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**ENVIRONMENTAL PROTECTION**

**SITE REMEDIATION AND WASTE MANAGEMENT**

**SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM**

**COMPLIANCE AND ENFORCEMENT**

**DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT**

**Solid Waste Rules, Recycling Rules and Hazardous Waste Rules**

**Fees**

Proposed Amendments: N.J.A.C. 7:26-2.4; 3A.8; 4.2; through 4.8; 7:26A-2.1, 2.3, 3.6 and 3.10; and 7:26G-3.3

Proposed New Rules: N.J.A.C. 7:26-4.5 through 4.7; and 7:26A-2.4 and 2.5

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

Authority: N.J.S.A. 13:1E-1 et seq.; 13:1D-125 et seq., 13:1B-3; 13:1D-1 et seq.; 13:1E-9, 13:1E-48.1, et seq., 13:1E-49, et seq.; 13:1E-99.11, 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: \_\_\_\_\_

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A public hearing concerning this proposal will be held on:

Date: January 3, 2007

Time: 10:00 to 12:00 and 1:00 until 4:00 or until close of comments

New Jersey Department of Environmental Protection

Public Hearing Room

401 East State Street

Trenton, New Jersey 08625

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

Leslie W. Ledogar, Esq.

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

Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

Trenton, New Jersey 08625-0402

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.

Copies of this proposal document can be downloaded electronically from the Department's web page at [www.state.nj.us/dep](http://www.state.nj.us/dep).

The agency proposal follows.

### Summary

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

The Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq., and more particularly, the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq., the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49, et seq., and the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11, et seq., authorize the Department to assess fees to cover the Department's cost to administer these various acts. Examples of these fees include but are not limited to registration fees, facility siting fees, compliance monitoring fees and fees for advice requested from the Department. These fees are reviewed and adjusted periodically to ensure that they capture the Department's true cost of administering the various programs that implement the acts mentioned above.

### **Summary of Proposed Fee Amendments**

The Department's fee rules concerning administering the solid waste, sanitary landfill facility, regulated medical waste, recycling center, and hazardous waste transporters programs were last revised in 2003, based on 2002 cost calculations (see 35 N.J.R. 321(a) for the proposal and 35 N.J.R. 5268(b) for the adoption). The current cost to the Solid and Hazardous Waste Management Program for performing its duties under the various acts mentioned above is \$9.6 million. Included in this figure are the salaries for 70 staff. The current cost to the Compliance and Enforcement - County Environmental and Waste Enforcement for performing its duties under the various acts mentioned above is \$4.2 million. Included in this figure are the salaries for a total of 63 enforcement personnel. An analysis of typical classified positions indicates that base salaries have increased approximately 11.4 percent since 2002 as a result of negotiated cost of living adjustments. During the same period fringe benefits on those salaries have risen from 25.85 percent to 33.25 percent, a 29 percent increase. Fees assessed pursuant to the 2003 fee schedule no longer enable the Department to cover its costs of administering these programs.

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As an example, the following table compares the fees paid by hazardous waste generators for State Fiscal Year 2005 (the period from July 1, 2004 through June 30, 2005) with actual Department costs for administering the Department's hazardous waste generator program (the second and third columns in the table, respectively). The fourth column in the table shows the anticipated fee revenues under the fee increases proposed herein. This table demonstrates that the assessed fees for Fiscal Year 2005 cover only approximately 93 percent of the actual cost and the proposed fees cover almost 100 percent of the actual cost of administering this program.

<u>Activity</u>	<u>Fiscal Year 2005 Fee Revenues</u>	<u>Fiscal Year 2005 Actual Administration Cost</u>	<u>Anticipated Fee Revenues After Proposed Fee Increases</u>
Large quantity generator inspections	\$572,320.00	\$563,748.41	\$564,000.00
Small quantity generator inspections	\$319,800.00	\$396,038.31	\$396,000.00
Active generator inspections	\$466,040.00	\$495,047.89	\$500,000.00
Total:	\$1,358,160.00	\$1,454,834.61	\$1,460,000.00

The Department is proposing to amend the regulated medical waste fee schedule and the fee schedules for solid waste and sanitary landfill facilities, recycling centers, and hazardous waste transporters. Amendments are also proposed to the compliance monitoring fee schedules associated with solid waste facilities, exempt compost facilities and recycling centers, and hazardous waste facilities and generators. The Department is also proposing three new compliance monitoring fees, which will apply to rail carrier transfer facilities, scrap recycling facilities removing automotive mercury switches, and hazardous waste transfer facilities.

The proposed fees are calculated in a manner that represents the duration and complexity of the respective tasks that the Department performs. Each program's hourly rate is calculated

using the hourly rate formula described in the Economic Impact section below. In determining the number of hours required to perform a service, the Department uses current workplan projections and timekeeping records of the staff directly responsible for the service (Direct Program Staff). The actual data used in calculating fees in 2006 are also described in the Economic Impact section of this proposal. For all fees, except the fees collected in connection with landfill work related to the NJPDES program, hazardous waste generator compliance monitoring fees, and hazardous waste transporter fees, the estimated hours required to provide a service are multiplied by the hourly rate for that service. NJPDES related fees are calculated using the methods developed for that program area. See N.J.A.C. 7:14A for the details regarding those fees. Hazardous waste generator compliance monitoring fees for a particular category of generator are calculated based on the projected workplan and timekeeping records of the staff directly responsible for performing inspections, divided by the total number of generators in that particular category of generator. See the table in the Economic Impact section for more information.

The Department proposes to amend the formula by which the hazardous waste transporter registration fee is calculated to assess the fee at a uniform, per-ton rate payable by each transporter based upon the amount of waste material each transporter transports. The fee for 2006 is based on calendar year 2004 manifest data because 2004 is the most recent year for which complete tonnage data exists. The Department is not intending to bill for 2004; it is merely using 2004 data to calculate the 2006 fee.

The Department proposes adjusting fees to reflect the current State fiscal year 2006 hourly rates. Program costs, the primary factor involved in determining the hourly rate, have risen over the last few years due primarily to increased base salaries as a result of negotiated cost of living adjustments and an increase in the fringe benefits on these salaries.

### **General fee-related amendments**

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As mentioned above, the Department proposes to annually update the hourly rates and fees for each fiscal year following State fiscal year 2006, to reflect actual costs of administering the solid waste, hazardous waste, regulated medical waste and recycling programs. Revising the hourly rate annually avoids abrupt changes in fees by metering costs yearly and, in the event of decreased costs, ensures that the regulated community will receive this benefit in the next, immediate billing cycle. The Department proposes adding the following new provisions to its rules that would codify the formulas it intends to use to update the hourly rates and fees (the components of each formula are discussed in the Economic Impact section of this proposal):

<u>Subject Matter of Rule Provision</u>	<u>N.J.A.C. Citation</u>
Regulated medical waste services and excess hourly rates	7:26-3A.8(n)
Solid waste fee hourly rates	7:26-4.5(a) and (b)
Solid waste facility fee	7:26-4.6(a) and (b)
Solid waste compliance monitoring services fee	7:26-4.7(a) and (b)
Recycling center fee hourly rate	7:26A-2.4(a) and (b)
Recycling center compliance monitoring fee	7:26A-2.5(a) and (b)
Hazardous waste fee hourly rate	7:26G-3.3(h)
Hazardous waste compliance monitoring fee	7:26G-3.3(i)
Hazardous waste per ton transporter fee	7:26G-3.3(j)

Additionally, the Department proposes adding a new provision to each of the applicable subchapters of the Solid Waste rules, the Recycling rules and the Hazardous Waste rules that would require the Department to prepare annual hourly rate calculation reports detailing the factors used to calculate the hourly rates, and fee calculation reports that include the task hours used to calculate each fee. In December, the Department will publish a notice in the New Jersey

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Register and include a summary of each report, including the hourly rate and the task hours used to calculate each fee. The notice will also be required to indicate that anyone interested in obtaining a copy of these reports should contact the Department. Additionally, a copy of each report will be required to be posted on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep). The following proposed new rules effect these requirements:

<u>Subject Matter of Rule Provision</u>	<u>N.J.A.C. Citation</u>
Regulated medical waste services and excess hourly rates	7:26-3A.8(o)
Solid waste fee hourly rates	7:26-4.5(c)
Solid waste facility fee	7:26-4.6(c)
Solid waste compliance monitoring services fee	7:26-4.7(c)
Recycling center fee hourly rate	7:26A-2.4(c)
Recycling center compliance monitoring fee	7:26A-2.5(c)
Hazardous waste fee hourly rate	7:26G-3.3(k)
Hazardous waste compliance monitoring fee	7:26G-3.3(k)
Hazardous waste per ton transporter fee	7:26G-3.3(k)

The Department is also proposing to amend N.J.A.C. 7:26-3A.8(h), 7:26-4.3(f), 7:26-4.3(i)2 and 7:26A-2.1(d) to make each of these provisions consistent with each other, and substantively, to provide that the Department may assess a reasonable fee for services at any time whether prior to, during or after the Department has performed a service that is not listed in the fee schedule set forth in the corresponding subchapters. At times, the Department will assess a reasonable fee prior to conducting work for instances of fee-based services in order to ensure that due fees do not become delinquent. The Department is also proposing to amend the rules

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enumerated above and N.J.A.C. 7:26-4.3(e) and 4.3(g) to allow persons requesting Department services the option of requesting an estimated fee for performing the service, rather than requiring them to obtain an estimate, as is provided in the current rules. However, the Department shall charge for performing its services.

Proposed new N.J.A.C. 7:26-3A.8(h)3 and the proposed amendments to N.J.A.C. 7:26-4.3(e), (f), and (i)2 and 7:26A-2.1(d) specify that the Department's estimate of fees are not binding. This is because they are merely a best estimate of the fees necessary to cover the costs of the Department's services based on the information at hand when the estimate was made. Various factors such as incomplete information, unforeseen issues and incomplete applications could affect the amount of work actually necessary to complete the service. Accordingly, the proposed amendments specify that the Department may bill periodically for its work before completion of its services to ensure that fees are received as work is completed, and as costs are incurred. This also helps to ensure that the Department receives the majority of the fees necessary to cover its costs in the event that the applicant experiences an adverse economic situation that prevents it from paying the entire fee at one time when the Department completes the work.

The proposed amendments to N.J.A.C. 7:26-3A.8(k), 4.2(b), 4.3(d) and (i), and 7:26A-2.1(f) and 2.3(b) clarify that the Department may refrain from commencing work or may suspend work on an application until the requisite fees are paid. The proposed amendments to these provisions and N.J.A.C. 7:26-4.3(f) provide that fees paid to the Department are non-refundable.

The Department is also proposing amendments to correct grammatical errors in the current rule text.

### **Solid Waste Rules - Subchapter 2 Amendments**

Subchapter 2 of the Solid Waste rules, N.J.A.C. 7:26-2, governs the disposal of nonhazardous solid wastes that are not specifically exempted from the subchapter. N.J.A.C.



7:26-2.4 sets forth the procedures for applying for a solid waste facility permit. The Department is proposing to amend N.J.A.C. 7:26-2.4(c)1 (pertaining to small-scale thermal destruction facilities) and N.J.A.C. 7:26-2.4(c)2 (pertaining to small-scale materials recovery facilities and transfer stations) to specify that a criterion to be used to determine completeness of an application for small scale facilities permit applications is the payment of the appropriate fee.

An application for a permit to operate a solid waste facility that accepts 100 tons or greater of solid waste per operating day must comply with the requirements of N.J.A.C. 7:26-2.4(b). An application for a permit to operate a solid waste facility that accepts less than 100 tons (a small scale facility) is excepted from the requirements of N.J.A.C. 7:26-2.4(b), but must comply with the requirements of N.J.A.C. 7:26-2.4(c). Under the current rules at N.J.A.C. 7:26-2.4(b)1, an application for a permit to operate a solid waste facility that is not a small scale facility cannot be deemed administratively complete unless that application is accompanied by the appropriate fee. The proposed amendments to N.J.A.C. 7:26-2.4(c)1vii and N.J.A.C. 7:26-2.4(c)2vii apply the same requirement to small scale facilities. That is, as provided in N.J.A.C. 7:26-2.4(b)1, an application for a solid waste facility permit must include all required fees, owed and payable in accordance with N.J.A.C. 13:1D-120 et seq. That act provides for the incremental payment of fees for applications for those permits issued by the Department which exceed \$1,000 in cost. N.J.S.A. 13:10-122 provides, inter alia, that one third of the total fee amount is payable at time of permit application filing, one third is payable upon the conclusion of the Department's review of a completed permit application, and the remaining third is due upon the taking of final action by the Department.

