

# NEW JERSEY REGISTER



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## REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS\*, PAGE 1007

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(Includes rules filed through April 14, 1986)

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183 W State St.  
Trenton, N.J.

\*MOST RECENT UPDATE TO ADMINISTRATIVE CODE: FEBRUARY 18, 1986.

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE WILL BE DATED MARCH 17, 1986.

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# RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **June 4, 1986**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

## AGRICULTURE

### (a)

#### DIVISION OF ANIMAL HEALTH

##### Indemnification

##### Avian Influenza

##### Proposed New Rules: N.J.A.C. 2:9-1.1 and 1.2

Authorized By: State Board of Agriculture, Arthur R. Brown, Jr., Secretary.

Authority: N.J.S.A. 4:5-1 and 4:5-10.

Proposal Number: PRN 1986-149.

Submit comments by June 4, 1986 to:  
Sidney R. Nusbaun, DVM, Director  
Division of Animal Health  
New Jersey Department of Agriculture  
CN 330  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

An outbreak and the potential for the spread of the contagious disease Avian Influenza in New Jersey has made it probable that the Department of Agriculture may have to move to depopulate flocks of infected poultry. Pursuant to the statutory authority of N.J.S.A. 4:5-10, the Department of Agriculture proposes new rules for indemnification and disposal of infected birds.

##### Social Impact

Owners and buyers of chicken products will experience temporary interruptions in normal trade and activities as infected birds are destroyed. Owners of infected birds will benefit from these rules because they will be compensated for their losses. A greater level of protection to the unaffected poultry industry will be accomplished as a result of the new rules.

##### Economic Impact

Should depopulation become necessary, indemnification of losses will help stem the economic losses suffered by owners and help insure eradication of transmittal points of the disease.

Full text of the proposed new rule follows.

#### CHAPTER 9. AVIAN INFLUENZA

##### SUBCHAPTER 1. INDEMNIFICATION

##### 2:9-1.1 Indemnities

(a) The handling and disposition of any and all poultry, poultry products or equipment, which is in the opinion of the Department of Agriculture likely to spread or harbor Avian Influenza shall be dealt with in accordance to the directives of the Division of Animal Health of the New Jersey Department of Agriculture.

(b) Indemnity to be paid for any bird destroyed pursuant to an order of the Department shall be the market value of the type and classification of the average bird of such type and kind. No indemnity for any one bird shall exceed \$20.00 per bird.

(c) No indemnity shall be paid for any actions not taken pursuant to a directive of the Department, or in contradiction of a directive of the Department.

##### 2:9-1.2 Disposal costs

(a) The disposal costs of any birds destroyed pursuant to a directive of or by the Department shall be paid as follows:

1. Should the owner undertake to dispose of the birds pursuant to the directives of the Department, the owner shall submit the disposal bill to the Department. If the Department finds the bill reasonable, the Department shall reimburse the bill, or such costs as the Department deems reasonable.

2. No disposal undertaken without Department supervision, or in contradiction to the directives of the Department, shall be paid.

## NEW JERSEY REGISTER

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## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

##### Petitions for Rules

##### Proposed Readoption: N.J.A.C. 5:29

Authorized By: Leonard S. Coleman, Jr., Commissioner,  
Department of Community Affairs.  
Authority: N.J.S.A. 52:14B-4(f) and 52:27D-3(e).  
Proposal Number: PRN 1986-152.

Submit comments by June 4, 1986 to:  
Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Division of Housing and Development  
CN 804  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

Pursuant to Executive Order No. 66(1978), the Department proposes to readopt the regulations concerning petitions for rules of the Division of Housing and Development. These rules will expire July 1, 1986 pursuant to the Executive Order. The Division has jurisdiction over enforcement of the Hotel and Multiple Dwelling Law, the State Uniform Construction Code Act, the Rooming and Boarding House Act of 1979 and the Uniform Fire Safety Act, all of which are major regulatory statutes which affect large numbers of people. The regulations proposed for readoption provide a formal mechanism, consistent with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) whereby members of the public may propose rule amendments.

Since 1981, four petitions for rules have been received by the Division. One petition was accepted, one was rejected and action on two is currently pending. The Division has published in the New Jersey Register these petitions for rules and the existence of the guidelines set forth in chapter 5:29 has facilitated use of this process.

##### Social Impact

Failure to readopt the chapter will eliminate standards for determining when a document qualifies as a rule petition, thereby making it more likely that documents lacking necessary information will be submitted. Another possible result of failure to adopt will be decreased public awareness of the existence of the rule petition process.

##### Economic Impact

The readoption or non-readoption of this chapter can be expected to have no discernible economic impact since the rules outline an administrative procedure to propose rule changes.

**Full text** of the proposed readoption follows (additions indicated in boldface **thus**).

#### CHAPTER 29

#### DIVISION OF HOUSING AND DEVELOPMENT ADMINISTRATIVE RULES

##### SUBCHAPTER 1. PETITIONS FOR RULES

###### 5:29-1.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Division of Housing and Development, or by any of its component bureaus, pursuant to N.J.S.A. 52:14B-4(f).

