the Commission was introduced in the Senate in 2002 but, for reasons not clear, was not enacted. In any case, the Department does not have authority to readopt the Commission's rules. Therefore, the Department is moving forward to readopt the rules for which it does have authority and, consequently, Subchapter 15 expired as of April 15, 2007.

Subchapter 14 of the Hazardous Waste rules was promulgated by the Department in accordance with the Siting Act, specifically, N.J.S.A. 13:1E-57, and established the minimum siting criteria to be applied by the Commission for new major commercial hazardous waste facilities to prevent any significant threat to human health and the environment. Because, as explained above, Subchapter 15 expired, Subchapter 14 was rendered superfluous. As a result, the Department determined not to readopt the subchapter. Consequently, Subchapter 14 also expired as of April 15, 2007.

## **I. Subchapter Summary**

The following is a summary of each subchapter proposed for readoption. A summary of proposed amendments follows this subchapter summary. As explained above, Subchapters 14 and 15 expired as of April 15, 2007, and therefore are reserved.

### N.J.A.C. 7:26G-1 General Provisions

N.J.A.C. 7:26G-1 sets forth the general provisions of the rules, including their scope and construction, and also the rights of the Department to exercise discretionary powers within the parameters of various statutory authorities including, but not limited to, the authority of N.J.S.A. 13:1E-1 et seq., 58:10A-1 et seq., 47:1A-1 et seq., 13:1D-9 and 18 and all other legislatively conferred powers. This subchapter also identifies those Federal regulations that are included or excluded through incorporation by reference statements and prospective incorporation by reference, how to resolve any inconsistencies between these rules and the Federal regulations, and where copies of the Federal regulations can be viewed or purchased. Also, subchapter 1 contains severability language to save the body of the rules if a court of competent jurisdiction strikes any specific provision. Additionally, the prospective incorporation by reference mechanism is described in subchapter 1. Upon adoption of this proposal, the Department will be readopting any regulations that are adopted by the EPA and that therefore will be incorporated by reference after the publication of this proposal. Should the Department choose not to incorporate by reference any EPA hazardous waste regulation, the Department shall publish a notice of proposal repealing the adoption in New Jersey of the EPA's regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

### N.J.A.C. 7:26G-2 Civil Administrative Penalties and Requests for Administrative Hearings

N.J.A.C. 7:26G-2 contains the civil administrative penalty assessment procedures and base penalty amounts for violations of the SWMA, including violations of any rule promulgated, any administrative order, permit, license, or other operating authority issued pursuant to the SWMA. This subchapter establishes procedures for requesting an adjudicatory hearing subsequent to the assessment of civil administrative penalties or the issuance of administrative orders. Additionally, this subchapter provides penalties for submitting inaccurate or false information, failure to allow lawful entry and inspection, failure to pay a fee, and economic benefit. It also sets forth the criteria and procedures for classifying a violation as minor, and affording the violator a grace period within which to correct that violation.

### N.J.A.C. 7:26G-3 Hazardous Waste Fees

N.J.A.C. 7:26G-3 establishes the fee schedule for services the Department performs. These fees are promulgated under the authority of the SWMA and must reasonably reflect the duration or complexity of the service rendered (that is, the "activity" performed). This subchapter establishes the procedures for payment of fees, provides a fee schedule for hazardous waste generators, transporters, and facilities and includes the formulas used for deriving said fees. Additionally it provides limited exemptions from certain fees for conditionally exempt small quantity generators of hazardous waste, transporters who act as generators in completing a hazardous waste manifest when picking up waste from a conditionally exempt small quantity generator, and hazardous waste facilities which accept waste from out-of-State conditionally exempt small quantity generators.

### N.J.A.C. 7:26G-4 Hazardous Waste Management System: General

N.J.A.C. 7:26G-4 generally incorporates by reference and prospectively incorporates by reference 40 C.F.R. Part 260. This subchapter also codifies the definitions of terms used throughout N.J.A.C. 7:26G, a list of references incorporated throughout N.J.A.C. 7:26G and information as to their availability, a list of testing methods, general requirements and procedures in petitioning for rulemaking to amend the universal waste regulations of N.J.A.C. 7:26A-7 to add a hazardous waste or category of hazardous waste to those regulations, variances which determine regulatory status, parameters to be considered in granting specific variances, and an appendix designed to enhance the regulated community's understanding of RCRA.

Certain elements of 40 C.F.R. 260.20(b) through (e) regarding petitioning for rulemaking have not been incorporated by reference. Instead, the Department is following the controlling New Jersey rules established by the Office of Administrative Law (N.J.A.C. 1:30-4) as further supplemented by the Department's rules at N.J.A.C. 7:1D-1.1. The Federal provisions at 40 C.F.R. 260.2, entitled "Availability of information; confidentiality of information," and 40 C.F.R. 260.1(b)1, which is a general summary of 40 C.F.R. 260.2 and introduces the concepts of public access to information and claims of confidentiality, are also not incorporated, since the Department

covers these and related provisions at N.J.A.C. 7:26G-16. Finally, N.J.A.C. 7:26G-4 includes Appendix 1 to Part 260 which provides an overview of Subtitle C Regulations.

#### N.J.A.C. 7:26G-5 Identification and Listing of Hazardous Waste

N.J.A.C. 7:26G-5 generally incorporates by reference and prospectively incorporates by reference the Federal Regulations on Identification and Listing of Hazardous Waste codified at 40 C.F.R. Part 261 and its appendices, as amended and supplemented by N.J.A.C. 7:26G-5. These Federal regulations regulate the universe of solid and hazardous waste and the procedures for generators to use in determining whether the waste they generate is regulated as hazardous waste. The Federal regulations define the terms solid and hazardous waste, provide certain exclusions to those terms, provide the special requirements for hazardous waste generated by conditionally exempt small quantity generators and the requirements for recyclable materials, regulate waste residues in exempt containers and also provide for the delisting of PCB waste in accordance with the Federal Toxic Substances Control Act regulation.

Additionally, Subchapter 5 incorporates the Federal criteria at 40 C.F.R. Part 261 to identify the four types of characteristic hazardous wastes and the identified listed hazardous waste. Also, this subchapter provides for deletion of certain hazardous waste codes following equipment cleaning and replacement. It includes identification and listing of hazardous waste from specific sources and regulates discarded commercial chemical products, off specification species, containers and spills. This subchapter also regulates the syngas fuel exclusion. Finally, N.J.A.C. 7:26G-5 includes eight of the nine appendices to Part 261 as follows: Appendix I--Representative Sampling Methods, Appendix II--[Reserved], Appendix III--[Reserved], Appendix IV--[Reserved for Radioactive Waste Test Methods], Appendix V--[Reserved for Infectious Waste Treatment Specifications], Appendix VI--[Reserved for Etiologic Agents], Appendix VII--Basis for Listing Hazardous Waste, and Appendix VIII--Hazardous Constituents. Note that Appendix IX--Wastes Excluded Under §§ 260.20 and 260.22, was never adopted in New Jersey.

#### N.J.A.C. 7:26G-6 Standards Applicable to Generators of Hazardous Waste

N.J.A.C. 7:26G-6 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on the standards applicable to generators of hazardous waste codified at 40 C.F.R. Part 262, as amended and supplemented by N.J.A.C. 7:26G-6. These Federal regulations establish the regulatory standards for generators of hazardous waste; clarify the applicability of these requirements to generators who treat, store or dispose of hazardous waste on-site; require a determination by a generator as to when a waste is hazardous; mandate that a generator obtain an EPA ID number; require generator recordkeeping and reporting with emphasis on the use of the manifest in transporting hazardous waste; and set forth pre-transportation requirements. The subchapter requires importers of hazardous waste to comply with generator standards, regulates the importation of hazardous waste, and regulates transporter shipments for recovery within the Organization for Economic Cooperation and Development (OECD). The subchapter also provides for a conditional exemption to the standards for farmers who generate waste pesticides; subjects generators to compliance requirements and penalties if applicable; and clarifies that owners/operators of treatment, storage or disposal facilities who initiate a shipment of hazardous waste must also comply with the generator standards. The subchapter also outlines the parameters for generator hazardous waste accumulation. N.J.A.C. 7:26G-6 also includes a waste code hierarchy used by generators to determine the hazardous waste code to enter on a manifest when a shipment of hazardous waste can be described by more than one code and sets forth procedures for transporters, generators, and hazardous waste facilities to follow when all or part of a shipment of hazardous waste is rejected.