### **Regulated Medical Waste Registration Fees**

N.J.A.C. 7:26-3A.8 contains the rules regulating registration and fees for regulated medical waste generators, and owners and operators of regulated medical waste transporters, collection facilities, transfer stations, intermediate handlers and destination facilities. For purposes of fee calculation, generators of regulated medical waste are divided into five

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categories, according to the amount of waste they generate (in pounds per year). The Comprehensive Regulated Medical Waste Management Act at N.J.S.A. 13:1E-48.7 caps the annual fee that the Department may charge to each generator category at \$100.00 for category 1 generators, \$300.00 for category 2 generators, \$500.00 for category 3 generators, \$1,000 for category 4 generators, and \$3,500.00 for category 5 generators. The Department proposes to amend the Regulated Medical Waste rules at N.J.A.C. 7:26-3A.8(a)1 to increase the fees for regulated medical waste generators in categories 3, 4 and 5 from \$425.00, \$850.00 and \$2,950.00 to the statutorily allowed cap of \$500.00, \$1,000.00 and \$3,500.00 respectively.

Since the Legislature capped medical waste fees in 1989, the Department has not increased the fees for any of the generator categories subject to these fees. However, the Department's costs have increased to an amount that exceeds the cap. As mentioned above, an analysis of typical positions since 1998 indicates that base salaries have increased approximately 19 percent as a result of negotiated cost of living adjustments. During the same period, fringe benefits on those salaries have risen from 20.95 percent to 29.15 percent, a 39 percent increase. However, setting the fees at the cap results in an increase for category 3 and 4 generators of only 17.6 percent, and for category 4 generators of 18.6 percent. Accordingly, the Department proposes to set the fees for categories 3, 4, and 5 at the cap.

The Department is not proposing to increase the fees for category 1 or 2 generators. On July 5, 2005, the Department adopted rules that reduced the regulated medical waste reporting requirements at N.J.A.C. 7:26-3A.21(d) to exempt generators of 200 pounds or less of regulated medical waste per year from the annual generator reporting requirement. (See 36 N.J.R. 4602(a) for the proposal and 37 N.J.R. 2497(a) for the adoption of these rules.) Since the adoption of these rules, the Department has found that any increases in the Department's program costs have been offset by a reduction in the Department's workload as a result of a reduction in the reporting requirements for categories 1 and 2.

The proposed amendment to N.J.A.C. 7:26-3A.8(f) adds the street address for the Division's office.

The proposed amendments to N.J.A.C. 7:26-3A.8(h)2 increase the hourly rate for regulated medical waste regulation services performed by the Department from \$74.73 to \$109.00 per hour for State fiscal year 2006, to reflect the actual per-hour costs of performing Department services. Thereafter, the Department proposes to annually adjust the hourly rate according to the formulas set forth at proposed N.J.A.C. 7:26-3A.8(n) and (o). To calculate the \$109.00 fee, the Department utilized the following in the hourly rate formula at proposed new N.J.A.C. 7:26-3A.8(n): Average Salary \$75,049.00; Fringe Benefits (at 33.25 percent of salary) \$24,953.79; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$26,210.73; Operating Expense \$27,280.02; Legal Services \$1,543.55. The numerator total, \$155,037.09, was then divided by 1428 billable hours for a rounded hourly rate of \$109.00.

The proposed amendments to N.J.A.C. 7:26-3A.8(i) specify that the subparagraph pertains to regulated medical waste services and raises the hourly rate for regulated medical waste regulation excess fees from \$55.88 to \$89.00 per hour for State fiscal year 2006. The excess fee rate is based on the hourly rate established in N.J.A.C. 7:26-3A.8(h)2, but only includes the average salary, fringe benefit and indirect components of the hourly rate formula. The Department also proposes to annually adjust the hourly rate according to the formulas set forth at proposed N.J.A.C. 7:26-3A.8(n) and (o). To calculate the \$89.00 fee, the Department utilized the following values in the formula at proposed N.J.A.C. 7:26-3A.8(h)2: Average Salary \$75,049.00; Fringe Benefits (at 33.25 percent of salary) \$24,953.79; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$26,210.73. The numerator total, \$126,213.52, was then divided by 1428 billable hours for a rounded hourly rate of \$89.00.

The Department proposes amending N.J.A.C. 7:26-3A.8(j) to clarify that the subparagraph pertains to estimated fees, and to allow persons who wish to pursue a request for services for which a fee determination has expired the option of requesting a redetermination of the fee for performing the service, rather than requiring them to obtain a redetermination, as is currently provided in the rule.

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The proposed amendments to N.J.A.C. 7:26-3A.8(m) clarify that the due date for annual generator reports is the date the reports are due to be submitted to the Department, and increases the late fee for the late filing of the annual generator report from \$50.00 to \$267.00. This figure is based on the Department's estimate that the related work associated with notifying and contacting delinquent filers and processing their reports filed after the report due date will require three staff hours at \$89.00 per hour (see proposed amendments to N.J.A.C. 7:26-3A.8(i), discussed above). The Department also anticipates that increasing the late fee will provide added incentive to generators to timely file their reports.

### **Solid Waste Facility Fees**

Subchapter 4 of the Solid Waste rules, N.J.A.C. 7:26-4, establishes the fees for all sanitary landfill operations, thermal destruction facilities, transfer stations, processing facilities, resource recovery facilities, municipal solid waste composting, co-composting or any other methods of transportation or disposal of solid waste, excluding hazardous waste, that must be licensed by and registered with the Department. N.J.A.C. 7:26-4.2 sets forth the requirements for the payment of fees for activities related to solid waste transporters and facilities. The proposed amendments to N.J.A.C. 7:26-4.2(a) specify that fees must be paid in U.S. Dollars, allows fees to be either mailed or hand delivered unless the Department authorizes some other means of payment, and specifies the street address to which the fees may be mailed or hand delivered.

The Department proposes deleting existing N.J.A.C. 7:26-4.2(b) since hand delivery of fees for activities related to solid waste transporters and facilities is covered in the amendments to subparagraph (a).

Proposed new N.J.A.C. 7:26-4.2(b) requires that all compliance monitoring fees be paid in U.S. Dollars, by certified check or money order made payable to the Treasurer, State of New Jersey and mailed to the indicated address at the Department of Treasury.

At N.J.A.C. 7:26-4.3(a)1, the Department is proposing to add the words “applicant or” before the word “permittee” in order to accommodate the rail carrier transfer facilities who, for purposes of the Department’s fee rules, are not permittees. The Department is also proposing to exempt newly permitted facilities and new rail carrier transfer facilities from the annual facility registration update fee provision at N.J.A.C. 7:26-4.3(a)1, and add a new provision at N.J.A.C. 7:26-4.3(a)2 to cover these newly permitted facilities. This new provision specifies that newly permitted solid waste facilities must pay their initial facility registration update fee no later than the first July 1 immediately following the issuance of the solid waste facility permit, and that a rail transfer facility must pay the initial facility registration fee no later than the first July 1 immediately following the Department’s receipt of the notification required pursuant to N.J.A.C. 7:26-2D.1 (requiring rail transfer facilities to provide the Department with certain information prior to commencing activities).

Proposed new N.J.A.C. 7:26-4.3(b) breaks out annual compliance monitoring fees into separate paragraphs. At N.J.A.C. 7:26-4.3(b)1, the Department is proposing new annual compliance monitoring services fees for solid waste facilities for State fiscal year 2006. The proposed new fees were calculated by multiplying the hourly rate for 2006 (discussed in the Economic Impact section of this proposal) by the actual number of hours spent performing inspections at these facilities. Based on these calculations, some of the proposed fees increased and some of the proposed fees decreased from the currently codified fees. Proposed fee increases are due to an increase in the hourly rate, with no change in the amount of hours spent performing inspections. Proposed fee decreases resulted when the hourly rate increased, but the number of hours that the Department spends inspecting this type of facility decreased. The Department proposes substituting the existing quarterly payment schedule with a new provision that requires the Department to bill for annual compliance monitoring services fees in equal quarterly installments, and that requires solid waste facilities to pay each fee invoice no later than 30 days from the date of the invoice.

The proposed amendment to the table in N.J.A.C. 7:26-4.3(b)1 establishes a new annual compliance monitoring fee for rail carrier transfer facilities. The Department currently conducts

inspections at these types of facilities but currently does not charge for its inspection services.

The proposed fee is based on the assumption that the Department will routinely inspect the rail carrier transfer facilities on a monthly basis, consistent with the existing schedule for inspecting non-rail solid waste transfer operations.

At proposed new N.J.A.C. 7:26-4.3(b)2, the Department is proposing to annually adjust the compliance monitoring services fees for solid waste facilities pursuant to proposed new N.J.A.C. 7:26-4.7, and to provide that the Department will bill for these fees in equal quarterly installments, on or about July 15, October 15, January 15 and April 15 of each year and that the solid waste facility shall pay each invoice no later than 30 days from the date of the invoice.

At proposed new N.J.A.C. 7:26-4.3(b)3i, the Department is proposing to require newly permitted solid waste facilities to pay the first quarterly installment of the annual compliance monitoring fee on or before the first quarter immediately following the issuance of the permit. At N.J.A.C. 7:26-4.3(b)3ii, the Department is proposing to require newly permitted rail carrier transfer facilities to pay the first quarterly installment of the compliance monitoring services fee on or before the first quarter immediately following the Department's receipt of the notification required under N.J.A.C. 7:26-2D.1(b). Proposed new N.J.A.C. 7:26-4.3(b)3iii provides that additional quarterly installments will be billed and payable in accordance with N.J.A.C. 7:26-4.3(b)1 (billed on or about July 15, October 15, January 15 and April 15 of each year and payable no later than 30 days from the date of the invoice).

The proposed amendments to N.J.A.C. 7:26-4.3(d) clarify solid waste fee applicability and payment requirements. One important variable in determining the cost incurred by the Department to process the various types of solid waste facility submission is the amount of time needed to review the submission. The published fees are based on an average time needed to process each submission. However, various factors increase the time required to process a submission, such as the complexity of the project, missing or incomplete information, or repeated modification of the initial submission by the applicant. The proposed amendments clarify that the applicable fee must accompany each submission, and that an applicant shall be

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responsible for any additional costs incurred by the Department in processing that person's submission. In some cases, additional modifications to the initial submission may constitute a separate and distinct submission and these amendments clarify that such a submission will be subject to a fee for each separate and distinct submission. Additionally, where the Department's review of any submission results in the rejection, denial or withdrawal of an application that is the subject of a submission, resubmission must be accompanied by the applicable fee. The Department is also proposing to amend this rule to clarify that all fees are due and payable in U.S. dollars.

The proposed amendments to N.J.A.C. 7:26-4.3(d)2 and 4 replace the single fee for each class of landfill disruptions with separate fees for minor and major landfill disruption approvals. The current fee schedule assesses the same fee for both of these types of approvals (see current N.J.A.C. 7:26-4.3(d)2vii). The proposed amendments move the landfill disruption fee from the operating landfill fee schedule, N.J.A.C. 7:26-4.3(d)2, to the landfill closure fee schedule at N.J.A.C. 7:26-4.3(d)4.vii and viii because landfill disruption approvals are only issued for closed landfills. Separate fees for major and minor landfill disruptions are also proposed. To calculate the proposed new fees for minor and major landfill disruptions, the Department first calculated the hourly rate according to the formula proposed at N.J.A.C. 7:26-4.5: Average Salary \$77,235.71; Fringe Benefits (at 33.25percent of salary) \$25,680.87; Indirect Costs (at 26.21percent of salary plus fringe benefits) \$26,974.43; Operating Expense \$21,334.07; Legal Services \$1,543.55. The numerator total, \$152,768.64, was then divided by 1428 billable hours. The resulting hourly rate of \$106.98 was then multiplied by the Minor Disruption task hours of 8, resulting in a rounded fee of \$855.00, and was multiplied by the Major Disruption task hours of 38, resulting in the rounded fee of \$4,065.00.