###### 5:29-1.2 Form of petition

###### (a)-(b) (No change.)

(c) Any document submitted to the Division of Housing and Development or to any of its component bureaus which is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

###### 5:29-1.3 Procedure for petitions

(a) Petitions for the promulgation, amendment or repeal of a rule by the Division of Housing and Development or any of its component bureaus shall be addressed to the office of the Director, Division of Housing and Development, CN 804, Trenton, New Jersey 08625.

###### (b)-(e) (No change.)

## EDUCATION

### (b)

#### STATE BOARD OF EDUCATION

##### Adult and Community Education

##### High School Equivalency (State Issued Diploma for Adults)

##### State Approved Adult High Schools (Locally Issued, State Endorsed, Diplomas for Adults)

##### Proposed Readoption with Amendments: N.J.A.C. 6:30-1

##### Proposed Repeal: N.J.A.C. 6:30-2

##### Proposed New Rules: N.J.A.C. 6:30-2

Authorized By: State Board of Education, Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:1-1, 18A:48-1, 18A:48-1, 18A:50-12, 12 and 14, 18A:7C-1.

Proposal Number: PRN 1986-165.

Submit comments by June 4, 1986 to:

Patricia Joseph  
Administrative Code Analyst  
New Jersey Department of Education  
225 West State Street  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The State Board of Education, pursuant to N.J.S.A. 18A:4-15, 18A:48-1, 18A:50-12, 13, 14 and 18A:7C-1 et seq., proposes the readoption with amendments of N.J.A.C. 6:30-1, State Issued Diploma Programs for Adults, and the repeal and adoption of new rules pertaining to the operation of State approved adult high schools, N.J.A.C. 6:30-2. The proposed readoption with amendments and the new rules reflect the requirements necessary to operate State issued diploma programs for adults and adult high schools which provide adults with a State endorsed, local diploma. Pursuant to Executive Order No. 66(1978) these rules, N.J.A.C. 6:30-1 and 2, are scheduled to expire on January 1, 1987.

These rules provide four program options through which an adult can obtain a high school diploma. These four options are (1) the Test of General Education Development (GED), (2) high school credits, (3) college credits, and (4) the adult high school.

The first three of these options, the subject of subchapter 1, are administered by the Division of Adult Education, New Jersey State Department of Education. The GED test requires the diploma applicant to demonstrate knowledge and skills on a test which is nationally accepted for the award of high school diplomas. The high school and college credit options require the diploma applicant to have completed required course credits, as well as demonstrate basic skills mastery and determined by the commissioner.

The adult high school program, the subject of subchapter 2, gives individuals a chance to master skills and proficiencies similar to those offered in the regular high school day program. Students in the adult high school must study the basic core curriculum as well as appropriate electives. Credits may be awarded for life experiences and a variety of previous learning experiences.

The revised adult high school code addresses many of the ambiguous areas in previous rules and reflects a standardization for awarding credit for life experiences and non-time-based programs. The new rules acknowledge the unique nature of the adult high school and strive to eliminate significant differences among program across the state while maintaining a close association with the high school programs in local districts. These rules shall be in effect until August 31, 1988.

##### Social Impact

Approximately one-third of adults in New Jersey do not have a high school diploma. They have not achieved this goal for many reasons but elect to return to programs which offer an opportunity to obtain a high school diploma.

The social impact of these programs is manifold in that great numbers of adults enroll in them to secure a high school diploma, increase their potential in the labor market and raise their self esteem.



#### Economic Impact

Adults with high school diplomas benefit significantly from higher average earnings over their lifetime. A 1984 Rutgers study found that of adults who had recently received a high school diploma forty-five percent had received a better job, twenty-nine percent had received a promotion and twenty-eight percent had demonstrated improved job performance. Those employed at the time of the study report an average increase in take home pay of more than \$26.00 per week. In addition to this, fifty-eight percent of those surveyed who were unemployed obtained employment.

Adult high school funding is under review and is being addressed in pending legislation. Under the new legislation, reimbursement to district boards of education will provide for the expenses to operate these programs based on averaged reported costs from school districts across the state.

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

#### SUBCHAPTER 1. [HIGH SCHOOL EQUIVALENCY (STATE ISSUED DIPLOMA FOR ADULTS)] STATE ISSUED DIPLOMA PROGRAMS FOR ADULTS

##### 6:30-1.1 Functions

(a) The [Office of High School Equivalency functions under the supervision of the Director of the Bureau of Adult and Community Education within the Division of School Programs.] **Division of Adult Education is responsible for educational leadership and funding for adult high school completion programs.**

(b) The [office] **division** is responsible for the: [allocation of categorical aid to adult secondary programs operating in local school districts, county community colleges, and county and State institutions. The office is responsible for the provision of technical assistance for high school equivalency instructional programs and to adult high schools and supervision of the General Educational Development Testing Centers.]