#### N.J.A.C. 7:26G-7 Standards Applicable to Transporters of Hazardous Waste

N.J.A.C. 7:26G-7 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on standards applicable to transporters of hazardous waste codified at 40 C.F.R. Part 263 as amended and supplemented by N.J.A.C. 7:26G-7. Also incorporated by reference are all United States Department of Transportation (USDOT) regulations on transportation of hazardous materials codified in Title 49 of the Code of Federal Regulations Parts 171 through 180, and Parts 390 through 397, with all the modifications that the New Jersey Department of Transportation has made in incorporating Title 49 into N.J.A.C. 16:49-2.1, and that the New Jersey State Police have made in incorporating Title 49 into N.J.A.C. 13:60-1.1. This



subchapter establishes the requirements for persons transporting hazardous waste under manifest, over the nation's highways, railways, or waterways. The regulations govern the labeling, placarding, marking, use of containers and reporting requirements for transporters in the event of a discharge. Additionally, this subchapter details transporter registration requirements, including the Department's requirements for leased vehicles, and contains provisions for those transporters who are allowed to store hazardous waste at hazardous waste transfer facilities for 10 days or less. The hazardous waste transfer facility regulations govern the storage, consolidation or commingling of hazardous waste by transporters while in transit. They require operation of the facility only by a licensed hazardous waste transporter who owns or leases the property upon which the transfer facility is located, notification by the owner or operator of the facility as to its location and any lease agreements to the Department prior to conducting activities at the transfer facility, and maintenance of an operating log documenting the movement of hazardous waste at the facility and compliance with the conditions set forth in the regulations. Finally, N.J.A.C. 7:26G-7 includes specific provisions governing rejected loads.

#### N.J.A.C. 7:26G-8 Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

N.J.A.C. 7:26G-8 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on the standards applicable to owners and operators of hazardous waste TSD facilities and the appendices codified at 40 C.F.R. Part 264, as amended and supplemented by N.J.A.C. 7:26G-8. These regulations include general requirements applicable to all TSD facilities and facility-specific requirements for certain types of TSD facilities. The general requirements include security provisions; general inspection requirements; training of TSD facility personnel; quality assurance; provisions for ignitable, reactive or incompatible wastes; siting requirements for TSD facilities; preparedness and prevention procedures; contingency plans and emergency procedures; compliance with the manifest system, recordkeeping and reporting requirements and biennial reports; ground water leak detection, and compliance monitoring programs; and closure and post closure care plans, including financial provisions for same. Specific design and operating requirements are included for containers, tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, drip pads, containment buildings,

and miscellaneous units. There are also air emissions standards for process vents and air emission standards for equipment leaks. This subchapter also includes the establishment of the corrective action program and correction action for solid waste management units (SWMUs). This subchapter also includes standards for munitions and explosive storage.

Finally, N.J.A.C. 7:26G-8 also includes 10 of the 11 appendices to Part 264 are: Appendix I--Recordkeeping Instructions, Appendices II-III--[Reserved], Appendix IV--Cochran's Approximation to the Behrens-Fisher Students' T-Test, Appendix V--Examples of Potentially Incompatible Waste, Appendices VII-VIII--[Reserved], and Appendix IX--Ground-Water Monitoring List. Note that Appendix VI--Political Jurisdictions, was never adopted in New Jersey.

#### N.J.A.C. 7:26G-9 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

N.J.A.C. 7:26G-9 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on the interim status standards applicable to owners and operators of "interim status" hazardous waste treatment, storage and disposal facilities and its appendices codified at 40 C.F.R. Part 265, as amended and supplemented by N.J.A.C. 7:26G-9. Interim status facilities are those that existed prior to their coming within the regulatory scope of the hazardous waste authorizing statutes and regulations. Like the regulations for permitted TSD facilities, these regulations include both general and facility specific standards. The general requirements include general waste analysis; security provisions; general inspection requirements; training of TSD facility personnel; location standards; the construction quality assurance program; provisions for ignitable, reactive or incompatible wastes; siting requirements for TSD facilities; preparedness and prevention procedures; contingency plans and emergency procedures; compliance with the manifest system; recordkeeping and reporting requirements and filing of biennial reports and other reports; ground water monitoring, leak detection, and compliance monitoring programs; and closure and post closure care plans including financial provisions for same. Specific design and operating requirements are included for containers, tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, thermal treatment, chemical, physical and biological treatment, containment buildings, drip pads, underground injection and miscellaneous units; air emissions for

process vents, and air emission standards for equipment leaks. This subchapter also contains standards for munitions and explosives storage. Finally, N.J.A.C. 7:26G-9 includes six appendices to Part 265 as follows: Appendix I--Recordkeeping Instructions, Appendix II--[Reserved], Appendix III--EPA Interim Primary Drinking Water Standards, Appendix IV--Tests for Significance, Appendix V--Examples of Potentially Incompatible Waste, and Appendix VI--Compounds with Henry's Law Constant Less Than 0.1 Y/X.

#### N.J.A.C. 7:26G-10 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

N.J.A.C. 7:26G-10 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on the management of specific hazardous wastes and specific types of hazardous waste management facilities codified at 40 C.F.R. Part 266, as amended and supplemented by N.J.A.C. 7:26G-10, and includes regulations for specific types of hazardous waste and hazardous waste management facilities. This subchapter includes regulations governing recyclables used in a manner constituting disposal, including specific standards for their transportation, use and storage. Also included in this subchapter are provisions for precious metal recovery and the reclamation of spent lead-acid batteries. The regulations also contain general and technical standards for both permitted and interim status boilers and industrial furnaces that burn hazardous waste, including specific standards for organic, particulate, metals, and hydrogen chloride/chlorine gas emissions. Finally, N.J.A.C. 7:26G-10 includes standards applicable to the handling of military munitions and all 13 Appendices to Part 266 as follows: Appendix I--Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals, Appendix II--Tier I Feed Rate Screening Limits for Total Chlorine, Appendix III--Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride, Appendix IV--Reference Air Concentrations, Appendix V--Risk Specific Doses (10 - 5), Appendix VI--Stack Plume Rise, Appendix VII--Health Based Limits for Exclusion of Waste-Derived Residues, Appendix VIII--Organic Compounds for Which Residues Must be Analyzed, Appendix IX--Methods Manual for Compliance With the BIF Regulations, Appendix X--[Reserved], Appendix XI--Lead-Bearing Materials that may be Processed in Exempt Lead Smelters, Appendix XII--Nickel or Chromium-Bearing Materials that may be Processed in

Exempt Nickel-Chromium Recovery Furnaces, and Appendix XIII--Mercury Bearing Wastes that may be Processed in Exempt Mercury Recovery Units.

#### N.J.A.C. 7:26G-11 Land Disposal Restrictions

N.J.A.C. 7:26G-11 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on land disposal codified at 40 C.F.R. Part 268, as amended and supplemented by N.J.A.C. 7:26G-11. This subchapter identifies hazardous wastes that are restricted from land disposal, and defines limited circumstances in which land disposal, which would normally be prohibited, may be allowed. Additionally, this subchapter includes the treatment standards for wastes restricted from land disposal and restrictions pertaining to storage of waste.

#### N.J.A.C. 7:26G-12 Hazardous Waste Permit Program

N.J.A.C. 7:26G-12 generally incorporates by reference and prospectively incorporates by reference the Federal regulations on EPA-administered permit programs (the hazardous waste permit program), codified at 40 C.F.R. Part 270, as amended and supplemented by N.J.A.C. 7:26G-12. This subchapter details who must apply for a hazardous waste permit and sets forth the general requirements of Parts A and B of the permit application. It includes general permit application requirements for new commercial and non-commercial facilities, and for existing and interim status facilities. It also details facility-specific information submittal requirements; permit renewal procedures; procedures for changes to a permit (including transfer of permits and modification, revocation and reissuance of permits); and special forms of permits (for example, permits by rule, emergency permits, research development and demonstration permits, land treatment demonstration permits, interim permits for UIC wells, hazardous waste incineration permits, permits for boilers and industrial furnaces burning hazardous waste, and remedial action plan permits). This subchapter also describes what is required in an environmental health and impact statement and delineates when a hazardous waste facility permit applicant must submit one.

