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## **ENVIRONMENTAL PROTECTION**

### **COMPLIANCE AND ENFORCEMENT**

#### **County Environmental and Waste Enforcement**

### **ENVIRONMENTAL REGULATION**

#### **Solid and Hazardous Waste Programs**

#### **Requirements for Rail Carriers that Transfer Non-containerized Solid Waste to or from Rail Cars**

**Proposed Amendments:** N.J.A.C. 7:26-2.1 and 2D.1

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

Authority: N.J.S.A. 13:1B-1 et seq.; 13:1D-1 et seq.; 13:1E-1-9

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

DEP Docket No: 18-08-10-698

Proposal Number: PRN 2008 -

A public hearing concerning this proposal will be held on:

Date: December 15, 2008

Time: 10:00 A.M. to noon or close of comments, whichever occurs first

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

Submit written comments by (no later than 60 days after publication of this proposal) to:

Leslie W. Ledogar, Esquire

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

Office of Legal Affairs

New Jersey Department of Environmental Protection

P.O. Box 402

Trenton, New Jersey 08625-0402

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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittal of a disk or CD is not a requirement. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. 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 page at [www.state.nj.us/dep/rules](http://www.state.nj.us/dep/rules).

The agency proposal follows:

### **Summary**

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

The Solid Waste rules, N.J.A.C. 7:26, constitute the Department's rules that govern the registration, operation, maintenance and closure of sanitary landfills and other solid waste facilities, registration, operation and maintenance of solid waste transporting operations and facilities, fees for services provided by the Department to solid waste facilities, generator and transporters, and the assessment of civil administrative penalties for rule violations. Subchapter 2 of these rules sets forth the procedures for obtaining, maintaining, and modifying a solid waste facility (SWF) permit. It also sets forth the submission requirements for an environmental health impact statement and the general engineering design requirements for a solid waste facility. In addition, this subchapter contains the general operational requirements for solid waste facilities, including registration criteria. Under the requirements at N.J.A.C. 7:26-2, a solid waste facility may not receive a permit from the Department for its operations unless and until, among other

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things, the Department has received written documentation that the facility is included in the applicable district solid waste management plan (or that the application has been submitted to the appropriate public authority seeking plan inclusion), and the facility has submitted a disclosure statement and received approval (often referred to as “A-901” approval ) pursuant to N.J.S.A. 13:1E-126 et seq. (A-901 was the number of the bill adopted in 1983 and codified as N.J.S.A. 13:1E-126 et seq.).

N.J.A.C. 7:26-2.1(c)1 exempts from subchapter 2 rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars. The exemption at N.J.A.C. 7:26-2.1(c)1 provides that these rail carriers are not, however, exempt from regulation under the Solid Waste Management Act, and establishes that they are subject to N.J.A.C. 7:26-2D, which contains the requirements on rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars, including the substantive operating and reporting requirements for noncontainerized rail carrier transfer stations at N.J.A.C. 7:26-2D.1(d). These provisions, as originally adopted, reflected the Department’s understanding at that time of the reach of the preemptive effect of the Federal Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. § 10101 et seq., on State regulation of rail carrier operations involving acceptance, storage, handling, or transfer of waste at a rail facility. The exemption at N.J.A.C. 7:26-2.1(c)2 exempts rail carriers engaged in the business of solid waste disposal or transportation by rail, but that do not engage in solid waste collection by other means of transportation in New Jersey, from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16.3.

On October \_\_\_\_, 2008, the Federal Rail Safety Improvement Act of 2008, Pub. L. No. 110- \_\_\_\_ (the Act), was signed into law. The Act contains provisions that limit the scope of the ICCTA preemption of state regulation of operations involving collection, storage, separation, processing, treatment, management, or disposal of noncontainerized waste at a rail facility. The Act expressly authorizes states to regulate and permit solid waste rail transfer facilities (other than facilities that only transfer containerized waste), with limits and qualifications as to the application of siting requirements for rail carrier transfer stations and the specific types of waste governed. For solid waste rail transfer facilities currently operating as of the effective date of