**1. Allocation of funds to local school districts, county community colleges and county and state institutions for the operation of high school completion instructional programs.**

**2. Monitoring and evaluation of high school completion instructional programs and adult high schools.**

**3. Provision of technical assistance to programs funded under this chapter.**

**4. Supervision of General Educational Development (GED) Testing Centers.**

**5. Evaluation of secondary school and college transcripts of persons applying for a State issued high school diploma.**

**6. Administration of all examinations to qualify for a State issued high school diploma.**

**7. Awarding of State issued high school diplomas to applicants meeting the requirements of N.J.A.C. 6:30-1.3(a)1, 2, and 3.**

[(c) The office is also responsible for the evaluation of secondary school and college transcripts of persons applying to the State for a high school diploma, and for the administration of all examinations taken to qualify for a State high school diploma.]

##### 6:30-1.2 Age and out-of-school requirements

(a) All persons applying for [the] **a State or locally issued** high school diploma must be 18 years of age and out of school [for one year.] Exceptions to this rule may be made in special cases for out-of-school youth, [who are] **16 and 17 years of age [old or over].**

(b) Requests for exceptions to this section **for out-of-school youth 16 and 17 years of age residing in a natural or foster home** must be approved by either a parent, guardian, probation or parole officer, State rehabilitation counselor or judge and one of the following representatives of the school district in which the applicant resides:

1. [A h]High school principal; or
2. Superintendent of schools.

(c) [The] **All** requests for exceptions [should] **shall** state why the individual should be **allowed to attend an adult education program or be tested** before meeting the age and[/or] out-of-school [for a year] requirement[. The school district representative] and shall certify that the applicant and **his/her parents or guardian have been counseled about [has been given] the opportunity to [enroll in] attend [school and has been offered] available in-school program options provided by the district.**

(d) **Requests for exceptions to this section for out-of-school youth 16 and 17 years of age who are residing in a state, county or municipal institution, or in residential rehabilitation settings must be signed by the chief school administrator or the education director of the institution or program and the parent, guardian, or, when neither is available, a surrogate parent.**

**1. Each institution shall ensure that the rights of a youth are protected through the provision of a surrogate parent who shall assume all parental rights under this chapter, when either:**

- i. **The parent(s) cannot be located after reasonable efforts; or**
- ii. **The youth is a ward of the State of New Jersey.**

**2. Each institution shall establish a method for selecting and training surrogate parents.**

**3. The person serving as a surrogate parent shall have:**

- i. **No interest that conflicts with those of the youth he/she represents;**
- ii. **Knowledge and skills that ensure adequate representation of the youth.**

**4. The person(s) serving as a surrogate parent may not otherwise be an employee of the institution. A surrogate parent may be paid solely to act in that capacity.**

[(d) Persons age 18 and over are exempt from the requirement of approval by a parent, guardian, probation or parole officer, State rehabilitation counselor or judge.]

##### 6:30-1.3 Certification by examination or course credit

(a) Any one of the following methods may be used by eligible adults to qualify for the State **issued** high school diploma[.]:

[(b)]1. The General Educational Development (GED) Test Battery of the American Council on Education [will] **shall** be used as the basis for qualifying for a State **issued** high school diploma. [if the applicant scores at least 40 on each individual test and totals at least 225 points.]

**i. The State Board of Education, after consultation with the Commissioner, shall establish uniform, statewide standard scores for passage of the GED test. The Board shall also establish a test of English fluency and standard scores for passage for candidates taking the GED test in Spanish or French.**

**ii. These standard score requirements shall be adopted and subject to change by resolution of the State Board of Education. The State Board shall announce its intent to change GED score requirements no less than 28 days prior to final adoption.**

[(c)]2. [The State high school diploma will be awarded to applicants demonstrating basic skills mastery as determined by the Commissioner of Education and by presenting an official high school transcript showing not less than 92 credits of which no more than 20 may be in physical education, health and safety, and must include 20 credits in communication, 10 credits in computation, 10 credits in social studies and history, five credits in fine, practical and/or performing arts, five credits in natural or physical science and 2.5 credits in career exploration or development.] **Persons may apply for a State issued high school diploma by presenting evidence of basic skills mastery as determined by the Commissioner of Education and official transcripts showing the minimum number of high school credits as required in N.J.A.C. 6:8-4.2 Promotion and graduation, with the exception of physical education, health and safety which shall be limited to no more than 20 credits.**

[(d) Persons not meeting these requirements may qualify by taking subject matter and basic skills examinations developed or approved by the Commissioner of Education.]

[(e)]3. Persons [completing the equivalent of one full year of college] may apply for a State **issued** high school diploma by presenting evidence of [minimum] basic skills mastery as determined by the Commissioner of Education and an official transcript(s) showing [the equivalent of one full year of successful college work in courses leading to a degree. Each applicant must have completed successfully at least 24 credits or the equivalent college credits, toward a degree.] **at least 24 general education credits leading to a degree at an accredited institution of higher education. Included in the 24 credits must be a minimum of 3 credits in each of the general education categories of communications, mathematics and sciences, social sciences and humanities as defined in N.J.S.A. 9:4-1.6 Educational programs.**

##### 6:30-1.4 Fees

(a) Persons submitting application for a State high school diploma by examination or reexamination must pay a fee of \$15.00 in the form of a money order or bank certified check made payable to the Commissioner of Education.