N.J.A.C. 7:26-4.3(e) concerns the fees that the Department charges for its review of submissions concerning methane venting systems, on-site disposal, cover material, RD&D reviews, hearing officer's reports, construction facility inspections, contaminated soil reviews, and solid waste facility performance partnership agreements. The Department is proposing to increase the hourly rate for solid waste regulatory services to be charged in State fiscal year 2006

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from \$106.00 to \$115.00 per hour to reflect the actual per hour costs of performing Departmental services. Thereafter, the Department is proposing to adjust the hourly rate component of the fee formula annually on a State fiscal year basis, beginning with State fiscal year 2006, pursuant to proposed new N.J.A.C. 7:26-4.5 and 4.6.

The Department is proposing to amend N.J.A.C. 7:26-4.3(f) to increase the hourly rate for solid waste regulatory services for State fiscal year 2006 to \$115.00 per hour to reflect the actual per hour costs of performing Program services and is making other minor grammatical changes to the rule. As with other proposed annual hourly rate adjustments, the Department is proposing to annually adjust the hourly rate component of the fee formula, beginning with State fiscal year 2006, according to the formulas set forth at proposed N.J.A.C. 7:26-4.5, discussed below. To calculate the proposed new fees for solid waste regulatory services, the Department first calculated the hourly rate according to the formula proposed at N.J.A.C. 7:26-4.5, utilizing the following values: Average Salary \$77,958.00; Fringe Benefits (at 33.25 percent of salary) \$25,921.04; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$27,226.70; Operating Expense \$21,334.07; Legal Services \$11,688.00. The resulting numerator total, \$164,127.80, was then divided by 1428 billable hours for a rounded hourly rate of \$115.00.

The proposed amendment to N.J.A.C. 7:26-4.3(h) includes beneficial use applications and issuance of certificates of authority to operate (CAO) a beneficial use project pursuant to N.J.A.C. 7:26-1.7(g) in the group of activities for which the Department may, in its discretion, require full payment of fees prior to application review.

The Department is also proposing to amend N.J.A.C. 7:26-4.3(i)2 to change the hourly rate that the Department charges for services rendered in connection with beneficial use facilities in State fiscal year 2006 from \$106.00 to \$115.00 per hour to reflect the actual per hour costs of performing Program services and to specify that these fees are to be paid in US dollars. As with other proposed annual hourly rate adjustments, the Department is proposing to adjust the hourly rate component of the fee formula annually, beginning with State fiscal year 2006, according to the formulas set forth at proposed N.J.A.C. 7:26-4.5, discussed more fully below.



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The Department is proposing to recodify N.J.A.C. 7:26-4.5, 4.7 and 4.8 at N.J.A.C. 7:26-4.8, 4.9 and 4.10, respectively, with no change in the text (N.J.A.C. 7:26-4.6 is currently reserved).

Proposed new N.J.A.C. 7:26-4.6(d) provides that fees are to be assessed per occurrence, and are not to be prorated or refunded. Bills will be issued upon completion of the Department's initial review. Proposed new N.J.A.C. 7:26-4.7(d) codifies the method of fee remittance.

### **Recycling Center Fees**

Chapter 26A, Recycling Rules, constitutes the rules of the Department governing the operation of recycling centers pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq. generally, and in particular, the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 131:1E-99.11, et seq. Subchapter 2 of these rules, N.J.A.C. 7:26A-2, sets forth the annual fees for a general and limited approval to operate a recycling center for Class B, C and D recyclable material.

The Department is proposing to delete N.J.A.C. 7:26A-2.1(b)5, concerning the compliance monitoring fee for inspections of composting operations that are exempt under N.J.A.C. 7:26A-1.4(a), to group this fee with other compliance monitoring fees at proposed new N.J.A.C. 7:26A-2.1(c)1i (discussed more fully below), and to decrease the fee for these inspections from \$1,381.00 to \$1,015.00.

N.J.A.C. 7:26A-2.1(c)1, and 3 through 5 set forth the annual compliance monitoring fees for persons who possess a general approval to operate Class B, Class C, Class D (used oil) and Class D (other than used oil) recycling facilities, respectively. The Department proposes deleting subparagraphs (c)1 through (c)5. At proposed new N.J.A.C. 7:26A-2.1(c)1, the Department proposes presenting the fees currently codified at existing subparagraphs (c)1, (c)3

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and (c)5 in tabular format. Additionally, the Department proposes increasing the compliance monitoring fees for these facilities for State fiscal year 2006 as follows:

<u>Type of Recycling Center</u>	<u>Current Annual Compliance Monitoring Fee</u>	<u>Proposed SFY'06 Compliance Monitoring Fee</u>
Class B - General Approval	\$8,286.00	\$ 9,130.00
Class C - General Approval	\$8,286.00	\$ 9,130.00
Class D - General Approval: Used Oil	\$8,923.00	\$ 12,175.00
Class D - General Approval: Other than Used Oil	\$8,286.00	\$ 12,175.00

The proposed new compliance monitoring fees for State fiscal year 2006 were calculated by multiplying the hourly rate of \$126.82 by the number of actual hours it takes Department personnel to complete these inspections. For Class B and C facilities, it takes the Department 72 hours to complete these inspections, down from the previous 78 hours. For Class D facilities, it takes the Department 96 hours to complete these inspections, an increase from 84 hours for used oil facilities and 78 hours for other Class D facilities.

The Department proposes recodifying N.J.A.C. 7:26A-2.1(c)2 at N.J.A.C. 7:26A-2.1(c)1ii with amendments that, for state fiscal year 2006, set the monthly fee owed by persons that possess a limited approval to operate a recycling center for Class B recyclable material at \$700.00. Current N.J.A.C. 7:26A-2.1(c)2 sets this fee at \$690.00.

At proposed new N.J.A.C. 7:26A-2.1(c)1iii, the Department is proposing to include a new annual compliance monitoring fee for State Fiscal Year 2006 of \$445.00 per facility for scrap recycling facilities removing automotive mercury switches. On March 24, 2005, Governor Codey signed into law the Mercury Switch Removal Act of 2004 (P.L. 2005 c.54). This bill created a collection and recovery program for mercury switches removed from end-of-life vehicles in New Jersey, and requires the removal of mercury switches by vehicle recyclers and scrap recycling facilities prior to vehicles being melted down. The Department estimates there are approximately 225 vehicle recyclers and scrap recycling facilities responsible for

automotive mercury switch removal, collection and recovery. Proposed new N.J.A.C. 7:26A-2.1(c)1iii establishes an annual compliance monitoring fee to cover the Department's costs for inspection and compliance monitoring of these facilities. The Department is proposing to inspect each facility annually. The Mercury Switch Removal Act of 2004 requires vehicle manufacturers to pay \$0.25 to the Department for each mercury switch removed as partial compensation for the Department's administrative and enforcement costs. The proposed compliance monitoring fee supplements this partial compensation and ensures that the Department has sufficient resources to adequately inspect this expanded universe of regulated facilities.

At proposed new N.J.A.C. 7:26A-2.1(c)2, the Department proposes to annually adjust the fees set forth in the preceding subsection on a State fiscal year basis, beginning with 2006, pursuant to the formulas at proposed new N.J.A.C. 7:26A-2.4 and 2.5, and to bill on the same schedule as provided for annual recycling center compliance monitoring fees.

At N.J.A.C. 7:26A-2.1(d) the Department proposes to change the hourly rate for Division regulation of recycling centers to \$115.00 per hour, effective State fiscal year 2006, to reflect the actual per hour costs of performing Department services. The Department proposes to annually adjust these fees pursuant to proposed new N.J.A.C. 7:26A-2.4. To calculate the proposed new fees, the Department first calculated the hourly rate according to the formula at proposed new N.J.A.C. 7:26A-2.4(b), utilizing the following values: Average Salary \$77,958.00; Fringe Benefits (at 33.25 percent of salary) \$25,921.04; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$27,226.70; Operating Expense \$21,334.07; Legal Services \$11,688.00. The resulting numerator total, \$164,127.80, was then divided by 1428 billable hours, resulting in a rounded hourly rate of \$115.00.

The proposed amendments to N.J.A.C. 7:26A-2.1(e) clarify that the fees to which the subparagraph applies are estimated fees and changes the requirement that an applicant or permittee request a re-determination of the fee in writing in favor of language that permits them to do so.

The proposed amendment to N.J.A.C. 7:26A-2.3(a) provides that fees related to recycling must be paid in U.S. Dollars by certified check or money order. The Department is also proposing to update the mailing address to which these fees are to be delivered. Pursuant to proposed new N.J.A.C. 7:26A-2.3(c), all compliance monitoring fees shall be made payable to the Treasurer, State of New Jersey, and shall be mailed to the indicated updated address.

Proposed new N.J.A.C. 7:26A-2.5(d) provides that solid and hazardous waste fees are to be assessed per occurrence, and are not to be prorated or refunded.

Subchapter 3 contains the rules concerning the approval of recycling centers for Class B, Class C or Class D recyclable materials. The proposed amendments to N.J.A.C. 7:26A-3.6(b) clarify that an applicant for renewal of a general approval to operate a recycling center must notify the Department of changes in both design and operations, rather than only operations as is currently provided in the rule. The proposed amendments also provide that the fee for renewal of a general approval is a separate fee from the fee that must accompany a request for a modification to the approval. Additional staff-hours are required to review modification notifications. Therefore, an applicant who requests both a renewal and modification to an approval must pay the fee for the renewal and the designated fee for the modification in accordance with N.J.A.C. 7:26A-3.10.

The proposed amendment to N.J.A.C. 7:26A-3.10(h) requires applicants to pay the fees for general and limited approval modifications at N.J.A.C. 7:26A-2 when applying for modifications for general or limited approvals.

### **Hazardous Waste Fees**

Chapter 7:26G, Hazardous Waste, constitutes the rules of the Department governing, among other things, the fees for services provided by the Department to hazardous waste facilities, generators and transporters. Subchapter 3 of these rules, N.J.A.C. 7:26G-3, establishes

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the fee rules that apply to hazardous waste generators, transporters, and treatment, storage, or disposal facilities.

N.J.A.C. 7:26G-3.3(c) sets forth the fees for conducting inspections and compliance reviews for hazardous waste generators and hazardous waste facilities. The Department proposes reorganizing subparagraphs two through four of this subsection. At proposed new N.J.A.C. 7:26G-3.3(c)2, the Department proposes to break out the hazardous waste facility per inspection compliance monitoring fee and provide that this fee will be calculated by dividing the inspection fee by the number of inspections to be performed. Proposed new N.J.A.C. 7:26G-3.3(c)2i contains the compliance monitoring fee for a commercial hazardous waste facility and sets this fee at \$1,285.00 per inspection for State fiscal year 2006. Proposed new N.J.A.C. 7:26G-3.3(c)2ii contains the compliance monitoring fee for a non-commercial hazardous waste facility and sets this fee at \$3,820.00 for State fiscal year 2006. Proposed new N.J.A.C. 7:26G-3.3(c)2iii contains the compliance monitoring fee for hazardous waste transfer facilities and sets this fee at \$3,550 for State fiscal year 2006.

Proposed new N.J.A.C. 7:26G-3.3(c)3 sets forth how the State fiscal year 2006 annual compliance monitoring fee for a hazardous waste generator is to be calculated for each category of generator. To arrive at these fees, the Department projected workplan hours and then multiplied the total hours by the hourly rate. To obtain the cost of the fee by category, this number is then divided by the universe of generators within the category. For large quantity generators, the Department proposes lowering this fee from \$980 to \$940, for small quantity generators, the Department proposes increasing this fee from \$600 to \$660 and for conditionally exempt small quantity generators not included in either the large or small quantity generator, and that have an active identification number, the Department proposes increasing the fee from \$40 to \$50.

In calculating the proposed new fees in this subsection, the Department looked at the workplan for 2006 to determine the hours spent on each activity, and multiplied those hours by the proposed new hourly rate. Proposed fee reductions result from a reduction in the projected

hours that the Department projects it will spend for the activity. Proposed fee increases generally resulted where the projected number of hours remained the same or increased.

At proposed new N.J.A.C. 7:26G-3.3(c)4, the Department proposes to annually adjust the fees set forth in the preceding subsection on a State fiscal year basis, beginning with 2006, pursuant to the formulas at proposed new N.J.A.C. 7:26G-3.3(h), (i) and (k). Proposed new N.J.A.C. 7:26G-3.3(c)5 requires that fees be paid in U.S. Dollars by certified check or money order, and mailed to the Department of Treasury, Division of Revenue at the specified address.