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the Act, the Act provides a transition period for state permitting. Specifically, existing solid waste rail transfer facilities that do not possess the required permit(s), other than a siting permit, are not required to possess any such permits to continue to operate the facility provided that, on or before 180 days after the effective date of the Act, the facility has submitted a complete application for all required permits. Such a facility may continue to operate without the required permit(s) until the permit authority has either approved or denied the facility's application(s). With respect to siting permits, a solid waste rail transfer facility operating as of the effective date of the Act that does not possess a State siting permit is not required to apply for a siting permit to continue to operate. However, the Act provides that the Governor of the State in which the facility is located (or his/her designee) may petition the Federal Surface Transportation Board (STB) to require the facility to apply for a land use exemption pursuant to the Act. If the STB grants a land use exemption to the facility, then no siting permit is required. Should the STB deny the facility's request for a land use exemption, then the facility must comply with the state siting requirements. New Jersey's solid waste regulations at N.J.A.C. 7:26 do not require a separate "siting" permit. Siting of a solid waste disposal facility is addressed through the district solid waste management planning process and the solid waste facility permitting process.

As noted above, the Act gives states express authorization to regulate the transfer of noncontainerized solid waste by rail carriers. Solid waste as defined by the Act includes, but is not limited to, construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste as determined appropriate by the STB. Specifically excluded from regulation under the Act are waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles), and waste generated as a result of a railroad accident, incident, or derailment. Additionally excluded are yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; and motor vehicles.

As a consequence of the enactment of this Federal legislation, the Department proposes to amend N.J.A.C. 7:26-2.1 and N.J.A.C. 7:26-2D.1 to provide that rail carriers that transfer

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noncontainerized solid waste to and from rail cars are subject to the Department's permitting and operational requirements for solid waste facilities. The effect of these proposed amendments is that if a rail carrier wishes to continue to operate a noncontainerized rail carrier transfer station, it is required to come into compliance with the Department's solid waste facility permitting provisions at N.J.A.C. 7:26-2, solid waste planning at N.J.A.C. 7:26-6 and A-901 approval pursuant to N.J.A.C. 7:26-16. Proposed new N.J.A.C. 7:26-2.1(d) requires rail carriers that are operating under N.J.A.C. 7:26-2D to come into compliance with the aforementioned requirements within 180 days of the effective date of the amendments, a timeframe consistent with that established under the Federal legislation.

A description of the specific proposed amendments and new rules follows.

#### **N.J.A.C. 7:26-2.1 Scope and Applicability**

At N.J.A.C. 7:26-2.1, the Department is proposing to delete from the exemption for rail carriers at N.J.A.C. 7:26-2.1(c)1 reference to the transfer of noncontainerized waste. The exemption as amended will apply only to rail carriers that transfer containerized waste, for which specific requirements are established at existing N.J.A.C. 7:26-2D. The Department will continue to regulate the transfer of containerized waste by rail carriers under N.J.A.C. 7:26-2D.1(c) as the Federal legislation does not affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards. These amendments will result in the regulation of noncontainerized rail carrier transfer stations under the Department's long-standing solid waste facility permitting provisions at N.J.A.C. 7:26-2 and related provisions, including the A-901 regulations at N.J.A.C. 7:26-16 and planning regulations at N.J.A.C. 7:26-6.

At N.J.A.C. 7:26-2.1(c)2, the Department proposes to delete the exemption from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16 to the Department for rail carriers that transfer noncontainerized waste to or from rail cars. A-901 approval is a type of permit the Federal legislation authorizes. Rail carriers that transfer strictly containerized solid

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waste to or from rail cars will continue to be exempt from A-901 approval provided they do not engage in the business of solid waste collection. The Department is also correcting a citation to the Solid Waste Management Act.

Proposed new N.J.A.C. 7:26-2.1(d) provides the timeframe by which rail carriers operating under the regulations at N.J.A.C. 7:26-2D.1(d) must come into compliance with the Department's permitting requirements. Consistent with the timeframe provided in the Federal Act, these existing facilities must submit required permit documents within 180 days of the effective date of the amendments. The Department believes that six months is a sufficient amount of time to prepare and submit the referenced documents. Exemption under the Federal Act for existing rail carrier facilities from the requirement to comply with State siting permits does not exempt these rail carriers from applying for district solid waste management plan inclusion nor solid waste facility permitting. As noted earlier, siting is only a portion of the planning and facility permitting process.