(b) Persons taking the [reading and mathematics tests of the General Educational Development Test] **statewide assessment test as specified by the Commissioner of Education at times other than during the regularly scheduled statewide administration to meet State basic skills testing requirements for a State endorsed high school diploma issued through programs specified in N.J.A.C. 6:30-1.3(a)2, 3 or Subchapter 2, State Approved Adult High Schools** must pay a fee of \$10.00 in the form of a money order or bank certified check made payable to the Commissioner of Education.



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(c) Persons housed under the custody and supervision of the New Jersey State Department of Corrections may, by contractual agreement with the New Jersey State Department of Education, be administered the GED test without charge to either the candidate or the New Jersey State Department of Corrections.

[(c)] (d) Persons requesting the issuance of a State high school diploma based on evaluation of secondary school credit or college coursework and those requesting a duplicate diploma must pay \$5.00 in the form of a money order or bank certified check made payable to the Commissioner of Education.

#### 6:30-1.5 Eligibility for instructional program funding

(a) School districts, county community colleges, and county and State institutions may apply to the Commissioner of Education for funds equal to the amount of [annual] anticipated costs to operate high school [equivalency] completion instructional programs for [out-of-school youth and adults] adults and out-of-school youth who [meet the eligibility requirements for the high school equivalency examinations. Adults and out-of-school youth not possessing] do not possess a high school diploma, [are eligible to attend instructional programs provided they] are residents of New Jersey and meet the age and out-of-school provisions of N.J.A.C. 6:30-1.2. [Eligible agencies may contract with and delegate responsibility to other nonprofit educational agencies with the approval of the Commissioner of Education.]

(b) In order that the Commissioner may estimate by November 15 the amount [necessary] to be appropriated to carry out the provisions of [the Act, the amount of funds to be requested and all plans for the succeeding fiscal year, shall be received by September 30. Specific plans for the utilization of funds requested shall then be submitted no later than June 15 of the pre-budget year. All such plans when received will be reviewed within 90 days. No plan will be rejected in whole or in part without prior consultation with the Chief Administrative Officer of the applying agency.] statute, eligible agencies shall submit a statement of anticipated funding needs for the succeeding fiscal year. These statements shall be submitted to the division no later than August 31 of the pre-budget fiscal year.

(c) [Plan requirements shall include, but not be limited to, the following information:] Eligible agencies shall submit a final application for funds in accordance with procedures established by the division no later than June 15 of the pre-budget fiscal year. All applications will be reviewed and approved for funding amounts on a formula basis in accordance with established criteria. Eligible agencies which are approved for funding will receive contract offers. Contracts will be approved by the Department based on an agency's certification that contractual terms and conditions will be met.

1. Staffing which adheres to local requirements;
2. Curriculum;
3. Budget detailing the following reimbursable costs: salaries, fringe benefits and all other materials, supplies and equipment necessary to operate the program;
4. Description of student diagnostic assessment program;
5. Plan for program assessment.]

(d) [Eligible agencies will be reimbursed for program costs at the same time and in the same manner as other State aid under N.J.S.A. 18A:58-15. The eligible agency] Agencies with approved contracts shall maintain [such] financial and program records and [accounts, including personnel, financial, and students' information and evaluation records, as are deemed necessary by the Commissioner of Education. Such records shall be submitted to the Department of Education on prescribed forms on a quarterly basis.] submit all reports as required by the terms and conditions of their contracts.

(e) Applicants seeking administrative appeal of a notification of funding from the Director, Division of Adult Education, shall adhere to the following procedures and timelines or forfeit their rights of appeal:

1. File a written request for a hearing with the Assistant Commissioner, Education Programs, within 15 calendar days of receipt of the notification.
2. The Assistant Commissioner, Educational Programs, or a designee, shall conduct a hearing and forward a written decision to the appellant within 15 calendar days after the conclusion of the hearing.

#### 6:30-1.6 Implementation

[The amendments in this subchapter shall become operative on October 1, 1982.]

This subchapter shall be in effect until August 31, 1988 or at such earlier date when amended.

## SUBCHAPTER 2. STATE APPROVED ADULT HIGH SCHOOLS (LOCALLY ISSUED, STATE ENDORSED, DIPLOMAS FOR ADULTS)

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 6:30-2.

Full text of the proposed new rules follows.

### 6:30-2.1 General provisions

Rules applicable to adult high schools should be directed toward the adult student. Adult high schools should offer adults opportunity, accessibility and flexibility while maintaining the high standards inherent in the awarding of a high school diploma. Courses should be sufficiently varied for meeting the educational needs of adults and should be designed to challenge participants to achieve their highest level of educational ability.