#### N.J.A.C. 7:26G-13 Procedures for Decisionmaking

N.J.A.C. 7:26G-13 generally incorporates by reference and prospectively incorporates by reference the Federal regulations codified at 40 C.F.R. Part 124 as amended and supplemented by N.J.A.C. 7:26G-13. This subchapter establishes Departmental procedures for the modification, revocation and reissuance, or termination of hazardous waste permits; identifies the Department's obligation to prepare a draft permit; and establishes Departmental procedures for the preparation and content of draft permits and fact sheets for draft permits. This subchapter also establishes Department procedures for handling public comments and requests for public hearings, including public notice of permit actions and public comment periods. It also sets forth specific requirements that apply to applications for permits and expansions that are subject to the Major Hazardous Waste Facilities Siting Act.

#### N.J.A.C. 7:26G-16 Availability of Information; Confidential Business Information

N.J.A.C. 7:26G-16 sets forth the administrative procedures that the Department follows when releasing public information, and protecting confidential business information collected under authority of this chapter. These procedures also explain how the public may access this information and how those who submit information may protect it as confidential business information. This subchapter also specifies "per copy fees" for the copying of records, and the fee schedule for confidentiality claims.

## **II. Proposed Amendments and Repeals**

The following is a summary of the amendments the Department proposes to make to the hazardous waste rules:

#### Prospective Incorporation by Reference

Prospective incorporation by reference means the ongoing process whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually automatically updated in order to maintain consistency with

the most current Federal rules. At N.J.A.C. 7:26G-1.4(b) and (l), 4.1(a), 5.1(a), 6.1(a), 7.1(a), 8.1(a), 9.1(a), 10.1(a), 11.1(a), 12.1(a), and 13.1(a), the Department is updating the date on which prospective incorporation by reference begins, so that the new date reflects the readoption date of these rules. Federal changes to the regulations between the last adoption and the new date have already been automatically incorporated by reference into the chapter.

### Penalties

At N.J.A.C. 7:26G-2.4(g), the Department proposes to amend the penalty tables for generators, transporters and TSD facilities to comport with the amendments proposed herein. The majority of the proposed amendments are necessary to incorporate the new Federal manifest regulations which were adopted on March 4, 2005, with a delayed compliance date of September 5, 2006. See 70 Fed. Reg. 10776. These amendments are discussed more fully below in connection with the Department's proposed repeal of N.J.A.C. 7:26G-6.2, 6.3 and the Appendix to subchapter 6. Some entries in the table are proposed for deletion. These are entries correspond to more stringent regulatory provisions that the Department is prohibited by the Federal manifest rule from retaining, or that the Department's experience has shown to be unnecessary for the manifest system to be protective of human health and the environment. Other proposed amendments to the penalty tables revise the regulatory text to comport with these same Federal manifest regulations or to recodify the regulatory text as necessary.

In June 2006, the Department adopted amendments to N.J.A.C. 7:26G-2.4, Civil administrative penalties for violations of rules adopted pursuant to the Act, to reflect the requirements of the Grace Period Law, N.J.S.A. 13:1D-125 et seq. (See 37 N.J.R. 1285(a) for the proposal and 38 N.J.R. 2426(a) for the adoption.) The adopted rules established the framework for the implementation of the Grace Period Law for purposes of imposing penalties for violations of the Hazardous Waste rules. Based upon the same standards, the Department is proposing to amend the penalty provisions to designate violations of the proposed amendments and new rules as minor or non-minor and to establish compliance grace periods for those violations identified as minor. In applying the statutory criteria to the penalty table amendments in this proposal, the Department determined that violations that are purely administrative, including the maintenance of records

(provided the records can be produced within the grace period), and other violations that do not pose a threat to human health and the environment, are minor. Violations that may result in discharges, releases, or odors and, therefore, be potentially detrimental to the environment, are considered non-minor. A grace period is not appropriate for any violation that is non-minor.

### Hazardous Waste Fees

At N.J.A.C. 7:26G-3.3(f), the Department proposes to delete the fee for purchasing blank manifests. As explained below, the Federal manifest rule prohibits New Jersey from requiring generators to use the Department's manifest form.

### Hazardous Waste Management System

The Department proposes to delete N.J.A.C. 7:26G-4.1(c)4ii, which currently modifies the Federal definition of manifest to require use of the Department's manifest form. With the incorporation of the aforementioned Federal manifest rule, only the Federal manifest is now permitted to be used. Therefore, changes to the Federal definition are no longer necessary. N.J.A.C. 7:26G-4.1(c)4iii is being recodified as N.J.A.C. 7:26G-4.1(c)4ii.

At N.J.A.C. 7:26G-4.1(c)13 the Department is proposing to update the name of the Solid and Hazardous Waste program and the Program's contact information.

### Identification and Listing of Hazardous Waste

The Department is proposing to amend N.J.A.C. 7:26G-5.1(c) to add the incorporation by reference of 40 C.F.R. 261.4(b)10. This proposed amendment will 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 rules codified in the Underground Storage Tank rules, N.J.A.C. 7:14B, rather than the Federal corrective action regulations at 40 C.F.R. Part 280, also qualify for the exclusion from the definition of hazardous

waste. The Department's rules at N.J.A.C. 7:14B are essentially equivalent to the Federal rules at 40 C.F.R. Part 280.

### Hazardous Waste Generators

On March 4, 2005, the EPA adopted significant amendments to its Uniform Hazardous Waste Manifest regulations, the manifest form, and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition. (See 70 Fed. Reg. 10776.) The Federal regulations standardize the content and appearance of the manifest form and prescribe new procedures for tracking certain types of waste shipments with the manifest, such as hazardous waste shipments that destination facilities reject (more commonly referred to as rejected loads). As an authorized state for the Federal RCRA program, New Jersey is not generally required to adopt new Federal regulations that could be considered less stringent than the State's current regulations. However, the Federal hazardous waste manifest system is not governed by this policy, but is subject to a special Federal program consistency requirement that obligates all states to maintain consistency with the Federal manifest system regardless of any stringency issues. Therefore, the Department must adopt this new Federal manifest. Accordingly, the Department is proposing a number of amendments to subchapter 6 and elsewhere as described herein to conform to the new Federal manifest system.

The Department is proposing to repeal N.J.A.C. 7:26G-6.1(b), 6.1(c)5 through 9, 6.1(c)16 through 17, and the appendix to subchapter 6. These provisions are proposed for repeal since they address acquisition, completion, and distribution by generators of the New Jersey manifest form, which is now being repealed in favor of incorporating the Federal manifest form by reference. Under the new Federal manifest rule, a waste generator, transporter or a treatment, storage and disposal (TSD) facility can register with EPA to print its own manifest, or it may obtain manifests from other registered sources such as a particular state, commercial printers or other waste handlers. At this point, the Department does not intend to register with EPA and print these forms. Additionally, although the Federal manifest regulation prohibits New Jersey from requiring use of its own manifest form, EPA continues to allow states to impose more stringent manifesting requirements on a limited basis. For example, states may require state-specific information such as



state waste code and generator manifest copy submission instructions. While the Department is not proposing to place additional manifest distribution requirements on generators, the Department continues to believe in the importance of tracking hazardous waste manifest shipments. Therefore, although not required by the Federal rules, the Department will continue to require generators to keep copies of manifests for three years.

The Department proposes to recodify N.J.A.C. 7:26G-6.1(c) as (b). At recodified N.J.A.C. 7:26G-6.1(b)6, the Department proposes to clarify that hazardous waste accumulation tanks, as well as containers, must be marked with the date upon which the hazardous waste accumulation period begins. Although this requirement is not specifically codified in 40 C.F.R. 262.34(a)(2), EPA intended for both tanks and containers to be marked with accumulation start dates (see 51 Fed. Reg. 10146, 10160 (March 24, 1986)). This amendment will ensure that large quantity generators accumulate hazardous waste in accordance with the 90-day accumulation time limit.