**N.J.A.C. 7:26-2D.1 Requirements on rail carriers that transfer containerized or noncontainerized solid waste to or from rail cars**

At N.J.A.C. 7:26-2D.1(b) the Department proposes to delete the references to "noncontainerized" solid waste transfer by rail carriers. Rail carriers that transfer noncontainerized solid waste to or from rail cars will provide the information currently required by this subsection through the required permitting, planning and A-901 provisions.

Lastly, the Department is proposing to delete the provisions at N.J.A.C. 7:26D.1(d). As noted earlier, rail carriers that transfer non-containerized solid waste to or from rail cars must comply with the Department's full permitting requirements at N.J.A.C. 7:26-2, including the planning provisions at N.J.A.C. 7:26-6 and the A-901 disclosure requirements at N.J.A.C. 7:26-16.

**Social Impact**

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The proposed amendments will have a positive social impact by requiring rail carriers engaged in operating noncontainerized solid waste facility transfer stations to comply with the full panoply of solid waste facility permitting requirements. Applying these standards, and requiring compliance with a permit reflecting the nature and limitations of each particular transfer station, will result in a significant increase in the Department's ability to protect the public health and safety from the hazards posed by transfer station operations. Applying the requirements of A-901 to rail carriers operating such transfer stations will help ensure the exclusion of organized crime, other criminals, and chronic environmental offenders, from the business of operating such transfer stations. Applying the planning requirements of the Solid Waste Management Act to such transfer stations will allow solid waste management districts to engage in rational planning to deal with solid waste issues in their respective districts, thereby resulting in lower costs to the public, and safer and more efficient collection and disposal of solid waste.

### **Economic Impact**

The economic impact of the proposed amendments will be beneficial because they will result in safer and more efficient solid waste operations, with a significantly decreased chance of releases of pollutants to the air or surface or groundwater. They will also allow the Department to help ensure the exclusion of organized crime, other criminals, and chronic environmental offenders, from the business of operating such transfer stations. Illicit activities often drive up the costs to the public of solid waste disposal, and poor environmental management often leads to the release of pollutants to the environment requiring a costly cleanup at public expense. The Department does not believe that there will be a significant negative economic impact from these amendments on noncontainerized rail carrier facilities, because the substantive requirements of compliance with the Subchapter 2D regulations, which are modeled on the substantive provisions of N.J.A.C. 7:26-2, are similar. Moreover, compliance by rail carrier facilities with the long-standing regulations governing transfer station operations in New Jersey will put rail carrier facilities on a level playing field with non-rail carrier facilities. Noncontainerized rail

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carrier facilities will incur the same costs as non-rail carrier facilities with respect to the costs of permitting, which may include additional costs for consultants and engineers to, for example, develop plans or purchase equipment. Specific costs that these rail carriers can expect to incur include, but are not limited to, an annual compliance monitoring fee, which ranges from \$7,990 to \$9,895; the initial solid waste permit application fee for a transfer station and/or materials recovery facility of \$138,680; an annual facility registration update fee of \$6,006, and the A-901 application and annual fee which ranges from \$635.00 to \$15,650, depending on the number of individuals required to be listed on the disclosure form.

Finally, applying the planning requirements of the Solid Waste Management Act to such transfer stations will allow solid waste management districts to engage in rational planning to deal with solid waste issues in their respective districts, resulting in lower costs to the public.

### **Environmental Impact**

The proposed amendments will provide a positive environmental impact by requiring rail carriers engaged in operating noncontainerized solid waste facility transfer stations to comply with the full panoply of solid waste facility permitting requirements. Applying these standards and requiring compliance with a permit reflecting the nature and limitations of each particular transfer station will result in a significant increase in the Department's ability to protect the environment from the release of pollutants into the air, and to surface or groundwater. Applying the A-901 registration requirements to rail carriers operating non-containerized transfer stations will lessen the chance that criminal elements or chronic environmental offenders will be in a position to discharge such pollutants, whether intentionally or through a lack of expertise and competence.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq. and Executive Order No. 27 (1994) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to

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include in the rulemaking document a Federal Standards Analysis. Existing Federal standards for transfer stations are, at most, minimal, because regulation of solid waste has traditionally been recognized as primarily a state rather than a Federal concern. See 42 U.S.C. § 6901(a)(4) (recognizing that although Federal guidance was required, the regulation of solid waste disposal “should continue to be primarily the function of state, regional and local agencies”); Old Bridge Chemicals, Inc. v. New Jersey Dep’t of Env’tl. Prot., 965 F.2d 1287, 1292 (3d Cir. 1992) (“[A]lthough Congress recognized the need for Federal regulation, it stated that ‘the collection and disposal of solid wastes should continue to be primarily the function of the State.’”); Kleenwell Biohazard Waste & Gen. Ecology Consultants, Inc., 48 F.3d 391, 398 (9th Cir. 1995) (“Congress has explicitly found that the field of solid waste collection is properly subject to state regulation”).