### 6:30-2.2 Definitions

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

"Accredited" means that the high school, college or university has met the criteria and standards set by the appropriate accrediting agency such as the Middle States Association.

"Adult" means a person 18 years of age or older.

"Adult high school" means a school conducting supervised educational activities in the day or evening to provide adults with the necessary instruction to enable them to complete the requirements for a locally issued, state endorsed diploma.

"Apprentice training" means a formal trade or industrial training program for one to five years duration which is based on at least 2000 hours of supervised training and may include 144 hours of related instruction for each year of the apprenticeship.

"Attendance" means participation in a learning activity for four hours or more for a full-day presence or participation for less than four hours but more than one hour for a half-day presence. Any adult participating in a learning activity for less than one full hour is not considered as attending a scheduled session and is not present for that session.

"Comprehensive examination" means a test designed to assess mastery of a given set of proficiencies.

"Contact time" means the time which a student interacts with a staff member of the adult high school at a Department of Education approved facility for purposes of instruction or counseling.

"Course" and "coursework" means activities and projects which are geared toward mastery of a set of proficiencies.

"DD-214" means a Department of Defense form issued to all members of the military which describes their service record.

"Educational plan" means a signed and dated statement developed by the student and a professional staff member of the adult high school. The educational plan reflects the student's past academic record, an analysis of past experiences for which credit may be awarded, graduation requirements, and a proposed schedule of courses for the current school year leading to completion of the requirements for graduation.

"Enrolled" means that an adult has completed and filed an application for enrollment and assisted in the development and completion of an educational plan.

"Flexible course" means a course that identifies and prescribes activities and projects necessary to achieve an accepted level of proficiency rather than a specified number of minutes of class time.

"Full-time employment" means work that is not less than 30 hours per week.

"Handicapped adult" means any adult who has any physiological disorder or condition, any mental or psychological disorder which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

"Language fluency" means the ability to understand conversational English and to speak the language with sufficient structural accuracy, to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics, to read material for information and to complete forms and write essays and reports on familiar topics.

"Locally issued, state endorsed diploma" means a high school diploma awarded to an individual by a district board of education endorsed by the State Board of Education.

"Monitoring" means a process conducted by representatives of the Department of Education to evaluate programs for compliance with law and rule.

"New Jersey resident" means a person who resides in the State of New Jersey. The residence of a person is defined in terms of domicile. Domicile is defined as the place where a person has his/her true, fixed permanent

home and principal establishment and to which, whenever absent, he/she has the intention of returning.

"Official transcript" means an individual's record of high school or college courses, grades and credits awarded. It shall have either of the following indicators: a raised seal or the original signature of an administrator of the school.

"Part-time employment" means work that is more than 15 hours but less than 30 hours per week.

"Proficiency" means an explicitly stated and demonstrable knowledge and/or skill used to define a desired learning outcome.

"Provisional approval" means approval to begin to operate an adult high school for a period not to exceed one year during which time monitoring shall occur and approval may be subsequently granted.

"Proprietary school" means a privately owned school.

"Remedial college courses" means those courses taken at an accredited college or university which are not applied toward graduation and for which no college academic credit is awarded.

"School year" means a period of time commencing on July 1 and ending on June 30 of the following year.

"State issued diploma" means a diploma issued by the State of New Jersey. This is contrasted with a locally issued, state endorsed diploma.

"Statement of responsibilities" means an agreement signed by both the student and a representative of the adult high school setting forth the requirements of each to engage in a successful academic program.

"Traditional course" means a course which has specified lengths of time for class meetings and the completion of activities necessary to achieve the accepted level of proficiencies for the award of credit. In a five-credit course, the specific time is 7200 minutes.

#### 6:30-2.3 Administration of adult high schools

(a) The responsibilities of the Department of Education shall be to:

1. Grant provisional approval for the establishment, expansion or relocation to another site of an adult high school;
2. Monitor adult high schools to evaluate compliance with law and rule;
3. Provide for channels of communication between the Department of Education and the district board of education;
4. Provide for technical assistance to the school district's adult high school; and

5. Approval of adult high schools which meet established law and rule.

(b) The responsibilities of the district board of education shall be to:

1. Adopt policies and procedures to maintain an approved adult high school program which adheres to law and rule.
2. Award a locally issued, state endorsed diploma to adults who successfully meet graduation requirements established by the district board of education and the State.
3. Provide for channels of communication between the district board of education and the Department of Education.

#### 6:30-2.4 Permission to establish, expand, or relocate an adult high school

(a) To establish an adult high school, the district board of education shall file a request with the Division of Adult Education prior to December 31 preceding the year of anticipated operation. The request shall include:

1. Data documenting community need;
2. Identification and description of the proposed program site;
3. A projection of enrollment for the first year of operation;
4. A projection of staff by job title;
5. A locally approved program of studies which includes state mandated courses required for graduation as prescribed in N.J.A.C. 6:30-2.14;
6. A projected budget for the first year of operation; and
7. A district board of education resolution approving the establishment of an adult high school.