The Department is proposing to repeal N.J.A.C. 7:26G-6.2 and 6.3, which govern the hierarchy by which a generator determines what code to enter on the manifest for wastes that can be described by more than one hazardous waste code, and the procedures for handling rejected loads, respectively. The Department believes it is no longer necessary to retain these State-only regulations. Prior to adoption of the new Federal manifest form, the New Jersey manifest provided only one box (Item I) on the form in which to enter a waste code to describe a waste listed on the manifest. Often, however, a given hazardous waste can be described by more than one hazardous waste code. Therefore, it was necessary to have a hierarchy in place to determine which of the various codes that could describe the waste should be entered in Item I (all other codes were listed in Item J further downward on the manifest form). The Department's rules at N.J.A.C. 7:26G-6.2 ensured that the code chosen for Item I was the one most critical for emergency personnel to know during an emergency situation, such as a spill of hazardous waste. The new Federal manifest form provides six boxes on which to enter waste codes that describe a given waste. The Department agrees with EPA that in all but a very few cases, six codes will be sufficient to accurately describe a waste's properties for emergency response and handling purposes. It is, therefore, no longer necessary or critical to order them with a hierarchy.

With respect to container residues or shipments of hazardous waste that are fully or partially rejected by the designated TSD facility, the Department has compared its regulations (proposed for repeal at N.J.A.C. 7:26G-6.3) to the Federal provisions. Both the Department's and EPA's new procedures for rejected loads are designed to ensure that rejected waste loads are adequately tracked from cradle to grave using the manifest system. The Department's existing rules accomplished this by allowing the generator or transporter to revise the original manifest to reflect the rejected load. EPA's new regulations require, with one exception, initiation of a new manifest to track these shipments (TSD facilities may use section 18b of the original manifest for full loads of hazardous waste that are immediately rejected by the TSD facility and for which the transporter is still on the premises). Both the Department's and EPA's regulations require that the original generator of the waste be consulted regarding the rejected load and allow the shipment to be returned to the generator if warranted. Given the comprehensive nature of the new Federal rejected load procedures, and the prohibition on using unique state manifests, the Department's rejected load regulations at N.J.A.C. 7:26G-6.3 are no longer necessary.

Note, however, that the Department is not proposing to abandon the requirements of N.J.A.C. 7:26G-6.3(b) and (c) with the repeal of N.J.A.C. 7:26G-6.3. Rather, it proposes to amend N.J.A.C. 7:26G-7.4(j) by adding new paragraphs 1 and 2. While the Federal manifest rule addresses the majority of rejected load scenarios, the Department believes transporters that commingle shipments of hazardous waste that are subsequently rejected, should bear additional responsibility with respect to the disposition of this material, since it was likely their act that caused the commingled load to be rejected. Therefore, the Department will continue to require these transporters to accept the returned shipment of rejected waste, place and secure the rejected waste in a hazardous waste transfer facility, and make arrangements with an authorized facility to receive and manage the commingled waste.

The Department is proposing to repeal the Appendix to Subchapter 6, which contained a copy of the New Jersey Uniform Hazardous Waste Manifest form and the instructions on how to complete it. Since the Department is prohibited from using its own manifest, these "state only" instructions are no longer necessary. The Federal regulations already contain instructions for completion of the Federal manifest form.

### Hazardous Waste Transporters

At N.J.A.C. 7:26G-7.1(c)1 the Department proposes to delete the reference to N.J.A.C. 7:26G-6.3(b) and (c) and replace it with N.J.A.C. 7:26G-7.4(j), where these regulatory provisions have been recodified in this proposal, as discussed above.

At N.J.A.C. 7:26G-7.3(c) the Department proposes to replace the reference to N.J.A.C. 7:26G-6.3(a) with 40 C.F.R. 263.21(b). As discussed above, the Federal manifest regulations now incorporate adequate procedures to address shipments of hazardous waste that are rejected by the designated facility or that the transporter is unable to deliver to the designated facility. Therefore the Department proposes replacing the reference to the State rejected load provisions with the appropriate Federal citation.

### Hazardous Waste Treatment, Storage and Disposal Facilities

The Department proposes to amend N.J.A.C. 7:26G-8.1(c)5 and 6 to require that the copy of the completed manifest (or shipping paper) mailed by the TSD facility to the Department and to the generator's state agency be postmarked within 10 days of waste receipt. While the Department believes it is important to keep timely track of hazardous waste shipments, the Department has determined that the requirement to mail a copy of the completed manifest by the next business day is too onerous. A few additional days will make New Jersey's requirements for return of manifest copies consistent with neighboring states' requirements. Further, the Department proposes to require a TSD facility to mail a copy of the completed manifest to the generator's state agency only if that agency wants the copy. Various state agencies do not require them, and the Department has previously issued advisories waiving this requirement (for example, to Ohio).

### Hazardous Waste Permit Program

The Department proposes to amend the cross reference to 40 C.F.R. 270.149(b)(1) found at N.J.A.C. 7:26G-12.1(c)6 to the correct reference to 40 C.F.R. 270.14(b)19.

## **Social Impact**

The readoption of N.J.A.C. 7:26G will continue to provide reasonable and necessary standards for the regulation and management of hazardous waste. This chapter ensures that hazardous wastes are collected, transported, stored, handled transferred, treated, processed, utilized, recovered, and disposed of/recycled in a manner that protects the environment and the health, welfare, and safety of the general public. The rules proposed for readoption benefit hazardous waste industries as a whole by providing a consistent regulatory structure that treats each regulated entity in a fair and equitable manner.

In renewing its mission to safeguard and promote a healthy environment, the Department is seeking to make substantive regulatory requirements as fair as possible for all segments of the regulated community, to facilitate voluntary exchange of information between regulator and permittee, to focus regulatory effort on areas of the industry most in need of improvement, and to adjust fees to more closely reflect the Department's regulatory cost. The proposed amendments are intended to reform the regulatory process, thereby encouraging compliance. The proposed amendments will enable the Department to continue to effectively and efficiently protect human health and the environment.

Incorporation of the new Federal manifest rules is expected to have a positive social impact. The Department will experience a burden reduction in that it will no longer need to print and distribute the hazardous waste manifest form. Differences between EPA's and the Department's manifest procedures have been significantly reduced thereby making it easier for the regulated community to comply. The public benefits from rules that are clear and concise.

The proposed amendments to N.J.A.C. 7:26G-5.1(c), clarifying that certain D-Code petroleum-contaminated media and debris qualify for the exclusion from the definition of hazardous waste if they are subject to the State underground storage tank corrective action regulations, rather than Federal corrective action regulations, will have no discernible social impact because the

proposed amendments are clarifications of existing rules and do not impose any additional requirements.

The proposed amendment to N.J.A.C. 7:26G-6.1(c)11, clarifying that tanks, as well as containers, must be marked with the accumulation start date will have a positive social impact. By addressing this issue, the Department will provide clearer and consistent rules and the regulated community will be better able to understand their obligations.

### **Economic Impact**

The readoption of N.J.A.C. 7: 26G will continue to provide regulatory standards and criteria regarding permitting and registration for hazardous waste landfills, surface impoundments, treatment, storage, and disposal facilities, thermal destruction facilities, transfer stations, and collection and transportation operations. Accordingly, the economic impacts arising from compliance with the existing standards and criteria will remain in place.

All applicants for a hazardous waste facility permit must comply with the appropriate information submittal requirements including the preparation of an environmental and health impact statement (EHIS) and an engineering design for hazardous waste facilities. The costs associated with complying with these requirements will vary according to the size and nature of the facility, but will generally create a substantial economic impact on the applicant. Although these costs can be significant, the Department has determined that the information is required to properly evaluate the environmental impacts and safety of such proposed facilities.

The readoption of N.J.A.C. 7:26G for the most part will also continue the economic impact of operations standards, including recordkeeping and reporting. These standards provide the minimum operational criteria that the facilities must meet, and the recordkeeping and other information reporting requirements with which approved facilities and transporters must comply on a regular basis. Facility operators will also experience costs related to compliance with the design and other technical criteria when constructing such facilities.