New Jersey’s statutory and regulatory scheme to regulate the collection, transfer, and disposal of solid waste conform to this Federal expectation that the collection, transfer and disposal of solid waste remain primarily a State function. The new Federal Act recognizes that the ICCTA, at least as interpreted by a number of courts and the Surface Transportation Board, unduly interfered with this longstanding understanding that State regulation of solid waste was primarily a State function. Therefore, the Federal Act was drafted to restore to states the authority to exercise their traditional right to regulate the collection, transfer and disposal of solid waste at noncontainerized rail carrier transfer stations. Enactment of this Federal Act allows that Congressional intent to be implemented, and restores in large part the traditional right of the states to regulate solid waste at noncontainerized rail carrier transfer stations.

New Jersey is one of the most densely populated states in the nation and is highly industrialized. Its waste industry has historically been a target of organized crime. It is therefore particularly important for New Jersey to have a strong regulatory program governing the collection, transfer and disposal of solid waste. The proposed amendments will restore the ability of the Department to apply the Solid Waste Management Act, and the long-standing rules adopted pursuant to that Act, to noncontainerized rail carrier transfer stations.

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### **Jobs Impact**

The proposed amendments are anticipated to have minimal impact on jobs within the State as they only change the provisions under which noncontainerized rail carrier transfer stations are regulated. There may be a loss of jobs at rail carrier facilities currently in operation that choose not to continue to transfer noncontainerized waste, although the Department is not aware that there are any such facilities. As noted above, there will be added costs for rail carriers that operate these transfer stations. These additional costs do not appear likely to result in job losses. There may be an increase in jobs related to ensuring compliance with permitting requirements, and additional jobs created in the engineering/consulting sector because of planning, and operation and design requirements.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has determined that the proposed amendments will have no detrimental impact on the State's agriculture industry because the regulated community to which they apply is not affiliated with or a part of the State's agricultural industry.

### **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 which employ fewer than 100 full-time employees. Rail carriers with existing noncontainerized transfer stations range in size from large, publicly traded entities with thousands of employees to privately held concerns with fewer than 100 employees. The proposed amendments will restore application of solid waste regulations otherwise applicable to all transfer stations in New Jersey to a single small class of rail carrier transfer stations. The existing regulatory structure already includes provisions to minimize adverse economic impacts on smaller transfer stations by, for example, reducing compliance monitoring fees for smaller transfer stations. See N.J.A.C. 7:26-4.3(b). Ultimately, however, it is necessary to strictly

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regulate any transfer station, regardless of the number of its employees, since even small transfer stations, on a weekly basis, handle hundreds of tons of solid waste that can pose significant risks to the public health, safety and general welfare if not properly handled. N.J.S.A. 52:14B-18c. As noted in the economic impact statement, there will be added costs of compliance on those rail carriers that are small businesses, including the costs of consultants and/or engineers to handle the planning and facility design requirements of these new rules. The proposed amendments will not result in added recordkeeping and reporting requirements for small businesses other than on-site retention of the permit and an operations and maintenance manual.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to 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 and has determined that the nature and extent of the proposed amendments will have no impact on smart growth and the implementation of the State Plan. Since the proposed amendments will encourage protection of the environment, including solid waste planning, the amendments support the conservation and environmental protection goals and policies underlying the State Plan.

### **Housing Affordability Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008 by P.L. 2008, c. 46, the Department has evaluated the proposed amendments to determine their impact, if any, on the affordability of housing. The Department has determined that the proposed amendments will have no impact because it is extremely unlikely that the rules will evoke a change in the average costs associated with housing. The subject of the proposed amendments is rail carriers, a regulated community that has little if no impact on housing or its affordability.