(b) The Division of Adult Education shall evaluate the application of the district board of education and visit the proposed site before the Division director shall grant or deny provisional approval to establish an adult high school.

1. Divisional approval shall mean that the adult high school may begin operation during the subsequent school year and operate for one year.

2. If permission is not granted, the district may resubmit an amended application.

3. If permission is not granted following resubmission, the proposed adult high school may not begin operations during the subsequent school year.

(c) To expand or to relocate an existing program to another site, the district board of education shall file a request with the Division of Adult Education three months prior to the anticipated change. The request shall include elements (a)2, (a)3, and (a)4 listed above.

#### 6:30-2.5 Evaluation requirement

(a) The Commissioner shall conduct uniform, statewide evaluations of

adult high schools to ensure that each is performing according to the standards and procedures prescribed by law and rule.

(b) Based upon the evaluation, the Commissioner shall recommend to the State Board of Education approval or non-approval of each adult high school.

(c) The State Board of Education shall grant or deny approval of each adult high school.

#### 6:30-2.6 Evaluation process

(a) Each adult high school shall be monitored within two years following the adoption of these rules.

1. The monitoring team shall be composed of representatives of the Division of Adult Education.

2. The director, Division of Adult Education shall cooperatively establish a monitoring schedule with the chief school administrator for each district being monitored.

3. An entrance conference with the chief school administrator and the principal of the adult high school shall be scheduled prior to the monitoring visit.

4. The monitoring team shall evaluate the adult high school pursuant to the elements set forth in N.J.A.C. 6:30-2.7.

#### 6:30-2.7 Evaluation elements

(a) Ten essential elements shall be evaluated by the monitoring team as specified below:

1. Educational planning;
2. School and community relations;
3. Curriculum and instruction;
4. Attendance and register maintenance;
5. Facilities;
6. Staff;
7. Mandated programs;
8. Mandated statewide assessment testing;
9. Equal educational opportunity and affirmative action; and
10. Financial administration.

(b) The director, Division of Adult Education shall establish guidelines, indicators, and evaluation worksheets for the monitoring of adult high schools.

#### 6:30-2.8 Findings

(a) The monitoring team shall record its findings on each element using worksheets as prescribed in N.J.A.C. 6:30-2.7(b).

1. The monitoring team shall meet with the chief school administrator and the principal of the adult high school at an exit conference to review its findings and outline future directions for the adult high school.

2. The director, Division of Adult Education shall send formal notification of the findings to the chief school administrator and the principal of the adult high school within 30 days after the completion of the monitoring visits.

3. The notification shall include:

- i. Copies of the completed worksheets;
- ii. A copy of the recommendation to the Commissioner of the approval status of the adult high school; and
- iii. If necessary, a statement of future directions to be taken by the adult high school.

#### 6:30-2.9 Approval

(a) Approval of an adult high school shall be based on an acceptable rating on all of the ten essential elements.

1. For each adult high school that receives an acceptable rating on each of the ten essential elements, the director, Division of Adult Education shall submit a summary report of findings and recommendations to the assistant commissioner, Educational Programs for submission to the Commissioner.

i. The Commissioner shall notify the appropriate county superintendent of schools regarding approval of the adult high school by the State Board of Education.

2. For each adult high school that receives an unacceptable rating on any of the ten essential elements, the director, Division of Adult Education shall submit a summary report of findings and recommendations to the assistant commissioner, Educational Programs that the adult high school not be approved. The district will then implement the corrective action process pursuant to N.J.A.C. 6:30-2.10.

(b) An adult high school rated as unacceptable may, with the approval of the district board of education, petition the assistant commissioner, Educational Programs to rescind the rating by presenting written documentation on its performance on the elements rated as unacceptable.

1. The assistant commissioner, Educational Programs, shall rule on such petitions.

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

**6:30-2.10 Corrective action process**

(a) A school district which is denied approval shall implement the following program improvement process.

1. The chief school administrator shall organize a self-study team, which shall include the principal of the adult high school, to analyze the nature and causes of the problem(s) identified by the monitoring team.

2. The team shall analyze the nature and causes of the problem(s) identified by the monitoring team and within 30 days of receipt of notification of non-approval develop an improvement plan to correct the problems. The improvement plan shall contain the following components:

- i. Objectives;
- ii. Activities;
- iii. Persons responsible;
- iv. Resources;
- v. Timelines; and
- vi. Documentation and evaluation of completed activity.

3. The plan shall be submitted to the director, Division of Adult Education who shall approve or disapprove the plan within 14 days of receipt.

4. If the plan is approved, it shall be referred to the chief school administrator for implementation.

5. If the plan is unacceptable, it shall be referred to the chief school administrator with recommendations for improvement.

i. The chief school administrator shall have 30 days to make the necessary revisions and resubmit the plan to the director, Division of Adult Education.

ii. Failure to resubmit a plan shall result in the development of an improvement plan by the director, Division of Adult Education which shall be transmitted to the chief school administrator.

iii. The district shall have 90 days from the date of improvement plan transmittal to implement the plan.