Hazardous waste facility owners and operators and transporters experience a direct economic impact from the requirement to pay the fees established in N.J.A.C. 7:26G-3. N.J.A.C. 7:26G-16 contains a fee schedule applicable to all solid and hazardous waste business concerns which must undergo disclosure and integrity review pursuant to N.J.S.A. 13:1E-126.

The penalty provisions, including the addition of new penalties for violations of Federal regulations promulgated since the Hazardous Waste rules were last readopted, will only have a negative economic impact on those who are assessed penalties because they have violated one or more of the rules. The extent of any economic impact will depend primarily on the nature of the violation, but in some cases may depend in part upon the violator's conduct, compliance history, and the remedial or preventative measures taken by the violator. An adverse economic impact on a regulated entity is the intent of the penalty.

The new Federal manifest procedures were adopted on September 6, 2005, with a delayed compliance date of September 5, 2006. While the Department will no longer require purchase of its manifest form, generators/offerors will need to purchase manifests from an outside source. Nevertheless, the Department expects the regulated community to experience an overall positive economic impact from incorporation of the new Federal manifest rule. Uniformity of the State and Federal manifest procedures will make recordkeeping, purchasing, and overall compliance simpler for the regulated community, resulting in reduced overall compliance costs.

The proposed amendments to N.J.A.C. 7:26G-5.1(c), clarifying that certain D-Code petroleum-contaminated media and debris qualify for the exclusion from the definition of hazardous waste if they are subject to the State underground storage tank corrective action regulations rather than Federal corrective action regulations should have a positive economic impact. Generators of this media and debris will be able to manage these materials as solid wastes and will not have to bear the increased cost of disposal of hazardous waste and compliance with the hazardous waste regulations.

The proposed amendment to N.J.A.C. 7:26G-6.1(c)11, clarifying that tanks, as well as containers, must be marked with the accumulation start date will have no discernible economic

impact other than the cost of the time spent to physically mark the tanks with the date of the beginning of each accumulation period.

### **Environmental Impact**

The readoption of the Hazardous Waste rules will continue to provide for the environmentally sound management of hazardous waste. This positive impact is realized through regulation of the collection, transportation, storage, handling, transfer, treatment, processing, utilization, reuse, recovery and disposal of hazardous waste in a manner that ensures protection of the environment and the health, safety and welfare of the general public. Additionally, the rules proposed for readoption will ensure that properly designed, constructed, operated and maintained facilities and vehicles are in place for the environmentally sound management of hazardous waste and that facilities which handle same, once terminated, are properly closed and maintained during any post closure period.

The Department expects the proposed amendments and repeals which incorporate the new Federal manifest system to have a positive environmental impact. Hazardous waste shipments will continue to be properly tracked from cradle to grave. Moreover uniformity between the Federal and the State manifest regulations make it easier for the regulated community to understand and, therefore, comply with them, ensuring that public health and the environment are better protected.

The proposed amendments to N.J.A.C. 7:26G-5.1(c), clarifying that certain D-Code petroleum-contaminated media and debris qualify for the exclusion from the definition of hazardous waste if they are subject to the State underground storage tank corrective action regulations rather than Federal corrective action regulations, will have minimal environmental impact because the amendments are clarifications of existing rules and do not impose any additional requirements.

The proposed amendment to N.J.A.C. 7:26G-6.1(c)11, clarifying that tanks, as well as containers, must be marked with the accumulation start date will have a positive environmental impact. By addressing this issue, the Department will provide clearer and more consistent rules and

the regulated community will be better able to understand its regulatory obligations. This better understanding of the rules will help ensure compliance with the regulations, leading to better protection of the environment.

### **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 rules proposed for re adoption in this rulemaking 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 rule proposed for re adoption and amendments do contain some requirements that exceed the requirements and standards set by Federal law.

### **Hazardous Waste Manifest Regulations**

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 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 3 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.

### 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.

### 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 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

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 inquiries (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.
- 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 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.

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 regulations proposed for readoption 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.

The regulations proposed for readoption and the amendments 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 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.

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 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 proposed for readoption and amendment 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.

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 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 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. 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 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.

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.

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 regulations proposed for readoption and amendments 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.

### **Jobs Impact**

The rules proposed for readoption, amendment and repeal are not significantly different than those currently in effect, which, overall have resulted in neither a significant generation nor loss of jobs in the State. Nevertheless, some businesses may experience savings or increased profits as a result of this rulemaking, while other may experience increased costs to comply. Each member of the regulated community will choose its own approach or combination of approaches to use those savings or address additional expenditures. Because of the variety of possible responses, it is not possible for the Department to accurately estimate the extent to which this rulemaking may either increase or decrease jobs in the State.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed the rules proposed for readoption, amendment, and repeal and determined that there will be little impact upon the agriculture industry. The rules proposed for readoption contain many exemptions specifically designed to lessen the economic and other associated impacts on the agriculture industry. For example N.J.A.C. 7:26G-5 exempts solid wastes generated by any of the following and which are returned to the soils as fertilizers: 1) the growing and harvesting of agricultural crops; and 2) the raising of animals, including animal manures from regulation as hazardous wastes. In addition, farmers who dispose of hazardous waste pesticides for their own use in accordance with certain provisions are exempted from hazardous waste permitting. The Department believes that most agricultural operations fall into one or more of the noted exemptions. To the extent that an agricultural operation cannot qualify for an exemption, such operation will be subject to the

regulatory impacts described elsewhere in this proposal for hazardous waste generators, transporters, and TSD facilities, as applicable.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., small businesses are defined as those that are independently owned and operated, not dominant in their field and employ fewer than 100 full-time employees. Many small quantity generators (SQGs) of hazardous waste are small businesses. These include, for example, dry cleaners, autobody and vehicle maintenance shops, academic laboratories, warehouse operations, printers, film developers and recreational facilities. Additionally, a small portion of the persons burning hazardous waste in boilers and industrial furnaces may come within the definition of small business. These small businesses will need to continue to expend funds to ensure continued compliance with the regulatory provisions proposed for re-adoption. The cost to small businesses for continued compliance will vary significantly based on the type and amount of waste generated and the disposal option chosen. The Department does not believe, however, that small businesses will need to employ the services of consultants to assist them with regulatory compliance. The Department notes that its hazardous waste regulations are virtually the same as the federal hazardous waste program, and as such, there is a wealth of free guidance available for small businesses, both via online through the internet at EPA's web site, and through various federal publications. Moreover, the incorporation of the recent federal manifest amendments in this re-adoption proposal has reduced the overall regulatory burden on small businesses, making it easier and less costly for them to comply.

In developing this re-adoption proposal, the Department has reviewed the regulations proposed for re-adoption as well as the proposed amendments to determine if these rules could be designed to minimize the burden on small businesses. During this review the Department balanced the need to protect human health and the environment and determined that to reduce the

requirements on small businesses would result in an unacceptable negative impact to human health and the environment. In addition, the Department notes that as an authorized state for the Federal RCRA program, it may not adopt regulations which are less stringent than the Federal regulations. The Federal RCRA regulations already contain reduced regulatory requirements for conditionally exempt and small quantity hazardous waste generators, both of which are likely to be small businesses.

### **Smart Growth**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments and new rules' impact on smart growth and the implementation of the State Plan. The proposed readopted provisions, amendments, and repeals do not involve land use policies or infrastructure development and therefore do not impact the achievement of smart growth or implementation of the State Plan. However, since they will continue to ensure and encourage protection of the environment, the rules support the conservation and environmental protection goals and policies underlying the State Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:26G-1 through 13 and 16.

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

## **CHAPTER 26G HAZARDOUS WASTE**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **7:26G-1.4 Incorporation by reference of the Code of Federal Regulations**

(a) (No change.)