### **Smart Growth Development Impact Analysis**

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Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed amendments at N.J.A.C. 7:26-2.1 and 2D.1 to determine their impact, if any, on smart growth development. The Department has determined that the proposed rules will result in an insignificant impact because it is an extremely unlikely that the rules will evoke a change in housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments have no direct impact on the continued use and habitability of existing residences; rather, they regulate rail carriers. Therefore the proposed amendments will not evoke a change in housing production in Planning areas 1 or 2, or within designated centers.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions are indicated in brackets [thus]):

## **CHAPTER 26: SOLID WASTE RULES**

### SUBCHAPTER 2. DISPOSAL

#### 7:26-2.1 Scope and applicability

(a) – (b) (No change.)

(c) This subsection sets forth the specific criteria for exempting rail carriers:

1. This subchapter does not apply to a rail carrier that transfers containerized [or noncontainerized] solid waste to or from rail cars. For the purpose of this subchapter, the term "rail carrier" shall mean a person as defined in 49 U.S.C. § 10102(5) that provides common carrier railroad transportation and has been approved pursuant to 49 U.S.C. § § 10901 or 10902, by the United States Surface Transportation Board (or its predecessor agency) or otherwise has been recognized as a rail carrier by such agency, and holds out to the general public that the operations at the facility for which the exemption under this subchapter is applicable are being conducted by it or on its behalf as part of its rail transportation services. However, a rail carrier

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that transfers containerized [or noncontainerized] solid waste to or from rail cars is not exempt from regulation pursuant to the Solid Waste Management Act, and shall be subject to the provisions of N.J.A.C. 7:26-2D.

2. Rail carriers engaged in the business of solid waste [disposal or] transportation by rail[,] **or the transfer of containerized solid waste to or from rail cars,** but that do not engage in the business of solid waste collection (as defined by N.J.S.A. 13:1[3]E-3) by other means of transportation within the State of New Jersey, are exempted from the requirement to submit a disclosure statement pursuant to N.J.A.C. 7:26-16.3.

3. (No change.)

**(d) A rail carrier as defined at (c)1 above that transfers noncontainerized solid waste to or from rail cars that is in compliance with N.J.A.C. 7:26-2D.1 as of (the effective date of the these amendments), shall submit the following documents within 180 days of (the effective date of these amendments):**

**1. Disclosure statements required under N.J.A.C. 7:26-16;**

**2. An administratively complete application consistent with all State and local requirements to the designated plan implementation agency for the purpose of seeking inclusion in the applicable District Solid Waste Management Plan. If the applicable Board of Chosen Freeholders, or the New Jersey Meadowlands Commission, as the case may be, has not amended the District Solid Waste Management Plan to include the facility pursuant to the requirements of N.J.S.A. 13:1E-23 et seq. within six months after receiving an administratively complete application for plan inclusion, the rail carrier shall submit same to the Department requesting plan inclusion; and**

**3. A complete application for a solid waste facility permit to the Department.**

SUBCHAPTER 2D. REQUIREMENTS ON RAIL CARRIERS THAT TRANSFER CONTAINERIZED [OR NONCONTAINERIZED] SOLID WASTE TO OR FROM RAIL CARS

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7:26-2D.1 Requirements on rail carriers that transfer containerized [or noncontainerized] solid waste to or from rail cars

(a) (No change.)

(b) A rail carrier that transfers containerized [or noncontainerized] solid waste to or from rail cars shall provide the Division of Solid and Hazardous Waste with the following information prior to commencing solid waste transportation operations within the State of New Jersey: a description of the geographical location of the rail carrier's facility, identifying the name of the municipality in which the facility is located and the address of the facility. This information shall be sent to:

New Jersey Department of Environmental Protection

Division of Solid and Hazardous Waste

401 East State Street, PO Box 414

Trenton, New Jersey 08625-0414

(c) (No change.)