The Department is proposing to amend the fee provisions for hazardous waste transporters set forth at N.J.A.C. 7:26G-3.3(g). The amendments at N.J.A.C. 7:26G-3.3(g)1 narrow the universe of hazardous waste transporters from all hazardous waste transporters passing through the State to hazardous waste transporters that collect or deliver hazardous waste within the State of New Jersey. Existing hazardous waste transporters that collect or deliver hazardous waste within New Jersey will be required to pay an annual registration fee based upon the number of tons of hazardous waste transported to or from New Jersey during the previous calendar year. The fee for 2006 is based on calendar year 2004 manifest data, because 2004 is the most recent year for which complete tonnage data exists. Accordingly, 2004 is the base year from which the Department calculated the 2006 fee. Registration decals will be issued at no additional cost for each transport unit included on the registration application and shall be used for identification purposes. Annual fees would be due in the form of a check or money order payable to the New Jersey State Treasurer. Fees will be billed by the Department during March and are payable prior to May 1 of each calendar year (rather than registration period). In addition to being non-refundable, the proposed amendments would also prohibit these fees from being prorated.

Proposed new N.J.A.C. 7:26G-3.3(g)1i deletes the text setting forth fees to be paid by hazardous waste cabs. In place of this requirement, the Department proposes new text that establishes that for State fiscal year 2006, the fee for each ton of hazardous waste transported by a hazardous waste transporter is \$1.67 per ton, based on manifest data on file with the

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Department as of the previous October 1, 2004. The values for the Solid and Hazardous Waste Program components utilized in the formulas set forth in N.J.A.C. 7:26-3.3(j) to arrive at the \$1.67 per ton rate are as follows: Average Salary \$69,307.80; Fringe Benefits (at 33.25 percent of salary) \$23,044.84; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$24,205.63; Operating Expense \$280,564.84 (includes special database development costs); Legal Services \$40,005.09. The Direct Program Staff need for Solid and Hazardous Waste is 1.3 FTEs, or a total of \$568,266.66. The values for the County Environmental and Waste Enforcement component utilized in the formulas set forth in N.J.A.C. 7:26-3.3(j) to arrive at the \$1.67 per ton rate are as follows: Average Salary \$97,817.83; Fringe Benefits (at 33.25 percent of salary) \$32,524.43; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$34,162.71; Operating Expense \$13,641.63; Legal Services \$2,947.37. The Direct Program Staff need for the County Environmental and Waste Enforcement is 2.4 FTEs for a program need of \$434,625.53. The combined program amount needed is \$1,002,892.19 (\$568,266.66 plus \$434,625.53), divided by calendar year 2004 qualifying transported waste manifested of 601,690 tons results in the rate of \$1.67 per ton.

The proposed amendment to N.J.A.C. 7:26G-3.3(g)1ii deletes the existing text regarding fees to be paid for hazardous waste transport units. In place of this requirement, the Department proposes new text that states that the per ton rate shall be adjusted on an annual basis, pursuant to N.J.A.C. 7:26G-3.3(j) and (k).

The Department proposes deleting N.J.A.C. 7:26G-3.3(g)1iii and iv as they are no longer relevant due to the fact that the Department will no longer bill and collect hazardous waste transporter fees based upon number and type of hazardous waste transport vehicles but, as stated above, proposes new text that establishes that for State fiscal year 2006, the fee for each ton of hazardous waste transported by a hazardous waste transporter is \$1.67 per ton, based on manifest data on file with the Department as of the previous October 1, for 2004.

At proposed new N.J.A.C. 7:26G-3.3(g)2, the Department proposes establishing a registration fee for new hazardous waste transporter applicants and at proposed new 7:26G-

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3.3(g)3, the Department proposes establishing a minimum hazardous waste transporter registration fee. Both of these fees are to be calculated according to the indicated formula. The Department has determined that the effort to do the necessary bookkeeping to produce and mail a bill is one half hour. Therefore any calculated fee below this minimum effort would result in the Department having insufficient funds to process new applications or renew registrations for transporters. The minimum fee is established as the sum of the Average Salary, Fringe Benefits, Indirect Costs, Operating Expenses and Legal Services established in October, divided by the number of Billable hours per position. Billable hours per position is the Department standard of 1428 hours. The result, the hourly rate per position, is multiplied by 0.5 (one half hour) and rounded to the nearest \$5.00 and is the minimum fee. Any registered transporter that hauls no waste during the current billing cycle and new hazardous waste transporter applicants will pay the minimum fee. On registration renewal years, registrants that have not transported any waste will pay the minimum registration fee. Registrants that require more than five decals will be billed the actual cost per the contract awarded to supply said decals, for each decal, beyond the initial five. The current contract cost per decal is approximately \$0.14. For State fiscal year 2006, the minimum hazardous waste transporter fee of \$65.00 was calculated as follows: Average Salary \$69,307.80; Fringe Benefits (at 33.25 percent of salary) \$23,044.84; Indirect Costs (at 26.21 percent of salary plus fringe benefits) \$24,205.63; Operating Expense \$30,564.84 (does not include special database development costs); Legal Services \$40,005.09. The resulting numerator total, \$187,128.20, was then divided by 1428 billable hours, resulting in an hourly rate of \$131.04. When multiplied by .5 hours and rounded to the nearest \$5.00, the result is the fee of \$65.00. The per decal amount, where applicable, will be added.

### **Social Impact**

The proposed fee adjustments will have a positive social impact. The funds generated through the collection of fees are essential to support Department services required by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. These amendments ensure that the costs of these services are borne by those who receive the most direct benefits from the services (rather



than the public at large). Additionally, the public will continue to benefit from the Department's efforts to work with the solid and hazardous waste community to ensure that solid and hazardous waste activities are conducted in compliance with the Department's rules and thus are protective of human health and the environment. As proposed, the fees will generate the funds necessary to support Department services. Additionally, the proposed amendments clarify the fees that are to be paid by different segments of the regulated community and more accurately reflect the actual costs of Department services for each class of facility and regulated activity.

### **Economic Impact**

The proposed solid waste, hazardous waste, sanitary landfill, regulated medical waste, and recycling center fees reflect the Department's costs in performing various activities. Factors contributing to the changes in costs include changes in the amount of time the Department requires to perform activities and/or implement the proposed rules, recent court decisions, and changes in the level of compensation paid to employees in the Site Remediation and Waste Management program and the Compliance and Enforcement Program.

The majority of regulated entities affected by the proposed fee adjustments will experience increased costs as a result of these proposed fees. The Department must charge fees, however, commensurate with its cost to provide services to the regulated community. Therefore, each proposed fee has been calculated in a manner that represents the duration and complexity of the respective tasks that the Department performs. In determining the number of hours required to perform a service, the Department has used both recent workplan projections and timekeeping records of staff directly responsible for the service (Direct Program Staff). The proposed new fees to be collected for each service will support the Department's fiscal requirements for providing that service to the regulated community. Services covered by this proposal include processing applications for new solid waste and recycling facilities, solid waste and recycling facility renewals or modifications, and hazardous waste generator and transporter assistance and inspections.

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### Hourly Rate Calculation

The first step in determining the appropriate fees to charge the regulated community is calculating an appropriate hourly rate. The hourly rate is calculated by dividing average annual costs per Department employee by the average annual “billable hours” that services are performed. This formula applies to the various fees described below, except where noted otherwise. Specifically, the hourly rate for Department services is determined according to the following formula:

$$\frac{(AS+FB+IC+OE+LS)}{BH}$$

Where:

AS is the average annual salary of the Direct Program Staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divided the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and added this figure to the average salary of the Direct Program staff. The Direct Support staff and Division Overhead staff functions are not included in determining the hours required to perform an activity, as this would then in effect over-inflate the Department’s cost for an activity.

FB is the average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer’s share of the Federal Income Compensation Act (FICA) contribution. The percentage set by the New Jersey Department of Treasury is currently 33.25 percent.

IC is the indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those

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costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel as this would then in effect over-inflate the Department's cost for an activity. To calculate the IC, the current negotiated rate of 26.21 percent is multiplied by the sum of AS and FB.

OE represents the average operational expenses attributable to an employee. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System, better known as NJEMS and external mainframe applications through the Office of Information Technology or OIT).

LS is the budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program Staff funded through the various fee programs. The Department estimates it will need \$1.1 million dollars for fiscal year 2006 to cover the costs related to permitting, compliance and enforcement efforts. The costs are apportioned across fee program areas on a per capita Direct Program Staff basis.

BH is the billable hours, which is the average number of hours each Direct Program Staff position spends annually performing activities for which fees are assessed. That figure, 1428 hours, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time

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(such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by 7 hours per workday equals the 1428 billable hours used for most calculations).

For the compliance monitoring fees, this hourly rate calculation will be adjusted each State Fiscal Year and posted to the web by July 31<sup>st</sup>. The State Fiscal Year is the period from July 1 to June 30.

#### Regulated Medical Waste Generator Fee Calculation

Medical Waste Program fees are calculated as above, but certain facility fees are capped by statute. See N.J.S.A. 13:1E-48.7. The Department is proposing to increase Category III (17.6 percent), IV (17.6 percent) and V (18.6 percent) facility fees to the statutory maximum to partially compensate for the base salary and fringe benefit increases to date. No new positions will result, but additional revenue of \$390,625 is expected to cover some of the increasing program costs.

#### Hazardous Waste Transporter Registration Fee Calculation

As a result of a recent court decision, American Trucking Associations, Inc., et al. v. New Jersey, 180 N.J. 377, 852 A.2d 142 (2004), the hazardous waste transporter registration fees will no longer be calculated on a per truck basis. The Department proposes to assess the fee using the following formula to reach a per-ton cost:

$$\frac{\text{Direct Program Staff x (AS + FB + IC + OE + LS)}}{\text{Total Tons Transported}}$$

Where:

“Direct Program Staff” is the average number of direct staff performing hazardous waste transporter related functions as determined by the current to be billed on an annual basis. All other factors are as previously defined and the numerator equals the total program cost of providing the service.

“Total Tons Transported” is the combined amount of hazardous waste that originates from or is delivered to New Jersey facilities by all registered transporters as reported on the hazardous waste manifest system for a given year of the registration period.

The formula yields a per-ton cost that applies to all registered transporters. Each transporter will be billed this per ton rate for each ton it transports after these rules become effective. The cost per ton will vary annually, depending on the total program cost estimate and the gross amount of material transported by all registered transporters the previous calendar year. The Department is using tonnage data recorded in calendar year 2004 manifests (the last prior calendar year) for its initial fee calculation because it is the most recent year for which complete tonnage data exists. Manifests reporting calendar year 2005 tonnage are still being submitted.

#### Solid Waste Fees - Calculation

As noted above, fees are calculated by multiplying the hourly rate by the number of hours necessary to perform an activity. The following table sets forth the hours required per fee related activity for solid waste facilities where the fees are proposed to change.

##### 1. Compliance monitoring activities

<u>Type of facility</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>SFY'06 Fee</u>
Sanitary landfill - operating at 31,200 tons per year (tpy) or more	108	\$126.82	\$13,695.00
Sanitary landfill – operating at less than 31,200 (tpy)	48	\$126.82	\$6,090.00

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Closed Landfill	5.25	\$126.82	\$665.00
Landfill Disruptions	4.25	\$126.82	\$540.00
Transfer station and materials recovery facility - operating at 31,200 tpy or more	78	\$126.82	\$9,895.00
Transfer station and materials recovery facility - operating at less than 31,200 tpy	63	\$126.82	\$7,990.00
Thermal destruction facilities operating at 9.6 tons per day or more	48	\$126.82	\$6,090.00
Thermal destruction facilities operating at less than 9.6 tons per day	16	\$126.82	\$2,030.00
Composting facilities	78	\$126.82	\$9,895.00
Certificate of Authority to Operate/RD&D	20	\$126.82	\$2,535.00
Rail Carrier Transfer Facility	78	\$126.82	\$9,895.00

2. Closure plans - Permitting

<u>Activity</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Fee</u>
vii. Minor landfill disruption	8	\$106.98	\$ 855
viii. Major landfill disruption	38	\$106.98	\$4,065

3. Other Department activities

While the Department has attempted to define appropriate fees for a comprehensive range of services, the Department recognizes that for some services performed, including methane venting reviews, cover materials approvals, and solid waste facility performance partnership agreement (SWFPPA) negotiations, will vary significantly. Accordingly, the Department will continue to provide an opportunity to any applicant to request an initial review of the submission to determine the fee for that specific service. The fee will equal the number of hours the Department expects the submission to require, multiplied by the Solid and Hazardous

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Waste Management Program’s average hourly rate for State fiscal year 2006 for the permitting program of \$115.00. Each State fiscal year thereafter, the fee shall be annually adjusted pursuant to the formulas discussed above. The Department shall publish a notice summarizing the hourly rate, provide a copy of the report containing these calculations and post a copy of the report on the Department’s web site at [www.state.nj.us/dep](http://www.state.nj.us/dep).