(b) Prospective incorporation by reference means the ongoing process, beginning [May 6, 2002] **(insert effective date of amendment)**, whereby all provisions of regulations incorporated into this Chapter from the Federal regulations at 40 C.F.R. Subparts 124, 260-266, 268, and 270 are continually automatically updated in order to maintain consistency with the most current Federal rules. Thus, any supplements, amendments, and any other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal rule, brought about by either judicial or administrative action and adopted or otherwise noticed by USEPA in the Federal Register, shall be paralleled by a similar change to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart. Similarly, to maintain consistency, all new Federal regulations are also adopted into this Chapter by this automatic process.

(c) – (k) (No change.)

(l) On or after [May 6, 2002] **(insert effective date of amendment)**, new Federal rules, amendments, supplements, and other changes, brought about through administrative or judicial action, automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative 90 days from the publication date or on the operative date cited by USEPA in the relevant Federal Register Notice, whichever is later, unless the Department publishes a notice of proposal repealing the adoption in New Jersey of the Federal regulation in whole or in part, and/or proposing to otherwise amend the affected State rules.

## 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) - (f) (No Change)

(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. – 2. (No change.)

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.)

(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>
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§262.20(a)(1)	[Failure of generator to prepare a manifest before transporting or offering for transport hazardous waste off-site.] <b><u>Failure of generator to properly complete the manifest.</u></b>	[\$5,000] <b><u>\$3,000</u></b>	[NM] <b><u>M</u></b>	<b><u>30 days</u></b>
* * *				
§262.20(d)	[Failure of generator to designate alternate facility or accept waste back in the event the transporter cannot deliver the waste.] <b><u>Failure of generator to designate alternate facility or instruct transporter to return waste when transporter is unable to deliver the waste.</u></b>	[\$3,000] <b><u>\$5,000</u></b>	[M] NM	[30 days]
§262.21[(a) <b><u>(g)1</u></b> ]	Failure <b><u>of generator</u></b> to use <b><u>EPA</u></b> approved manifest forms [from the Department] for intrastate shipments of hazardous waste [in New Jersey or for hazardous waste originating in another state destined for New Jersey].	\$3,000	M	30 days
[§262.21(b)]	[Failure to use approved manifest forms for hazardous waste originating in New Jersey and destined for another state.]	[\$3,000]	[M]	[30 days]

<u>§262.21(g)</u> <u>(2)</u>	<u>Failure of generator to determine if generator or consignment state regulates additional wastes or requires generator to submit copies of the manifest.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
* * *				
§262.23(a)(3)	Failure of generator to retain one copy of manifest [or to forward one copy to state of origin or one to state of destination].	\$3,000	M	30 days
* * *				

(40 C.F.R. Part 262 Subparts C through F)

(No change.)

(N.J.A.C. 7:26G-6)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
<u>7:26G-6.1(b)5</u>	<u>Failure of generator to properly mark each container of hazardous waste prior to transportation.</u>	<u>\$4,500</u>	<u>NM</u>	
<u>§262.27</u>	<u>Failure of generator initiating a shipment of hazardous waste to certify to one of the statements in Item 15 of the manifest.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§262.34 (m)</u>	<u>Failure of generator to properly sign the manifest upon receipt of a returned shipment of hazardous waste.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>



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[7:26G-6.1(c)5	Failure of generator to properly complete the manifest.	\$3,000	M	30 days
7:26G-6.1(c)9	Failure of generator to assure that the Department and the Consignment State receive copies of manifests signed by the designated facility.	\$3,000	M	30 days
7:26G-6.1(c)10	Failure of generator to properly mark each container of hazardous waste prior to transportation.	\$4,500	NM	
7:26G-6.2	Failure of generator to use proper waste code(s) that accurately describe the shipment of hazardous waste, determined according to the waste hierarchy.	\$3,000	M	30 days
7:26G-6.3(a)1	Failure of transporter to contact generator for instructions or of generator to give transporter instructions when a facility immediately rejects all or part of a shipment of hazardous waste or the transporter is unable to deliver the hazardous waste to the designated facility.	\$5,000	NM	
7:26G-6.3(a)1i	Failure of generator, transporter, or facility to comply with manifest requirements for shipments of	\$3,000	M	30 days

	hazardous waste returned to the generator.			
7:26G-6.3(a)1ii	Failure of generator, transporter, or facility to comply with manifest requirements for shipments of hazardous waste delivered to an alternate hazardous waste facility.	\$3,000	M	30 days
7:26G-6.3(a)2	Failure of generator, transporter, or facility to comply with manifest requirements when a facility rejects all or part of a shipment of hazardous waste and the manifest has been distributed by the facility.	\$3,000	M	30 days
7:26G-6.3(b)	Failure of transporter to accept a hazardous waste shipment when it is rejected by the designated facility and the waste was mixed or commingled by the transporter.	\$5,000	NM	
7:26G-6.3(c)	Failure of transporter who accepts a return shipment of rejected waste under N.J.A.C 7:26G-6.3(b) to comply with the requirements of N.J.A.C 7:26G-6.3(c)1 and 2.	\$5,000	NM]	

4. The violations of N.J.A.C. 7:26G-7, Standards Applicable to Transporters 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 263 Subpart A-General)

(No change.)

(40 C.F.R. Part 263 Subpart B-Compliance with the Manifest System and Recordkeeping)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
§263.20(a) <b><u>1</u></b>	Failure of transporter accepting hazardous waste from a generator to ensure it is accompanied by a manifest signed in accordance with the provisions of 40 C.F.R. [262.20] <del>262.23</del> .	\$3,000	M	30 days
<b><u>§263.20(a)</u></b> <b><u>2</u></b>	<b><u>Failure of transporter accepting exported waste to ensure that the waste was accompanied by and conformed to the EPA Acknowledgement of Consent.</u></b>	<b><u>\$3,000</u></b>	<b><u>M</u></b>	<b><u>30 days</u></b>
* * *				
§263.21(b) <b><u>(1)</u></b>	Failure of transporter to contact generator for instructions [or to revising] <b><u>and to revise</u></b> manifest <b><u>in accordance with generator's instructions</u></b> in case of undeliverable shipment.	\$5,000	NM	
<b><u>§263.21(b)</u></b> <b><u>(2)</u></b>	<b><u>Failure of transporter to comply with the requirements of 40 CFR 263.21(b)2 when hazardous waste is rejected by the designated facility while the transporter is on</u></b>	<b><u>\$5,000</u></b>	<b><u>NM</u></b>	

	<u>the facility's premises.</u>			
* * *				

(40 C.F.R. Part 263 Subpart C-Hazardous Waste Discharges)

(No change.)

(N.J.A.C. 7:26G-7)

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty or Matrix</u>	<u>Type of Violation</u>	<u>Grace Period</u>
* * *				
<b><u>7:26G-7.4(j)</u></b>	<b><u>Failure of transporter to accept a hazardous waste shipment when it is rejected by the designated facility and the waste was commingled by the transporter.</u></b>	<b><u>\$5,000</u></b>	<b><u>NM</u></b>	
<b><u>7:26G-7.4(j)1 and 2</u></b>	<b><u>Failure of transporter who accepts a return shipment of rejected waste to secure rejected waste in a hazardous waste transfer facility and make arrangements with an authorized facility to receive and manage the waste.</u></b>	<b><u>\$5,000</u></b>	<b><u>NM</u></b>	

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.)