(d) A rail carrier that engages in the transportation of solid waste at a facility owned by such rail carrier within the State of New Jersey, and that engages in any form of solid waste tipping (such as onto the floor of a building or other structure), processing, sorting or compaction, or the removal of solid waste from a container to transfer to another container or vehicle, shall comply with the following requirements:

1. All facility processing, tipping, sorting, loading, storage and compaction of materials (that is, solid waste and mixtures of solid waste and recyclable materials) shall occur within the confines of an enclosed building that complies with all requirements of the Uniform Construction Code;

2. Facility shall have concrete or equivalent tipping floors or ramps to ensure proper containment and channeling of wastewater to sanitary sewer connections or holding tanks and constructed to withstand heavy vehicle usage, in compliance with applicable rules regarding the discharge of wastewater and the utilization of holding tanks at N.J.A.C. 7:14B;

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3. Facilities shall have a system that collects, stores, and properly disposes of wastewater generated during normal operations, including wash-out and cleaning of equipment, trucks, and floors, in compliance with the applicable rules regarding wastewater and stormwater management at N.J.A.C. 7:14A;

4. Within each 24-hour period, the operator shall clean each area where waste has been deposited or stored;

5. No waste shall be stored overnight without effective treatment to prevent odors associated with putrefaction;

6. Facility property surrounding the actual waste management area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residuals and effluents. Methods (such as fencing) of effectively controlling windblown papers and other lightweight materials shall be implemented;

7. Methods of effectively controlling dust shall be implemented in order to prevent migration outside the enclosed building and off-site;

8. The operation shall not result in the migration of odors outside the confines of the enclosed building or the emission of air contaminants, except by locomotive or locomotive engine, in violation of N.J.A.C. 7:27-5.2(a);

9. An adequate water supply and adequate fire-fighting equipment shall be maintained or be readily available to extinguish any and all types of fires. Fire-fighting procedures, including the telephone numbers of local fire, police, ambulance and hospital facilities, shall be posted in and around the facility at all times;

10. The operator shall effectively control insects, other arthropods and rodents at the facility by means of a program in compliance with N.J.A.C. 7:30, and implemented by an applicator of pesticides, certified in accordance with the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

11. The facility shall operate certified scales for the reporting requirements of N.J.A.C. 7:26-2.13 for waste transported by trucks;

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12. Facilities' on-site roadways and storage areas shall have concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

13. The queuing and staging of solid waste vehicles on any public roadway is prohibited;

14. The queuing and staging of solid waste vehicles shall be conducted so as to prevent traffic backups and related traffic hazards on access roads servicing the facility;

15. Facilities and all appurtenances, other than those owned or operated by rail carriers, including vehicles while on-site, shall be positioned and buffered in such a manner that sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control rules, N.J.A.C. 7:29, and rail carriers shall at all times comply with the noise emission standards set forth in Title 49 C.F.R., Part 210, and any applicable regulation promulgated pursuant to the State Noise Control Act, N.J.S.A. 13:1G-1 et seq.;

16. Only solid waste vehicles properly registered pursuant to N.J.A.C. 7:26-3 with the Division of Solid and Hazardous Waste, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number and solid waste decal shall be admitted for loading or unloading of any solid waste at the facility;

17. The facility shall designate a secure area under the facility's control, located at a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles that are either exempt from registration requirements of N.J.A.C. 7:26-3.3 or which must be manually unloaded. Bulky items and recyclable materials may be provided for in this manner;

18. The facility may establish a separate secure area for the drop-off and/or transfer of asbestos and asbestos-containing waste material (ACWM). The facility shall ensure that the container used for drop-off and/or transfer is fully enclosed and located on an impermeable surface. No person other than facility personnel or a licensed commercial asbestos removal contractor may load the asbestos or ACWM into the container used for drop-off and/or transfer;

19. Rail carrier transfer stations and materials recovery facilities who receive, store or transfer only ID 72 liquid wastes are not required to comply with (d)1 and 2, 4 through 7, 10, 17

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and 18 above; however, these rail carriers shall operate in accordance with the following standards:

i. Rail carriers may pump ID 72 liquid waste directly from or to rail cars and other transportation vehicles provided all loading and unloading areas employed are equipped with a means of secondary containment or diversion designed to prevent leaked waste from being discharged to the environment. The secondary containment or diversion system shall block all probable routes by which leaked waste could reasonably be expected to become discharge and have a capacity to contain the volume of the largest compartment in any tank car or tank truck utilizing the area;

ii. A rail carrier shall not store ID 72 wastes other than in containers and/or aboveground tanks;