Recycling Center Fees – Calculation

Like the proposed solid waste fees, the proposed recycling center fees have been calculated by multiplying the hourly rate by the number of hours necessary to perform an activity. The following table sets forth the hours required per fee related activity, for compliance monitoring fees only.

<u>Compliance Monitoring</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>SFY’06 Compliance Monitoring Fees</u>
Class B - General Approval	72	\$126.82	\$9,130.00
Class B – Limited Approval	5.5	\$126.82	\$700.00/month
Class C – General Approval	72	\$126.82	\$9,130.00
Class D – General Approval: Used Oil	96	\$126.82	\$12,175.00
Class D – General Approval: Universal	96	\$126.82	\$12,175.00
Waste, Other			
Exempt composting facilities compliance inspection	8	\$126.82	\$1,015.00
Scrap recycling facilities removing automotive mercury switches	3.5	\$126.82	\$445.00

Hazardous waste generator fee – Calculation

Like the proposed solid waste fees, the proposed hazardous waste generator fees were calculated by multiplying the hourly rate by the number of hours necessary to perform an

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activity. However, in addition, this figure is then divided by the estimated universe of regulated hazardous waste generators to arrive at the annual fee per hazardous waste generator. The following table sets forth the hours required per fee related activity.

<u>Type of Generator</u>	<u>Estimated # of inspections per year</u>	<u>Hours spent per year</u>	<u>Hourly Rate</u>	<u>Estimated Universe</u>	<u>Annual Fee</u>
Large quantity generator	190	4455	\$126.82	600	\$940.00
Small quantity generator	200	3127	\$126.82	600	\$660.00
Conditionally exempt small quantity generator not included in the above two categories, with active identification number	500	3898	\$126.82	10000	\$50.00

During the 2003 adoption, the Department decided that fees should be distributed more equitably among the entire regulated hazardous waste generator universe, as opposed to assessing a fee solely to those entities that are inspected in a given year. It should be noted that the regulated community had requested that the Department consider annual billing, because, from the regulated community's perspective, an annual fee, rather than periodic inspections, would be easier to budget. Therefore, the Department adopted an annual fee assessment for hazardous waste generators based on the amount of waste manifested in the previous calendar year. In addition to an annual fee for large and small quantity generators, the Department adopted an annual fee for a new category of "active" generators (that is, generators with an active EPA Identification Number or an active New Jersey Identification Number) which have manifested less than 2,640 pounds of hazardous waste in the previous calendar year. While the method of assessing the fee has changed, the actual services performed (i.e., inspections, compliance inspections and compliance reviews) has not changed. Each year, the Department inspects approximately 190 Large quantity generators, 200 Small quantity generators, and 500 "active" generators. In addition, approximately 100 compliance inspections and 120 compliance reviews are performed as a result of hazardous waste entities being out of compliance with the regulations.



Hazardous waste facility fee calculation

The calculation for the hazardous waste major commercial facilities remains unchanged since it already provides for the adjustment of actual program costs. In addition, the method of calculating the fees for commercial hazardous waste facilities, other than major, and for non-commercial hazardous waste facilities remains unchanged and the Department is proposing the addition of a fee for the hazardous waste transfer facilities. Using the new hourly rate, the fees for the commercial hazardous waste facilities, other than major, and for the non-commercial hazardous waste facilities, as well as the fee for hazardous waste transfer facilities were calculated by multiplying the hourly rate by the number of hours spent per year divided by the estimated number of inspections per year in order to arrive at the proposed fee. The following table sets forth the hours required per fee related activity.

<u>Type of facility</u>	<u>Estimated # of inspections per year</u>	<u>Hours spent per year</u>	<u>Hourly Rate</u>	<u>Estimated Universe</u>	<u>Proposed Fee</u>
Commercial hazardous waste facility, other than major	104	1057	\$126.82	8	\$1,285.00 per inspection
Non-commercial hazardous waste facility	18	542	\$126.82	18	\$3,820.00 (annual fee)
Hazardous waste transfer facility	120	840	\$126.82	30	\$3,550.00 (annual fee)

It should be noted that the fee for the commercial hazardous waste facilities, other than major, actually decreased due to a decrease in the number of these types of facilities, since this is a per inspection fee.

Overall Effect of Fee Changes

The Department expects an overall positive impact on the Department from the proposed fee increases. The new fees will ensure that the Department can retain sufficient staff to

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implement the solid waste, hazardous waste, and recycling programs in a manner protective of human health and the environment. The Department expects an overall negative economic impact to solid waste, hazardous waste and recycling regulated entities from the proposed fee increases, although the Department notes that it is proposing to decrease some fees. The Department has used actual time coding information in determining the average required hours and is statutorily permitted to charge fees to cover its actual costs. This fee system is necessary to collect all costs of implementing the solid waste, hazardous waste, and recycling facility programs in New Jersey.

### **Environmental Impact**

Proper management and regulation of solid waste, hazardous waste and medical waste are essential to the health, safety and general welfare of New Jersey's residential and business communities. The proposed fee amendments will provide adequate funds for the Department to ensure that solid waste, hazardous waste and regulated medical waste are managed in a safe and environmentally sound manner. In addition, fees provide an incentive to minimize the amount of waste generated by increasing the cost to the generator of managing the waste, thereby decreasing potential risk to the environment.

### **Federal Standards Analysis**

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Department's fee provisions in N.J.A.C. 7:26, 7:26A and 7:26G 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 a State statute that incorporates or refers to Federal law standards or requirements.

### **Jobs Impact**

As noted above in the Economic Impact analysis, the regulated community to which the proposed fees apply will experience an overall increase in the fees it pays to the Department. While some of the proposed fees represent reductions from the currently codified fees, these reductions are not sufficient to counterbalance the number of fees that are proposed to be increased. Since many of these fees were last adjusted in 2003, managers of affected businesses may not have incorporated fee increases into their overall business plans. Because each member of the regulated community may respond differently to fee increases (that is, different strategies to address cost increases, and differing abilities to absorb them), it is not possible to estimate accurately the extent, if any, to which the fee increases will affect employment.

This fee proposal is expected to have a positive impact on jobs at the Department. The proposed fees will provide funding sufficient to maintain staffing at a level necessary to ensure continued protection of human health and the environment.

### **Agriculture Industry Impact**

In accordance with N.J.S.A. 4:1C-10.3, the Right to Farm Act, the Department has reviewed this proposal and determined that it will have little or no impact upon the Agricultural Industry. The agriculture industry does not typically operate solid waste landfill and recycling centers or handle regulated medical waste. Moreover, the Department believes that most agricultural operations will fall under one or more of the regulatory exemptions contained at N.J.A.C. 7:26G-5.1, which incorporates by reference the federal exemption for solid wastes generated by growing and harvesting of agricultural crops, and animal manure from regulation as hazardous waste. See 40 CFR 261.4(b)(2). See also N.J.A.C. 7:26G-8.1(a) which incorporates by reference the federal exemption at 40 CFR 264.1(g)(4).

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Most agricultural operations, therefore, will be unaffected by this fee proposal. If an agricultural operation cannot qualify for an exemption, such operation will be subject to the same fee increases as other facilities for solid waste, hazardous waste and regulated medical waste. The economic impact of these fee increases is described in the Economic Impact analysis above.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey 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 that employ fewer than 100 full time employees. The Department believes that many solid waste, hazardous waste and recycling businesses are small businesses in accordance with this definition. While small businesses should not need to hire consulting or engineering firms to come into compliance with these amendments, they will be impacted economically in the form of higher fees paid to the Department for services rendered. For specific information on the economic impacts of this fee proposal, see the Economic Impact analysis above.

In developing this proposal, the Department reviewed the impact of the amendments on small businesses. The Department has determined that no blanket exemption to the rules can be granted to small businesses due to the necessity to protect public health, safety and the environment. Small businesses will need to continue to expend funds to ensure continued compliance with the rules. These costs may vary among small businesses depending on the type and the amount of waste handled or transported.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies which adopt, or amend any rule pursuant to Section 4(a) of the Administrative Procedure Act N.J.S.A. 52:14B-4(a) 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'

impact on smart growth and the implementation of the State Plan. These amendments revise fees the Department charges for solid waste facilities, recycling centers, regulated medical waste, hazardous waste facilities, and hazardous waste generators and transporters.

Because these amendments do not involve land use policies or infrastructure development, they are not expected to have any impact on the achievement of smart growth. However, the proposed amendments are expected to have a positive impact on implementation of the State Plan. They ensure that the Department has adequate financial resources to continue to provide services to the solid waste facilities, recycling centers, regulated medical waste and hazardous waste facilities, generators and transporters consistent with the Waste Management Policies of the State Plan.

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

## CHAPTER 26 - SOLID WASTE

### SUBCHAPTER 2 - DISPOSAL

#### 7:26-2.4 Application procedures for a solid waste facility permit

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

(c) A complete application for a SWF permit for a small scale solid waste facility identified in (c)1 or 2 below shall include the following:

1. For a small-scale thermal destruction facility:

i – iv. (No change.)

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v. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted under N.J.A.C. 7:26-16.3(d); [and]

vi. This exemption from full application requirements is limited to one small-scale thermal destruction unit for each company site; and

vii. All fees required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et seq.

2. For a small scale materials recovery facility or transfer station:

i. through iv. (No change.)

v. Documentation that the facility has been included in the applicable district solid waste management plan; [and]

vi. The disclosure statement described in N.J.A.C. 7:26-16. The requirement of a disclosure statement shall not apply to any person specifically exempted as set forth at N.J.A.C. 7:26-16.3(d); and

vii. All fees, required by N.J.A.C. 7:26-4, owed and paid in accordance with N.J.S.A. 13:1D-120 et. seq.

### SUBCHAPTER 3A REGULATED MEDICAL WASTE

7:26-3A.8 Registration and fees for regulated medical waste generators, and owners and operators of transporters, collection facilities, transfer stations, intermediate handlers and destination facilities

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(a) Any person that generated regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (e) below, and shall pay annual fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into five categories as explained in the following table:

<u>Generator Category</u>	<u>Pounds Generated Per Year</u>	<u>Base Fee Category</u>
1	less than 50	\$85.00
2	50-200	\$255.00
3	greater than 200-300	[\$425.00] <u>\$500.00</u>
4	greater than 300-1,000	[\$850.00] <u>\$1,000.00</u>
5	greater than 1,000	[\$2,950.00] <u>\$3,500.00</u>

i. (No change.)

(b) through (e) (No change.)

(f) Each generator, transporter, intermediate handler, collection facility, transfer station and destination facility shall register with the Department on regulated medical waste registration forms prescribed by and available from the Department at the address listed below and shall state such information as necessary and proper to the enforcement of this subchapter, as the Department may require. No pro rata adjustment or refund for prior registration year payment of fees shall be made by the Department. Fees shall be payable to the Department 30 days after the beginning of each respective registration year in accordance with the following schedule:

1. through 3. (No change.)

4. The Department's address for regulated medical waste is:

Bureau of Resource Recovery and Technical Programs  
Solid and Hazardous Waste Management Program  
New Jersey Department of Environmental Protection  
P.O. Box 414  
401 East State Street  
Trenton, New Jersey 08625-0414

(g) (No change.)

(h) The omission of any type of Department service from the fee schedule set forth in [(f)] (g) above, or if the Department determines that performing its services will exceed the fee the Department charges for a service listed at (g) above, shall not prevent the Department from assessing a reasonable fee for such service, at any time whether prior to, during or after the Department has performed its services. Any person that requests a Department service not listed at [(f)] (g) above [shall] may request an initial review of the service for purposes of determining the fee for performing such service.

1. (No change.)

2. If the Department determines that the service is not one of those listed in (g)1 through 3 above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the following hourly [rate of \$74.73.] rates for regulated medical waste services:

i. For State fiscal year 2006, the hourly rate shall be \$109.00; and

ii. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to (n) and (o) below.



3. An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department will be based on actual hours worked multiplied by the hourly rate calculated pursuant to 2i and ii above.