(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>
* * *				
§264.71(a) [(1)] <b><u>(2)(i)</u></b>	Failure of facility owner, [or] operator, <b><u>or agent</u></b> to sign or date manifest.	\$3,000	M	30 days
§264.71(a) (2) <b><u>(ii)</u></b>	Failure of facility owner [or], operator, <b><u>or agent</u></b> to note any significant discrepancies in the manifest on each copy of the manifest.	\$3,000	M	30 days
§264.71(a) [(3)] <b><u>(2)(iii)</u></b>	Failure of facility owner [or], operator, <b><u>or agent</u></b> to give transporter a copy of manifest or forward one copy to the Department.	\$3,000	M	30 days
§264.71(a) [(5)] <b><u>(2)(v)</u></b>	Failure of facility owner [or], operator, <b><u>or agent</u></b> to retain copy of manifest for 3 years.	\$3,000	M	30 days
<b><u>§264.71(a)</u></b> <b><u>(3)</u></b>	<b><u>Failure of facility owner or operator receiving hazardous waste imported from a foreign source to mail a copy of the manifest to EPA within 30 days of</u></b>	<b><u>\$3,000</u></b>	<b><u>M</u></b>	<b><u>30 days</u></b>

	<u>delivery.</u>			
<u>§264.71(e)</u>	<u>Failure of facility owner or operator to determine if consignment state regulates any additional wastes or if consignment state or generator state requires the facility to submit copies of the manifest.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
* * *				
<u>§264.72(d)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R.264.72(d) when rejecting waste or identifying a container residue that exceeds the quantity limits for “empty.”</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§264.72(e)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R.264.72(e) when sending full or partially rejected loads to an alternate facility.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§264.72(f)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R.264.72(f) when sending rejected wastes and residues back to the generator.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§264.72(g)</u>	<u>Failure of facility owner or</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>

	<u>operator to comply with the requirements of 40 C.F.R.264.72(g) when rejecting a waste or identifying a container residue that exceeds the quantity limits for “empty” after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator.</u>			
* * *				

(40 C.F.R. Part 264 Subparts F through O)

(No change)

(40 C.F.R. Part 264 Subpart W-Drip Pads)

Rule	Rule Summary	Base Penalty or Matrix	Type of Violation	Grace Period
* * *				
§264.573(b) ) (3)	Failure of facility owner or operator to record, in the facility’s operating log, the date and amount of leakage collected from a drip pad leakage collection system.	[Matrix] <b><u>\$3,000</u></b>	[NM] <b><u>M</u></b>	<b><u>30 days</u></b>
* * *				

(40 C.F.R. Part 264 Subpart EE)

(No change.)

6. The violations of N.J.A.C.7:26G-9, Interim Status 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 265 Subpart B–D)

(No change.)

(40 C.F.R. Part 265 Subpart E-Manifest System, Recordkeeping, and Reporting)

Rule	Rule Summary	Base Penalty or Matrix	Type of Violation	Grace Period
§265.71(a) [(1)] <b>(2)(i)</b>	Failure of facility owner [or], operator, <b>or agent</b> to sign or date manifest.	\$3,000	M	30 days
§265.71(a) (2) <b>(ii)</b>	Failure of facility owner [or], operator, <b>or agent</b> to note any significant discrepancies in the manifest on each copy of the manifest.	\$3,000	M	30 days
§265.71(a) [(3)] <b>(2)(iii)</b>	Failure of facility owner [or], operator, <b>or agent</b> to give transporter a copy of manifest.	\$3,000	M	30 days



§265.71(a) [(4)](2)(iv)	Failure of facility owner, [or], operator, <b><u>or agent</u></b> to send copy of manifest to generator within 30 days after delivery of hazardous waste.	\$3,000	M	30 days
§265.71(a) [(5)](2)(v)	Failure of facility owner [or], operator, <b><u>or agent</u></b> to retain copy of manifest for 3 years.	\$3,000	M	30 days
<b><u>§265.71(a)</u></b> <b><u>(3)</u></b>	<b><u>Failure of facility owner or operator receiving hazardous waste imported from a foreign source to mail a copy of the manifest to EPA within 30 days of delivery.</u></b>	<b><u>\$3,000</u></b>	<b><u>M</u></b>	<b><u>30 days</u></b>
<b><u>§265.71(e)</u></b>	<b><u>Failure of facility owner or operator to determine if consignment state regulates any additional wastes or if consignment state or generator state requires the facility to submit copies of the manifest.</u></b>	<b><u>\$3,000</u></b>	<b><u>M</u></b>	<b><u>30 days</u></b>
* * *				

§265.72 [(b)] (c)	Failure of facility operator to reconcile a significant discrepancy with the generator or transporter within 15 days of receipt or to report the unresolved discrepancy to the Department immediately thereafter.	\$3,000	M	30 days
<u>§265.72(d)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R. 265.72(d) when rejecting waste or identifying a container residue that exceeds the quantity limits for “empty.”</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§265.72(e)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R. 265.72(e) when sending full or partially rejected loads to an alternate facility.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>
<u>§265.72(f)</u>	<u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R. 265.72(f) when sending rejected wastes and residues back to the generator.</u>	<u>\$3,000</u>	<u>M</u>	<u>30 days</u>

<b><u>§265.72(g)</u></b>	<b><u>Failure of facility owner or operator to comply with the requirements of 40 C.F.R. 265.72(g) when rejecting a waste or identifying a container residue that exceeds the quantity limits for “empty” after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator.</u></b>	<b><u>\$3,000</u></b>	<b><u>M</u></b>	<b><u>30 days</u></b>
* * *				

(40 C.F.R. Part 265 Subpart F through EE)

(No change.)

7. (No change.)

8. The violations of N.J.A.C.7:26G-11, Land Disposal Restrictions, 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 268 Subparts A, C, and D)

(No change.)

(40 C.F.R. Part 268 Subpart E – Prohibitions on Storage)

Rule	Rule Summary	Base Penalty or Matrix	Type of Violation	Grace Period
* * *				

§268.50(a) (2)[i – ii] <b>(i)</b> <del><b>(ii)</b></del>	Failure of facility owner or operator storing restricted waste solely for the purpose of the accumulation of such quantities of waste as necessary to facilitate proper recovery, treatment, or disposal to include the accumulation start date on each container or tank.	\$3,000	M	30 days
* * *				

9. - 10. (No change.)

SUBCHAPTER 3. HAZARDOUS WASTE FEES

7:26G-3.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) – (e) (No change.)

[(f) The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.]

(g) Re-codify as (f) (No change in text.)

SUBCHAPTER 4. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7:26G-4.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **insert effective date of amendment** and prospectively incorporates by reference 40 C.F.R. Part 260, as amended and supplemented, except as provided in (b) and (c) below.

(b) (No change.)

(c) The following provisions of 40 C.F.R. Part 260 are incorporated by reference with the specified changes:

1. through 3. (No change.)

4. 260.10 Definitions:

i. (No change.)

[ii. "Manifest," after "Manifest" add "or State Manifest"; after "EPA form 8700-22" add "as modified by the State"; after "EPA form 8700-22A," add "or a form approved by the Department"; replace "part 262" with ""N.J.A.C. 7:26G-6";

iii.] **ii.** "New tank system or new tank component," at the end of the paragraph add "For non-HSWA tanks (that is, inground tank systems, onground tank systems, aboveground tank systems and underground tank systems that can be entered for inspection), Existing tank system or existing component means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to October 21, 1996."

5. through 12. (No change.)

13. Appendix I to Part 260 last paragraph, after "encouraged to write to EPA" add "and the Department"; after "(513) 684-5362" add "and New Jersey Department of Environmental Protection, [Division of] Solid and Hazardous Waste[, Bureau of Hazardous Waste] Regulation **Program**, PO Box [414] **422**, [120 South Stockton] **401 East State** Street, Trenton, NJ 08625-[0414] **0422**, (609)[292-7081]**984-2014**."

(d) – (f) (No change.)

## SUBCHAPTER 5. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

### 7:26G-5.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **(insert date of amendment)** and prospectively incorporates by reference 40 C.F.R. Part 261, Federal Regulations on Identification and Listing of Hazardous Waste, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) (No change.)

(c) The following provisions of 40 CFR Part 261 are incorporated by reference with the specified changes:

1. (No Change.)

**2. 40 C.F.R. 261.4(b)10, after “the corrective action regulations under part 280 of this chapter” add “or N.J.A.C. 7:14B”.**

2. through 15. Recodify as 3 through 16 (No change in text.)

(d) - (f) (No Change.)

## SUBCHAPTER 6. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

### 7:26G-6.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **(insert effective date of amendment)** and prospectively incorporates by reference 40 C.F.R. Part 262, Federal regulations on the standards applicable to generators of hazardous waste, as amended and supplemented, except as provided in (b) [and (c)] below.

[(b) The following provisions of 40 C.F.R. Part 262 are not incorporated by reference: Appendix to Part 262—Uniform hazardous waste manifest and instructions for EPA Form 8700-22 only.