6. Upon completion of improvement plan activities, the monitoring team shall remonitor the adult high school to evaluate whether previously identified deficiencies have been corrected.

7. Following the remonitoring, the director, Division of Adult Education shall submit a summary report of the findings and recommendations to the assistant commissioner, Educational Programs for submission to the Commissioner. The approval process shall be completed pursuant to N.J.A.C. 6:30-2.9(a).

8. For an adult high school that receives an unacceptable rating following the implementation of a program improvement plan, the director, Division of Adult Education shall request that the assistant commissioner, Educational Programs convene an external team made up of three adult high school principals and two nonadministrative professional adult high school staff members from programs outside of the county of the adult high school which has failed to receive approval.

i. The members of the external team shall review reports and events leading to non-approval and schedule visits to the program site in order to render an advisory report to the assistant commissioner, Educational Programs regarding the adult high school's rating on each of the ten essential elements.

ii. Following the receipt of the advisory report from the external team, the assistant commissioner, Educational Programs may recommend to the Commissioner the continuance or discontinuance of the adult high school program.

**6:30-2.11 Eligibility for enrollment and state aid**

(a) To qualify for enrollment in an adult high school, a person shall:

1. Be a New Jersey resident;
2. Meet the age and out-of-school requirements of N.J.A.C. 6:30-1.2; and

3. Complete and sign an application for enrollment and a statement of responsibilities.

(b) To qualify for state aid a person shall:

1. Have met the requirements set forth in (a) above;
2. Have not earned a locally issued, state endorsed high school diploma;
3. Have an educational plan on file; and
4. Have met the following attendance requirements:

i. Be enrolled and on the school register as of September 30 of the current school year; and

ii. Be in attendance at least once during the first fourteen days in October, unless excused by the adult high school principal for reasonable cause.

(c) Adults who qualify for state aid shall be reported for state aid purposes on the basis of the number of course credits projected in the educational plan for the current school year on the following schedule:

1. One to and including fourteen credits as a value of 0.5.
2. Fifteen or more credits as a value of 1.0.

**6:30-2.12 Adults with special needs**

(a) Adults with limited English language proficiency shall be tested upon enrollment using a test selected by the Department of Education to judge whether the adult can demonstrate language fluency in English.

1. The principal of the adult high school shall review the results of the test to determine the need for a special instructional program in English as a second language (ESL).

i. If the language improvement needs of the adult can be met by the program, then the adult shall be placed in a class for that purpose.

ii. If the language improvement needs of the adult cannot be met by the program, then the principal shall promptly refer the adult to the nearest adult high school with staff available to meet those needs.

(b) For an adult with previous experience in a special education program now seeking similar services at an adult high school, the principal of the adult high school with the concurrence of the adult shall request the most recent evaluation and individualized education program (IEP) for that adult from the high school of last attendance, provided the evaluation was made within the last three years.

1. The principal shall review the IEP to determine the services required by the plan and also the availability of such services in the adult high school.

i. If the IEP can be carried out, it shall serve as the instructional guide for that adult.

ii. If the principal determines that the IEP cannot be carried out, the principal shall promptly refer the adult to the nearest adult high school with staff available to offer the special services required in the IEP or to appropriate county or state agencies or institutions with resources and personnel able to serve the special needs of the adult.

2. If the evaluation was made more than three years prior to application to the adult high school, the IEP may not serve as a guide for the adult's instructional program at the adult high school.

(c) Handicapped adults without previous experience in a special education program shall be counseled regarding educational options which would lead to high school graduation and shall be served to the maximum extent appropriate to the needs of the handicapped adult within the capability of the program to provide such services.

**6:30-2.13 Curriculum**

(a) The adult high school curriculum shall comply with the requirements of law and rule and shall include a program of studies which has been adopted by the district board of education.

(b) A copy of the program of studies together with the rules governing its administration as formulated locally and approved by the district board of education shall be kept on file in the principal's office of each adult high school. It shall include the course offerings, both required and elective and the number of credits for each course.

(c) The program of studies shall include all course descriptions. Each course description outline shall include:

1. Course title;
2. Course description;
3. Topical listing of course content;
4. List of course proficiencies;
5. Evaluation criteria and standard of mastery; and
6. A comprehensive examination.

(d) The comprehensive examinations for all courses, except for those in the fine, practical, or performing arts, shall be written examinations.

(e) When similarly titled courses exist in the adult high school and in high schools of the district, the proficiencies for adult high school courses must meet or exceed the proficiencies previously established for those courses in the high schools of the district.

(f) The program of studies shall indicate whether a course is traditional or flexible.

1. Traditional courses shall be held in classroom sessions which meet a minimum of 7200 minutes for each one-year, five credit course.

2. Flexible courses shall require the completion of projects and activities which shall be reviewed in biweekly meetings between a subject area specialist and a student.

**6:30-2.14 Graduation**

(a) The district board of education of each adult high school shall adopt policies for adult high school graduation requirements, pursuant to law and rule. Policies shall include passing the Statewide assessment test.