(i) The Department shall charge an excess fee for regulated medical waste services at the following hourly [rate of \$55.88] rates for excess person-hours required to perform any service for which a fee is established pursuant to (a) through (g) above. The Department shall notify the applicant or permittee of such excess fee in writing before performing the additional work.:

1. For State fiscal year 2006, the hourly rate shall be \$89.00; and

2. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to (n) and (o) below.

(j) The determination of [a] an estimated fee pursuant to (h) above shall expire 90 days after the date such determination was issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the request for services for which the fee determination has expired, such applicant or permittee [shall] may request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (h) above, as applicable.

(k) The Department may refrain from commencing work on the service for which a fee is established pursuant to (g) through (i) above until the Department receives full payment of such fee. If the Department has commenced work on the service the Department may suspend such work until it receives full payment of such fee. Once the Department has begun its work, fees paid pursuant to (g) through (i) above are non-refundable.

(l) (No change.)

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(m) Any generator that submits the annual generator report required by N.J.A.C. 7:26-3A.21(d), 30 or more days after such report is due to be submitted to the Department shall pay a late fee of \$[50.00] 267.00. Neither the assessment nor the payment of a late fee shall prevent the Department from taking any appropriate enforcement action.

(n) The Department shall annually determine, during the month of October, the hourly rate for regulated medical waste services, as well as the hourly rate for excess hours. These hourly rates shall be determined using the following formulas:

$$\text{Hourly Rate} = \frac{(\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{BH}}$$

BH

$$\text{Excess Hourly rate} = \frac{(\text{AS} + \text{FB} + \text{IC})}{\text{BH}}$$

BH

Where:

AS = The average annual salary of the Direct Program Staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those

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costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to a Direct Program Staff position. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program Staff funded through the various fee programs.

BH = 1428. The billable hours, which is the average number of hours each Direct Program Staff position spends annually performing activities for which fees are assessed, which is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by 7 hours per workday equals the 1428 billable hours used for most calculations).

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(o) Each year, the Department shall prepare an Annual Regulated Medical Waste Hourly Rate Calculation Report detailing the factors used to calculate the hourly rate and the excess hourly rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and excess hourly rate. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

#### SUBCHAPTER 4. – FEES FOR SOLID WASTE

##### 7:26-4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid in U.S. dollars by certified check or money order, [and made] payable to "Treasurer, State of New Jersey" [at the following address], and mailed or hand delivered to the following address unless the Department authorizes some other means of payment:

New Jersey Department of Environmental Protection  
Solid and Hazardous Waste Management Program  
[PO]P.O. Box 414  
401 East State Street  
Trenton, NJ 08625-0414

(b) [Engineering design fees and transporter registrations may be paid in person at the address set forth in (a) above] The Department may refrain from commencing work on activities related to solid waste transporters and facilities until the Department receives full payment of such fee. If the Department has commenced work on the service, the Department may suspend such work until it receives full payment of such fee. Once the Department has begun its work, fees paid pursuant to this subchapter are non-refundable.

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(c) All compliance monitoring fees shall be paid in U.S. dollars by certified check or money order, payable to "Treasurer, State of New Jersey" and mailed, along with the fee invoice, to the following address:

Department of Treasury

Division of Revenue

P.O. Box 417

Trenton, NJ 08646-0417

#### 7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste annual facility registration is as follows:

1. [Each] Except as provided in paragraph 2 below, each solid waste facility applicant or permittee shall pay an annual facility registration update fee of \$6,006. The annual facility registration update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.

2. A newly permitted solid waste facility or a newly permitted rail transfer facility shall pay an initial facility registration fee of \$6,006, according to the following schedule:

i. The initial facility registration fee for a newly permitted solid waste facility shall be due no later than the first July 1 immediately following the issuance of the permit; and

ii. The initial facility registration fee for a rail carrier transfer facility shall be due no later than the first July 1 immediately following the Department's receipt of the notification required under N.J.A.C. 7:26-2D.1(b).

(b) Each solid waste facility permittee shall pay an annual compliance monitoring services fee as follows:

1. [Each] For State fiscal year 2006, each solid waste facility [permittee], including newly permitted facilities and rail carrier transfer facilities, shall pay the applicable annual fee listed in the following table for compliance monitoring services. [The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.] Except for newly permitted facilities and rail transfer facilities, the Department shall bill for these fees in equal quarterly installments, on or about July 15, October 15, January 15 and April 15 of each year. The solid waste facility shall pay each invoice no later than 30 days from the date of the invoice.

<u>Type of Facility</u>	<u>Annual Compliance Monitoring Services Fee for State fiscal year 2006</u>
Sanitary Landfill - operating at 31, 200 tons per year (tpy) or more	\$[8,286] <u>13,695.00</u>
Sanitary Landfill-operating at less than 31,200 tpy	\$[5,418] <u>6,090.00</u>
Transfer Stations and Materials Recovery Facilities – operating at 31,200 tpy or more	\$[8,286] <u>9,895.00</u>
Transfer Stations and Materials Recovery Facilities – operating at less than 31,200 tpy	\$[5,418] <u>7,990.00</u>
Thermal Destruction Facilities - operating at 9.6 tons per day or more	\$[8,286] <u>6,090.00</u>
Thermal Destruction Facilities - operating at less than 9.6 tons per day	\$[1,806] <u>2,030.00</u>
Solid Waste Composting and Co-	\$[8,286] <u>9,895.00</u>

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<u>Type of Facility</u>	<u>Annual Compliance Monitoring Services Fee for State fiscal year 2006</u>
Composting Facilities	
Closed Landfills	[\$451.00] <u>665.00</u>
Landfill Disruption	[\$451.00] <u>540.00</u>
Research Demonstration & Development/Certificate of Authority to Operate	[\$8,286] <u>2,535.00</u>
<u>Rail Carrier Transfer Facility</u>	<u>\$9,895.00</u>

2. The annual compliance monitoring services fee for each State fiscal year after State fiscal year 2006 shall be annually adjusted pursuant to N.J.A.C. 7:26-4.7. Except for newly permitted facilities and newly permitted rail transfer facilities, the Department shall bill for these fees in equal quarterly installments, on or about July 15, October 15, January 15 and April 15 of each year and the solid waste facility shall pay each invoice no later than 30 days from the date of the invoice.

3. A newly permitted solid waste facility or rail transfer facility shall pay its first annual compliance monitoring services fee as follows, based on the quarterly beginning dates listed at N.J.A.C. 7:26-4.3(b)1:

i. A newly permitted solid waste facility shall pay its first quarterly installment of the annual compliance monitoring services fee on or before the first quarter immediately following the issuance of the permit; and

ii. A newly permitted rail carrier transfer facility shall pay its first quarterly installment of the annual compliance monitoring services fee on or before the first quarter

immediately following the Department's receipt of the notification required under N.J.A.C. 7:26-2D.1(b).

iii. The Department shall bill for each quarterly installment following the first quarterly installment and these installments shall be payable in accordance with the schedule set forth at N.J.A.C. 7:26-4.3(b)1.

(c) (No change.)

(d) [The following table sets forth fees (in dollars) for services for the classes] Each class of solid waste[s facilities] facility set forth in (c) above[, specified by activity] shall pay the applicable fee for the Department's review of any submission listed in the following table. Each fee must accompany the corresponding submission, and is payable in accordance with N.J.A.C. 7:26-2.4(b) and 2.4(c)1vi. If the solid waste facility modifies or amends a submission and the modification or amendment falls into a submission category different from the submission category of the initial submission, the applicable fee must accompany the modification/amendment. The Department may[, in its discretion,] refrain from commencing work [or] on the service for which a fee is established pursuant to this subsection until the Department receives full payment of such fee. If the Department has commenced work on the service, the Department may suspend such work [at any time] until [the applicant or permittee has paid the designated] it receives full payment of such fee. Once the Department has begun its work, fees paid pursuant to this subsection are non-refundable. Where the Department's review of any submission listed in the following table results in the rejection, denial or withdrawal of an application that is the subject of that submission, full payment of the fee in the amount listed below is due and payable at the time of resubmission of the application.

1. (No change.)

2. Sanitary Landfill Facilities



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i.-vi. (No change.)

[vii. Landfill disruptions	\$3,485	\$3,485	\$3,485]
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3. (No change.)

4. Closure Plan

	Class		
	<u>A</u>	<u>B</u>	<u>C</u>
i.- vi. (No change.)			
<u>vii. Minor Landfill disruption</u>	<u>\$855</u>	<u>\$855</u>	<u>\$855</u>
<u>viii. Major Landfill disruption</u>	<u>\$4,065</u>	<u>\$4,065</u>	<u>\$4,065</u>

5. (No change.)

(e) For submissions concerning methane venting systems, on-site disposal, cover material, RD&D reviews, hearing officer's report, construction facility inspection, contaminated soil reviews, or the solid waste facility performance partnership agreement, the applicant/permittee [shall] may request [an initial review of the submission] the Department to provide an estimate of the fee for review of that submission. As part of its initial review, the Department shall [determine] charge the fees for performing its services in connection with the submission. [Such fees shall be equal to the number of] An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department shall be based on actual hours [estimated by the Department to be required for the performance of such services] worked, multiplied by an hourly rate for solid waste regulation services for State fiscal year 2006 of \$[106.00] 115.00. For each State fiscal year after State fiscal year 2006,

the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26-4.5. Once the Department has begun its work, fees paid pursuant to this subsection are non-refundable.

(f) The omission of any type of service from the fee schedules set forth in (a), (b), (d) and (e) above, or if the Department determines that performing its services will exceed the fee the Department charges for the review of any submission listed at (d) above, shall not [be construed as a waiver of the Department's authority to assess fees] prevent the Department from assessing a reasonable fee for such services, at any time whether prior to, during or after the Department has performed its services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above [shall] may request [an initial review of the submission] the Department to provide an estimate of the fee for review of that submission. As part of its initial review, the Department shall [determine] charge the fees for performing its services in connection with the submission. The solid waste facility performance partnership agreement will be assessed a fee based on the [hour for hour] hour-by-hour negotiation of the document with the permittee and any associated work. This assessment will allow for the flexibility required by the Department and the permittee in establishing its permit pursuant N.J.A.C. 7:26-2.14. [Such fees] An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department shall be [equal to the number of] based on actual hours [estimated by the Department to be required for the performance of such services] worked, multiplied by an hourly rate for solid waste regulation services for State fiscal year 2006 of \$[106.00] \$115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26-4.5. Once the Department has begun its work, fees paid pursuant to this subsection are non-refundable. The Department will calculate the fee for performance of the Department's services as follows:

1. (No change.)
2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the Department's estimate of the

number of person-hours required to perform such activity, multiplied by the hourly rate for solid waste regulation services for State fiscal year 2006 of \$[106.00] \$115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26-4.5.

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee [shall] may request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

(h) The Department may, in its discretion, refrain from commencing work on the activity, which is the subject of a fee determined pursuant to (e) or (f) above or (i) below until the Department has received full payment of the fee. If the Department has already commenced work, the Department may, in its discretion, suspend such work until it has received full payment of the fee.

(i) The following table sets forth fees (in U.S. dollars) for services in reviewing beneficial use applications and issuing certificates of authority to operate (CAO) a beneficial use project pursuant to N.J.A.C. 7:26-1.7(g). The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant has paid the designated fee. Once the Department has begun its work, fees paid pursuant to this subsection are non-refundable.

1. (No change.)

2. For additional activities such as pre-application meetings and site visits or any other activity which the Department determines, in its discretion, is required to fully evaluate and process the applicant's submission, the Department shall [determine] charge the fee for

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performing the additional services. An estimated fee calculated pursuant to this paragraph is not binding on the Department. The final fee to be charged by the Department shall be [equal to the number of] based on actual hours [estimated by the Department to be required for the performance of such services,] worked multiplied by an hourly rate for solid waste regulation services for State fiscal year 2006 of \$[106.00] \$115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26-4.5.

#### 7:26-4.4 Fee schedule for transporters

(a) For solid waste transporters, excluding those solely transporting hazardous waste, a biennial registration and inspection fee shall be paid. Annual registration shall continue through the registration period of calendar year 2002. In accordance with (b) below, the odd numbered year for biennial registration shall begin calendar year 2003. The [five year] five-year registration period for public entities shall begin calendar year 2001. The registration of a solid waste transporter is non-transferable and fees are non-refundable.

(b) through (i) (No change.)

7:26-4.5 Recodify as 7:26-4.8 (No change in text.)