(c)] **(b)** The following provisions of 40 C.F.R. Part 262 are incorporated by reference with the specified changes:

1. through 4. (No change.)

[5. 40 C.F.R. 262.20(a), after "according to the instructions included in the appendix to part 262" add "for EPA form 8700-22A and for EPA form 8700-22, according to the instructions in the appendix to N.J.A.C. 7:26G-6. If an out-of-state manifest is used, the generator shall complete Items A-K of the manifest even if the instructions on the back of the out-of-state manifest do not address these shaded portions."

6. 40 C.F.R. 262.21(a), at the end of the paragraph add "If the consignment State for the shipment is New Jersey, the generator shall use the manifest supplied by the Department.";

7. 40 C.F.R. 262.21(b), at the end of the paragraph add "In these situations, the generator shall use the manifest supplied by the Department.";

8. 40 C.F.R. 262.23(a)(3), after "in accordance with 262.40(a)" add "and forward one copy to the generator State and one copy to the consignment State";

9. 40 C.F.R. 262.23, after "subsection (e)", add new subsection "(f) The generator is responsible for assuring that the Department and the consignment State receive copies of the completed manifest containing the handwritten signatures of the owner or operator of the designated facility. If the designated facility is located in a state that does not mandate its facilities to return copies of the completed manifests to the generator state and the consignment state, the generator must so distribute these copies. The generator may provide photocopies to satisfy this requirement,

if the manifest form provided by the consignment State does not contain a sufficient number of copies. In the case of an interstate shipment for which the manifest has not been returned, the Department will provide notification to the consignment state and to the State in which the shipment may have been delivered (or to EPA, in the case of unauthorized states)";

10.] 5. 40 C.F.R. 262.32(b), remove 110 and replace with 119; after "HAZARDOUS WASTE—Federal" add "and/or State"; after "If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency" add "or the New Jersey Department of Environmental Protection"; [before "Manifest Document Number" add "State";]

**6. 40 C.F.R. 262.34(a)(2), after “visible for inspection on each container” add “or tank”.**

11. through 15. Recodify as 7. through 11. (No change in text.)

[16. 40 C.F.R. 262.54(e), delete the last sentence of the paragraph and replace with "For all export shipments, the primary exporter shall obtain the manifest from the Department.";

17. 40 C.F.R. 262.60(c), delete the last sentence of the paragraph and replace with "For all import shipments, the person who imports the waste shall obtain the manifest from the Department.";]

18. through 19. Recodify as 12 through 13 (No change in text.)

(d) through (f) Re-codify as (c) through (e) (No change in text.)

## SUBCHAPTER 7. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

7:26G-7.1 Incorporation by reference



(a) This subchapter incorporates by reference up to [May 6, 2002] (**insert effective date of amendment**) and prospectively incorporates by reference 40 C.F.R. Part 263 Federal regulations on the standards applicable to transporters of hazardous waste, as amended and supplement, except as provided in (b) and (c) below.

(b) (No change.)

(c) The following provisions of 40 C.F.R. 263 are incorporated by reference with the specific changes:

1. 40 C.F.R. 263.10(c)2, replace "of different DOT shipping descriptions by placing them into a single container" with "and has the shipment of hazardous waste rejected by the designated facility. The transporter shall comply with the requirements at [N.J.A.C. 7:26G-6.3(b)-(c)] **N.J.A.C. 7:26G-7.4(j)** and will not be subject to the provisions at §262.34."

2. through 3. (No change.)

(d) (No change.)

#### 7:26G-7.3 Other requirements

(a) through (b) (No change.)

(c) If the hazardous waste is rejected by the designated facility or if the transporter is unable to deliver the shipment of hazardous waste to the designated facility and no alternate facility is noted on the manifest, the transporter shall comply with all applicable transporter requirements at [N.J.A.C. 7:26G-6.3(a)] **40 C.F.R. 263.21(b) as incorporated by reference at N.J.A.C. 7:26G-7.1.**

#### 7:26G-7.4 Requirements for hazardous waste transfer facilities

(a) through (i) (No change.)

(j) If a shipment of hazardous waste is rejected by a designated facility after a transporter has commingled hazardous wastes, the transporter [must] **shall** comply with requirements set forth at [N.J.A.C. 7:26G-6.3(b) and (c) and any additional requirements set forth at] N.J.A.C. 7:26G-7.1(c)1 **and accept the return shipment of the rejected waste. If a transporter accepts a return shipment of rejected waste, the transporter shall:**

**1. Promptly place and secure the rejected waste in a hazardous waste transfer facility; and**

**2. Make arrangements with an authorized facility to receive and manage the commingled waste.**

(k) (No change.)

SUBCHAPTER 8. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS  
WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

7:26G-8.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **(insert effective date of amendment)** and prospectively incorporates by reference 40 C.F.R. Part 264, Federal regulations on the standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b), (c) and (d) below.

(b) (No change.)

(c) The following provisions of 40 C.F.R. Part 264 are incorporated by reference with the specified changes:

1. – 4. (No change.)

5. 40 C.F.R. 264.71(a)(3)~~(2)~~**(iii)**, after “one copy of the [signed] manifest” add “, and forward the pertinent copy of the manifest form to the Department and to the generator's State agency[, by the next business day”], **provided the generator’s State agency requires the submittal of manifest copies. These manifest copies must be postmarked within 10 days of waste receipt.”**;

6. 40 C.F.R. 264.71(b)(3), after “one copy of the manifest or shipping paper (if the manifest has not been received)” add “, and forward the pertinent copy of the manifest form to the Department and to the generator's State agency [by the next business day”], **provided the generator’s State agency requires the submittal of manifest copies. These manifest copies must be postmarked within 10 days of waste receipt”**;

7. – 15. (No change.)

(d) – (i) (No change.)

## SUBCHAPTER 9. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

### 7:26G-9.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **(insert effective date of amendment)** and prospectively incorporates by reference 40 C.F.R. Part 265. Federal regulations on the interim status standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, and its appendices, as amended and supplemented, except as provided in (b) and (c) below.

(b) – (h) (No change.)

SUBCHAPTER 10. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7:26G-10.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **insert date of readoption** and prospectively incorporates by reference 40 C.F.R. Part 266 (including all appendices), Federal regulations on the management of specific hazardous waste, as amended and supplemented, except as provided in (b) and (c) below.

(b) – (d) (No change.)

SUBCHAPTER 11. LAND DISPOSAL RESTRICTIONS

7:26G-11.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **insert effective date of amendment** and prospectively incorporates by reference 40 C.F.R. Part 268, Federal regulations on Land Disposal Restrictions, and the Appendices to 40 C.F.R. Part 268, as amended and supplemented, except as provided in (b) and (c) below.

(b) – (g) (No change.)

SUBCHAPTER 12. HAZARDOUS WASTE PERMIT PROGRAM

7:26G-12.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **insert effective date of amendment** and prospectively incorporates by reference 40 C.F.R. Part 270, Federal regulations

on USEPA administered permit programs: the hazardous waste permit program, as amended and supplemented, except as provided in (b) and (c) below.

(b) (No Change.)

(c) The following provisions of 40 C.F.R. Part 270 are incorporated by reference with **the** specified changes:

1. - 5. (No change.)

6. 40 C.F.R. [270.149(b)(1)] **270.14(b)(19)**, after “A topographic map” add “, prepared in a manner and format consistent with N.J.A.C. 7:1D, Appendix A,”;

7. through 18. (No Change.)

(d) - (g) (No Change.)

## SUBCHAPTER 13. PROCEDURES FOR DECISIONMAKING

### 7:26G-13.1 Incorporation by reference

(a) This subchapter incorporates by reference up to [May 6, 2002] **(insert effective date of amendment)** and prospectively incorporates by reference 40 C.F.R. Part 124, as amended and supplemented, except as provided in (b) and (c) below. 40 C.F.R. Part 124, Subparts A and B are adopted by reference solely for the purpose of establishing procedures regarding hazardous waste management permits.

(b) – (c) (No change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Statement 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 proposed readoption with amendments and repeals. I hereby authorize this proposed readoption with amendments and repeals.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lisa P. Jackson, Commissioner  
Department of Environmental Protection