iii. Containers and aboveground tanks used to store ID 72 liquid wastes shall be in good condition (no severe rusting, apparent structural defects or deterioration) and not leaking (no visible leaks);

iv. Containers and aboveground tanks shall be equipped with a secondary containment system consisting of dikes, berms, or retaining walls, and a floor that shall cover the entire area within the secondary containment system and be sufficiently impervious to waste materials to prevent any waste materials released into the contaminant system from migrating out of the system to the soil, groundwater or surface water;

v. Before a facility receives, stores, or transfers ID 72 liquid waste, the facility shall obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, the analysis shall contain all of the information that must be known to receive, store or transfer the waste. This analysis may include published or documented data on the waste, or on wastes generated in similar processes. The analysis shall be repeated as necessary to ensure it is accurate and up to date;

vi. Rail carriers that receive, store or transfer incompatible wastes or mixtures of incompatible wastes and other materials shall take precautions to prevent reactions that generate extreme heat or pressure, fire or explosions, or violent reactions; produce uncontrolled toxic

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mists, fumes or gases in sufficient quantities to threaten human health or the environment; produce uncontrolled flammable fumes or gases in sufficient quantities to pose risk of fires or explosions; damage the structural integrity of the equipment or the facility; or through other like means threaten human health or the environment. The facility shall document compliance with precautions upon request by the Department of Environmental Protection. This documentation may be based on references to published scientific literature, data from trial tests (for example, bench scale or pilot scale tests), waste analysis, or the results of treatment of similar wastes by similar treatment processes and under similar operating conditions; and

vii. Upon detection of a release of ID 72 liquid waste to the environment, the facility shall stop the release; contain the released material; clean up and properly manage the released wastes and other materials; and if necessary, repair and replace any leaking storage or treatment containers or tanks prior to returning them to service;

20. A rail facility shall not accept or in any manner handle hazardous waste as defined at N.J.S.A. 13:1E-38 or regulated medical waste as defined at N.J.S.A. 13:1E-48.3 except in compliance with all applicable requirements for such activities pursuant to this chapter and N.J.A.C. 7:26G. If the facility inadvertently accepts an unauthorized waste type, the facility shall immediately report the event to the Department's Hotline at 1-877-WARNDEP, and place the waste in a secure area under the facility's control, located a safe distance away from active waste areas, until the operator receives instruction from the Department as to the proper disposal of the waste;

21. Nonputrescible solid waste shall not remain at the rail facility for more than 10 days, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. Putrescible solid waste shall not remain at any rail facility for greater than 72 hours;

22. Effective security procedures shall be implemented to control entry and exit at all times;

23. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or other portion of a rail facility, at any time. This right to enter and inspect includes, but is not limited to:

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- i. Observing and sampling any materials on-site;
- ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or noncompliance with the statutes and regulations of the Department; and
- v. Reviewing and copying all records that are required to be maintained by Federal or State law, which shall be made available on request to the Department representatives and inspectors at all reasonable times for review and inspection;

24. Any release or discharge of any solid waste at the rail facility shall be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hotline at 1-877-WARNDEP. The report shall specify the type of substance discharged and the estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification;

25. The rail carrier shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations such as, but not limited to, spills, discharges, or releases of solid wastes at the facility;

26. Any rail facility that fails to operate in compliance with the requirements of this section shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and N.J.A.C. 7:26-5; and

27. The rail carrier shall comply with the following recordkeeping and reporting requirements at each and every facility owned or operated by it within the State of New Jersey that is engaged in the transportation of solid waste pursuant to (d) above:

- i. The facility shall maintain a daily record of wastes received. The record shall include the information specified in N.J.A.C. 7:26-2.13(a);

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ii. The daily record shall be maintained, shall be kept, and shall be available for inspection in accordance with N.J.A.C. 7:26-2.13(b);

iii. The facility shall verify, retain, and make available for inspection a waste origin/disposal (O and D) form for each load of solid waste received in accordance with N.J.A.C. 7:26-2.13(c); and

iv. The facility shall submit monthly summaries of wastes received to the Division of Solid and Hazardous Waste, Bureau of Recycling and Planning and the solid waste coordinator for the county in which the facility is located on forms provided by the Department (or duplicates of same), no later than 20 days after the last day of each month. The monthly summaries shall include the information specified in N.J.A.C. 7:26-2.13(e).]