#### 7:26-4.5 Solid Waste Facility Fee Hourly Rate Calculation

(a) The Department shall compute the Solid Waste Fee Hourly Rate in accordance with (b) below and it shall be used in calculating solid waste facility fees in accordance with N.J.A.C. 7:26-4.6 and Compliance Monitoring Fees in accordance with N.J.A.C. 7:26-4.7.

(b) The Department shall calculate the Solid Waste Facility Fee Hourly Rate for the upcoming State Fiscal Year (SFY) as of the December 1 that precedes the upcoming SFY as follows:

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$$\text{Hourly Rate} = \frac{(\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{BH}}$$

BH

Where:

AS = The average annual salary of the Direct Program Staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to an employee. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system

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management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program Staff funded through the various fee programs.

BH = 1428. The billable hours, which is the average number of hours each Direct Program Staff position spends annually performing activities for which fees are assessed, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by 7 hours per workday equals the 1428 billable hours used for most calculations).

(c) Each year, the Department shall prepare a Solid Waste Facility Fee Hourly Rate Calculation Report detailing the factors used to calculate the hourly rate and the excess hourly rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

#### 7:26-4.6 Solid Waste Facility Fee Calculation

(a) The Department shall calculate Solid Waste Facility Fees in accordance with (b)1 through (b) 2 below and shall assess these fees in accordance with (d) below.

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(b) The Department shall calculate Solid Waste Facility fees for the upcoming State fiscal year, as of the December 1 that precedes the upcoming State fiscal year as follows:

1. Calculate Task Hours by determining the number of hours (determined from time coding or workload analysis) required to perform the specific program function for which the Direct Program Staff is being employed (such as Class A Landfill Renewal, Transfer Station Major Modification, Thermal Destruction Facility Minor Modification, etc.).

2. Multiply the Solid Waste Facility Hourly Rate derived pursuant to N.J.A.C. 7:26-4.5 by the Task Hours for each task calculated in paragraph (b)1 above to derive the Solid Waste Facility Fee for each task.

(c) Each year, the Department shall prepare an Annual Solid Waste Facility Fee Calculation Report detailing the factors used to calculate each fee. During the month of February, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and the task hours used to calculate each fee. The notice shall state the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

(d) Fees under N.J.A.C. 7:26 are assessed per occurrence and shall not be prorated or refunded. A bill will be issued to the applicant upon completion of the initial review.

7:26-4.7 Recodify as 7:26-4.9 (No change in text.)

7:26-4.7 Compliance Monitoring Services Fee Calculation

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(a) This section shall apply to all compliance monitoring services fees calculations for facilities that are required to pay compliance monitoring services fees pursuant to this chapter.

(b) The Department shall calculate compliance monitoring services fees for the upcoming State Fiscal Year as of December 1 that precedes the upcoming State fiscal year as follows:

1. Calculate Task Hours by determining the number of hours (determined from time coding or workload analysis) required to perform the specific program function for which the Direct Program Staff are being employed (such as Major Landfill inspections, Class B Recycling Center inspections, Hazardous Waste Non-Commercial Facility inspections, etc.).

2. Multiply the Solid Waste Facility Hourly Rate derived pursuant to N.J.A.C. 7:26-4.5 above by the Task Hours calculated in paragraph (b)1 above to derive the compliance monitoring services fee for each task.

(c) Each year, the Department shall prepare an Annual Compliance Monitoring Fee Calculation Report detailing the factors used to calculate each fee. During the month of February, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and the task hours used to calculate each fee. The notice shall state the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

(d) The recipients shall pay said compliance monitoring fee by check or money order, payable to "Treasurer, State of New Jersey" within 30 days of the date on which it is billed. The check or money order shall be submitted in accordance with the remittance information contained on the bill.



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7:26-4.8 Recodify as 7:26-4.9 (No change in text.)

## CHAPTER 26A – RECYCLING RULES

### SUBCHAPTER 2 – ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER FOR CLASS B, CLASS C AND CLASS D RECYCLABLE MATERIAL

#### 7:26A-2.1 Fees for general or limited approval

(a) (No change.)

(b) The following apply to the annual fee for general approval and the monthly fee for limited approval:

1. through 4. (No change.)

[5. All composting operations exempt under N.J.A.C. 7:26A-1.4(a) shall pay a compliance fee of \$1,381 for an exemption determination inspection.]

[(c) The following apply to the annual fee for compliance monitoring. The annual fee for compliance monitoring will cover the Department's costs of facility compliance inspections and case management activities related to compliance monitoring

1. All persons who possess a general approval to operate a recycling center for Class B recyclable material shall be billed an annual fee of \$8,286 for compliance monitoring on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

2. All persons who possess a limited approval to operate a recycling center for Class B recyclable material shall submit a fee of \$690.00 per month for each month of operation authorized by the limited approval. The fee for the total number of months of authorized operation is due 15 days from the date of issuance of the limited approval.

i. The monthly fee for limited approval will cover the Department's costs of advising recycling center owners or operators on technical compliance matters, and facility compliance inspections.

3. All persons who possess a general approval to operate a recycling center for Class C recyclable material shall be billed an annual fee of \$8,286 for compliance monitoring on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

4. All persons who possess a general approval to operate a recycling center for Class D recyclable material-Used Oil shall be billed an annual fee of \$8,923 on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.

5. All persons who possess a general approval to operate a recycling center for Class D recyclable material-Other shall be billed an annual fee of \$8,286 on May 1 for each fiscal year beginning on July 1 and ending on June 30. The fee is payable within 30 days of billing. For newly approved recycling centers, the first annual fee is due on the first May 1 immediately following the issuance of the general approval.]

(c) The fee schedule for Recycling Center annual compliance monitoring services is as follows:

1. For State fiscal year 2006:

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i. Each recycling center shall pay the applicable annual fee listed in the following table for compliance monitoring services. The fees are billable in equal quarterly installments, during July, October, January and April of State fiscal year 2006. Each invoice shall be payable within 30 days following issuance of the invoice. For newly approved recycling centers, the first annual fee is due on the first July immediately following the issuance of the general approval.

<u>Type of Center</u>	<u>State Fiscal Year 2006 Compliance Monitoring Fees</u>
<u>Class B - General Approval</u>	<u>\$ 9,130.00</u>
<u>Class C - General Approval</u>	<u>\$ 9,130.00</u>
<u>Class D - General Approval: Used Oil</u>	<u>\$ 12,175.00</u>
<u>Class D - General Approval: Other than Used Oil</u>	<u>\$ 12,175.00</u>
<u>Exempt composting facilities compliance inspection</u>	<u>\$ 1,015.00</u>

ii. All persons that possess a limited approval to operate a recycling center for Class B recyclable material shall submit a fee of \$700.00 per month for each month of operation authorized by the limited approval. The fee for the total number of months of authorized operation shall be billed during July for the previous one year period. The monthly fee for limited approval shall be applied to offset the Department's costs of advising recycling center owners or operators on technical compliance matters, and to facility compliance inspections.

iii. All persons that are in the business of removing automotive mercury switches shall pay an annual fee of \$445.00 for compliance monitoring services. The fee will be billed during July of each year. The fee is payable within 30 days of billing.

2. For each State fiscal year following State fiscal year 2006, the fees set forth at (c)1 above shall be annually adjusted pursuant to N.J.A.C. 7:26A-2.4 and 2.5. The billing schedule for the annually adjusted fees shall be the same as the billing schedule for the fees that are assessed under (c)1 above.

(d) The omission of any type of service from the fee schedules set forth in (a), or (b) above, the omission of a fee for a modified type of facility, or if the Department determines that performing its services will exceed the fee the Department charges for annual compliance monitoring services listed at (c) above, shall not [be construed as a waiver of the Department's authority to assess fees for] prevent the Department from assessing a reasonable fee such services at any time whether prior to, during or after the Department has performed its services. An applicant/permittee [making a submission which it] that believes a service is not included [in any of the schedules set forth] in (a) above [shall] may request [an initial review of the submission] the Department to provide an estimate of the fee for that service. As part of its initial review, the Department shall [determine] charge the fees for performing its services in connection with the submission. An estimated fee calculated under this subsection is not binding on the Department. The final fee to be charged by the Department shall be [equal to the number of] based on actual hours [estimated by the Department to be required for the performance of such services] worked, multiplied by an hourly rate for recycling center regulation services for State fiscal year 2006 of \$[106.00] 115.00. For each State fiscal year after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.A.C. 7:26A-2.4. The Department will calculate the fee for performance of the Department's services as follows:

1. (No change.)

2. If the Department determines, in its discretion, that such activity is not of a type listed in (a) above, the fee shall be equal to the Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate for recycling center regulation services for State fiscal year 2006 of \$[106.00] 115.00. For each State Fiscal Year

after State fiscal year 2006, the hourly rate shall be annually adjusted pursuant to N.J.S.A. 7:26A-2.4.

(e) A determination of [a] an estimated fee made pursuant to (d) above shall expire on the date, which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee [shall] may request a redetermination of the fee in writing, and the Department shall redetermine the fee in accordance with (d) above, as applicable.

(f) The Department may[, in its discretion,] refrain from commencing work on the activity which is the subject of a fee determined pursuant to (a), (b), (c) or (d) above until the Department [has received] receives full payment of the fee. If the Department has [already] commenced work, the Department may[, in its discretion,] suspend such work until it [has received] receives full payment of [the] such fee. Once the Department has begun its work, fees paid pursuant to this paragraph are non-refundable.

#### 7:26A-2.3 Payment of fees

(a) Payment of all fees for activities related to recycling shall be [made] paid in U.S. dollars by certified check or money order, payable to "Treasurer, State of New Jersey" and [shall be submitted] mailed or hand delivered to the following address, unless the Department authorizes some other means of payment:

New Jersey Department of Environmental Protection  
[Bureau of Revenue  
P.O. Box 420  
Trenton, New Jersey 08625-0420]

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Solid and Hazardous Waste Management Program

P.O. Box 414

401 East State Street

Trenton, NJ 08625-0414

(b) The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant has paid the designated fee.

(c) All compliance monitoring fees shall be paid in U.S. dollars by certified check or money order, payable to "Treasurer, State of New Jersey" and mailed, along with the fee invoice, to the following address:

Department of Treasury

Division of Revenue

P.O. Box 417

Trenton, NJ 08646-0417

7:26A-2.4 Recycling Center Fee Hourly Rate Calculation

(a) The Department shall calculate the Recycling Center Fee Hourly Rate in accordance with (b) below and shall be used in calculating compliance monitoring fees in accordance with N.J.A.C. 7:26A-2.5.

(b) The Department shall calculate the Recycling Center Fee Hourly Rate for the upcoming State Fiscal Year (SFY) as of the December 1 that precedes the upcoming SFY as follows:

$$\text{Hourly Rate} = \frac{AS+FB+IC+OE+LS}{BH}$$

BH

Where:

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AS = The average annual salary of the Direct Program Staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to a Direct Program Staff position. Operating expenses include costs incurred in connection with the program for such items as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Technology).

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LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program Staff funded through the various fee programs.

BH = 1428. The billable hours, which is the average number of hours each Direct Program Staff position spends annually performing activities for which fees are assessed, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by 7 hours per workday equals the 1428 billable hours used for most calculations).

(c) Each year, the Department shall prepare a Recycling Center Fee Hourly Rate Calculation Report detailing the factors used to calculate the hourly rate and the excess hourly rate. During the month of December, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and excess hourly rate. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

#### 7:26A-2.5 Compliance Monitoring Fee Calculation

(a) This section shall apply to all compliance monitoring fees for recycling centers.

(b) The Department shall calculate compliance monitoring fees for the upcoming State Fiscal Year as of December 1 prior to that State fiscal year calculated, as follows:



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1. Calculate Task Hours by determining the number of hours (determined from time coding and/or workload analysis) required to perform the specific program function for which the Direct Program Staff are being employed.

2. Multiply the Hourly Rate derived pursuant to N.J.A.C. 7:26A-2.4 by the specific Task Hours for each type of activity for which a fee is listed pursuant to (b)1 above to derive the Compliance Monitoring Fee.

(c) Each year, the Department shall prepare an Annual Compliance Monitoring Fee Calculation Report detailing the factors used to calculate each fee. During the month of February, the Department shall publish in the New Jersey Register a notice that includes a summary of the report and the hourly rate and the task hours used to calculate each fee. The notice shall state the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy and shall post a copy of the report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

(d) Fees under this subchapter are assessed per occurrence and shall not be prorated or refunded.

### SUBCHAPTER 3 – APPROVAL OF RECYCLING CENTERS FOR CLASS B, CLASS C OR CLASS D RECYCLABLE MATERIALS

7:26A-3.6 Application for renewal of a general approval to operate a recycling center

(a) (No change.)

(b) Applicants for renewal of existing general approvals shall certify in writing to the Department that there have been no changes in the operations of the recycling center since the issuance of the general approval in order to renew the approval in its existing form. In the event that there have been changes in the design or operations of the recycling center or where either

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design or operational changes are planned, the application for renewal of a general approval shall be accompanied by a written [request to modify] notification of the modification for which the applicant intends to apply, in accordance with the requirements for modifications of general approvals at N.J.A.C. 7:26A-3.10, and payment of the designated modification fee at N.J.A.C. 7:26A-2.1 et seq. The Department will not incorporate modifications into general approvals for recycling centers through the approval renewal process without a designated fee being paid with the initial written notification of said modifications.

(c) through (h) (No change.)

#### 7:26A-3.10 Modifications of general or limited approvals

(a) through (g) (No change.)

(h) Applicants shall pay fees pursuant to the requirements at N.J.A.C. 7:26A-2.1 et seq. at the time that the applicant submits an application for modifications of general or limited approvals, including those modifications referenced during approval renewals pursuant to the requirements of N.J.A.C. 7:26A-3.6(b).

### CHAPTER 26G – HAZARDOUS WASTE

#### SUBCHAPTER 3 – HAZARDOUS WASTE FEES

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

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

(c) Fees for conducting inspections and compliance reviews for generators and facilities are as follows:

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1. (No change.)

2. [Inspection] The hazardous waste facility per-inspection compliance monitoring fee, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-42.1, shall be calculated by dividing the inspection fee determined pursuant to (c)1 above by the number of inspections to be performed. For State fiscal year 2006, the following fees apply:

i. The compliance monitoring fee for a commercial hazardous waste facility, other than a major hazardous waste facility as defined at N.J.S.A. 13:1E-42.1, [per inspection: \$1,442;] shall be \$1,285.00 per inspection.

[3. Inspection] ii. The compliance monitoring fee for a non-commercial hazardous waste facility[: \$3,154; and] shall be \$3,820.00; and

iii. The compliance monitoring fee for a hazardous waste transfer facility shall be \$3,550.00.

[4. Annual fee for a generator] 3. The compliance monitoring fee for a hazardous waste generator shall be divided by the number of generators in the appropriate category in order to arrive at the annual fee. For State fiscal year 2006, the following annual generator fees apply:

i. Large quantity generator: [~~\$980.00~~] \$940.00;

ii. Small quantity generator: [~~\$600.00; and~~] \$660.00;

iii. Conditionally exempt small quantity generator not included in i or ii above, with active identification number: [~~\$40.00~~] \$50.00.

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4. For each State fiscal year after State fiscal year 2006, the fees assessed in subparagraphs 2 and 3 above shall be annually adjusted pursuant to (h), (i) and (k) below.

5. All fees under this subchapter shall be paid in U.S. dollars by certified check or money order, payable to "Treasurer, State of New Jersey" and mailed, along with the fee invoice, to the following address:

Department of Treasury

Division of Revenue

P.O. Box 417

Trenton, NJ 08646-0417

(d) through (f) (No change.)

(g) [The fee schedule for hazardous] Hazardous waste transporters [is as follows] shall pay an annual registration fee pursuant to the following:

1. [All] Except for new hazardous waste transporter applicants, any hazardous waste [transporters] transporter that collects or delivers hazardous waste within the State of New Jersey shall pay [a biennial] an annual fee that is the greater of the per ton fee pursuant to i and ii below, or the minimum fee pursuant to (g)3 below. [A State of New Jersey hazardous waste transporter registration decal will be issued for each] Each hazardous waste cab and transport unit (as defined at N.J.A.C. 7:26G-4.2) [for which a fee is paid.] used in the collection or delivery of hazardous waste in New Jersey shall bear a New Jersey hazardous waste transporter registration decal for identification purposes. The [fee] registration period shall be biennial, unless otherwise established by the Department, and shall extend from July 1 through June 30 of each odd numbered year. [Annual registration fees shall continue through the registration period for calendar year 2002. In accordance with N.J.A.C. 7:26G-3.3(g), the odd numbered year for biennial registration shall begin calendar year 2003. The] In each odd numbered year, the annual fee, in the form of a check or money order, payable to "Treasurer, State of New Jersey," shall accompany the submission of the biennial registration application.

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Fees shall be billed by the Department during the month of March, and shall be payable prior to May 1 of each [registration period] calendar year. All vehicles registered with the Department must be owned or leased by the applicant. If the vehicle is leased, a copy of the lease must be submitted with the registration application. The registration of a hazardous waste transporter is non-transferable and fees are not to be prorated and are not refundable. The [biennial] annual registration [fees are] fee is as follows:

i. [Each hazardous waste cab: (\$20.00 for calendar year 2002) \$40.00;] For State fiscal year 2006, \$1.67 for each ton of hazardous waste transported by a hazardous waste transporter, based on the manifest data on file with the Department as of the previous October 1, for the prior calendar year;

ii. [Each hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab, having a capacity less than or equal to one ton (one ton = one cubic yard = 200 gallons): (\$85.00 for calendar year 2002) \$170.00] For each State fiscal year following State fiscal year 2006, the fee for each ton of hazardous waste that transporter collects or delivers in New Jersey in the applicable 12 month period shall be annually adjusted pursuant to (j) and (k) below. The number of tons transported by that transporter shall be the amount of hazardous waste originating from or delivered to New Jersey facilities that is recorded in the State's hazardous waste manifest system for that transporter.

[iii. Each hazardous waste transport unit without a hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): (\$117.00 for calendar year 2002) \$234.00; and

iv. Each hazardous waste transport cab with permanently attached hazardous waste transport unit with a capacity greater than one ton (one ton = one cubic yard = 200 gallons): (\$137.00 for calendar year 2002) \$274.00.]

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2. New hazardous waste transporter applicants shall pay a registration fee that is calculated pursuant to the following formula, rounded to the nearest \$5.00. Applicants that are applying to register more than five vehicles and therefore need more than five decals (used to show proof of registration) shall be billed the actual cost for each decal, beyond the initial five. The fee shall be submitted with the application. For State fiscal year 2006, the registration fee for a new hazardous waste transporter is \$65.00 plus \$.14 per decal for more than five decals.

$$\text{New Applicant} = \frac{((AS + FB + IC + OE + LS)/BH)0.5}{\text{Registration Fee}}$$

Where: AS, FB, IC, OE, LS and BH shall be as defined at (h) below.

3. The minimum hazardous waste transporter registration fee shall be calculated pursuant to the following formula, rounded to the nearest \$5.00. Any registered transporter that hauls no waste during the year for which the annual fee was calculated pursuant to 7:26G-3.3(g)1.i and ii above, will pay the minimum fee. For State fiscal year 2006, the minimum registration fee for a hazardous waste transporter is \$65.00. On registration renewal years, registrants that have not transported any waste and that require more than five decals will be billed the actual cost for each decal, beyond the initial five, per the contract awarded by the Department to its decal supplier.

$$\text{Minimum} = \frac{((AS + FB + IC + OE + LS)/BH)0.5}{\text{Registration Fee}}$$

Where: AS, FB, IC, OE, LS and BH shall be as defined at (h) below.

(h) The Department shall calculate the Hazardous Waste Fee Hourly Rate for the upcoming State Fiscal Year as of the December that precedes the upcoming State fiscal year as follows:

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$$\text{Hourly Rate} = \frac{(\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{BH}}$$

BH

Where:

AS = The average annual salary of the Direct Program Staff assigned to the activity, plus a component that reflects the salaries for Direct Support and Division Overhead staff who perform functions related to the fee activity. To calculate AS, the Department divides the applicable number of Direct Support staff and Division Overhead staff salaries by the number of Direct Program staff and adds this figure to the average salary of the Direct Program staff.

FB = The average fringe benefits for an employee calculated as a percentage of the average salary. The New Jersey Department of Treasury sets the percentage based on costs associated with pensions, health benefits, workers compensation, disability benefits, unused sick leave and the employer's share of the Federal Income Compensation Act (FICA) contribution. The percentage is annually set by the New Jersey Department of Treasury.

IC = The indirect costs, which are calculated at a rate negotiated annually between the Department and the United States Environmental Protection Agency. Indirect costs are those costs incurred for a common or joint purpose, benefiting more than one objective and not readily assignable to the cost objective specifically benefited without effort disproportionate to the result achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. Indirect costs do not include the salaries for Division Overhead staff and Direct Support personnel. To calculate the IC, the current negotiated rate is multiplied by the sum of AS and FB.

OE = The average operational expenses attributable to a Direct Program Staff position. Operating expenses include costs incurred in connection with the program for such items as

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postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management (internal systems such as the New Jersey Environmental Management System (NJEMS) and external mainframe applications through the Office of Information Management).

LS = The budgeted annual costs of legal services performed in connection with each of the types of activities for which fees are assessed divided by the total number of Direct Program Staff funded through the various fee programs.

BH = 1428. The billable hours, which is the average number of hours each Direct Program Staff position spends annually performing activities for which fees are assessed, is determined by starting with the total number of days in the calendar year, 365. Then weekends and holidays are subtracted. This figure is further reduced by subtracting days for an average number of used employee leave time (vacation, sick and administrative leave days). Finally, the figure is adjusted by subtracting days for training and other non-billable staff time (such as medical surveillance, time sheet preparation, staff meetings, and other general functions). This results in 204 working days annually that can be allocated to specific objectives (204 days multiplied by 7 hours per workday equals the 1428 billable hours used for most calculations).

(i) The Department shall calculate hazardous waste facility compliance monitoring fees for the upcoming State fiscal year as of December 1 that precedes the upcoming State fiscal year, as follows:

1. Calculate Task Hours by determining the number of hours (determined from time coding and/or workload analysis) required to perform the specific program function for which the Direct Program Staff is being employed.

2. Multiply the Hourly Rate derived pursuant to (h) above by the specific Task Hours for each type of activity for which a fee is listed pursuant to (i)1 above to determine the Hazardous Waste Compliance Monitoring Fee.



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(j) The Department shall annually determine during the month of October the hazardous waste transporter per ton fee, using the following formula:

$$\text{Per Ton Fee} = \frac{\text{Direct Program Staff} \times (\text{AS} + \text{FB} + \text{IC} + \text{OE} + \text{LS})}{\text{Total Tons Transported}}$$

WHERE:

Direct Program Staff = The Full Time Equivalent (FTE) level, projected to the nearest five percent, for all positions required to code time directly to any of the functions associated the hazardous waste transporter program, including but not limited to; issuance of transporter registration documents, transporter billing, compliance monitoring, inspections and any actions regulatory activity. The FTE, including but not limited to managers, clerical support, rule writers, administrative and information technology support staff, not attributable to specific program functions (including but not limited to hazardous waste transporter registration, solid waste transporter registration, Regulated Medical Waste, A901, recycling centers, solid waste permit fees, manifest and the biennial report programs in Solid Waste Management), shall be apportioned in proportion to those various program areas. Any FTE funded by alternative non-fee sources, such as Federal Grants, shall not be included in the determination of the FTE.

AS, FB, IC, OE, and LS are as they are defined in at (h) above.

“Total Tons Transported” is the combined amount of hazardous waste that originates from or is delivered to New Jersey facilities by all registered transporters as reported on the hazardous waste manifest system for a given year of the registration period.

(k) Each year, the Department shall prepare a Hazardous Waste Fee Hourly Rate Report, a Hazardous Waste Compliance Monitoring Fee Report, and an Annual Hazardous Waste Transporter Tonnage Calculation Report detailing the factors used to calculate hourly rate, the compliance monitoring fee and the per ton rate. During the month of December, the

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Department shall publish in the New Jersey Register a notice that includes a summary of each report and the hourly rate, the compliance monitoring fee and the per ton rate. The notice shall state the reports are available, and shall direct interested persons to contact the Department for a copy of either report. The Department shall provide a copy of either report to each person requesting a copy and shall post a copy of each report on the Department's website at [www.state.nj.us/dep](http://www.state.nj.us/dep).

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order No. 27 (1994) and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., permit the public to understand accurately and plainly the purposes and expected consequences of this proposal. I hereby authorize the proposal.

\_\_\_\_\_  
Date

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