(b) The district board of education of each adult high school shall establish graduation requirements on the basis of credit, which meets the requirements of the district's regular high school.

1. Of the required credits, no more than 15 credits may be in physical education.

2. Of the required credits, at least ten credits must be earned in coursework taken at the adult high school issuing the diploma.



(c) Each adult high school shall establish minimum curriculum graduation requirements which shall meet the requirements of the district's high school and include the following:

1. 20 credits of communication, of which five credits shall be in literature;
2. 10 credits of computation;
3. 10 credits of history as required by N.J.S.A. 18A:35-1 and 2;
4. 5 credits of natural or physical science;
5. 5 credits of fine, practical, or performing arts;
6. 5 credits in health and safety; and
7. 2.5 credits of career exploration or development.

(d) The staff of each adult high school shall distribute to each entering adult a copy of all State and local adult high school graduation requirements. In addition, all adults shall receive at the beginning of each course a list of proficiencies required for successful completion of that course.

(e) Successful completion of the requirements set forth in (a), (b) and (c) above, and those established by the district board of education shall be required as conditions for awarding a locally issued, state endorsed diploma.

(f) No district board of education may issue an adult high school diploma without State endorsement.

(g) No district board of education may issue an adult high school diploma without signed verifications for all credit awarded for experience and official transcript(s) on file.

#### 6:30-2.15 Award of credit

(a) The district board of education of each adult high school shall adopt policies at a public meeting which provide for the awarding of credit.

1. Credits verified by an official transcript may be transferred from accredited high schools or institutions. Experiences being considered for transfer credit from proprietary schools or public vocational training programs shall be assessed in terms of proficiencies for district courses offering similar experiences.

2. Credits may be awarded for other than remedial courses which lead to a degree and are taken at an accredited college. They must be verified by an official transcript. Five credits may be awarded for three college credits earned.

3. Credits may be awarded for physical education and basic military training with the following limitations:

- i. Up to fifteen credits may be awarded for previously earned high school physical education credits verified by an official transcript.
- ii. Up to ten credits verified by a DD-214 form may be awarded for basic military training.
- iii. The combination of i and ii above may not exceed 15 credits.

4. A maximum of 2.5 credits in health and safety may be awarded for the possession of a valid New Jersey driver's license if credit for driver's education has not been awarded.

5. Credits may be awarded for work experience with the following limitations:

- i. 2.5 credits may be awarded for each 12 months of full-time employment that is verified by a signed statement from the employer(s).
- ii. 2.5 credits may be awarded for each 24 months of part-time employment that is verified by a signed statement from the employer(s).
- iii. The combination of i and ii above may not exceed 10 credits and may not duplicate credits awarded for apprentice training or on-the-job training.

6. Credits may be awarded for completion of apprentice training with the following limitations:

- i. The apprentice training must meet standards established by the U.S. Department of Labor, Bureau of Apprenticeship and Training;
- ii. Completion of training must be verified by a signed document from a union or employer;
- iii. The award may not exceed 20 credits, may be allocated on the basis of five credits for each 2000 hours of training and may not duplicate credits awarded for work experience, on-the-job training, or transferred credit from an official transcript.

7. Credit may be awarded for on-the-job training and advanced military training with the following limitations:

- i. Five credits may be awarded for each 120 hours of on-the-job training that is formally supervised, follows a prescribed training outline and is verified by a signed statement from the employer.
- ii. One credit may be awarded for each week of advanced military training not to exceed 10 credits that is verified by the Military Occupational Speciality designation which appears on the DD-214 form.
- iii. The combination of i and ii above may not exceed 20 credits and may not duplicate credits awarded for work experience or apprentice training.

8. The cumulative award of credit for 5, 6, and 7 above shall not exceed 30 credits.

9. Credit may be awarded for passing a comprehensive examination with the following limitations:

- i. The award shall not exceed five credits;
- ii. The comprehensive examination must be part of an approved course and may only be used to award credit for a single course;
- iii. The comprehensive examination may not be a standardized test, such as the General Education Development Test.

10. Credit may be awarded for compensatory communication or computation courses for adults.

- i. Credits may only be awarded to adults who have demonstrated reading or computational proficiency below grade level 9 on a standardized test.
- ii. The award of credit in compensatory communications courses may not exceed 15 credits.
- iii. The award of credit in compensatory computation courses may not exceed 10 credits.

11. Credit may be awarded for coursework in English as a second language (ESL) to adults who have not demonstrated on a test selected by the Department of Education that they have attained language fluency in English.

- i. The award of credit in English as a second language may not exceed 20 credits.
- ii. No more than 10 credits awarded in English as a second language may be applied to fulfilling graduation requirements in communication.
- iii. Courses in English as a second language shall be offered only as traditional courses.

#### 6:30-2.16 Maintaining student records

(a) Each adult high school shall have the responsibility to compile, maintain and retain student records and to regulate access to and security of such records as prescribed in N.J.A.C. 6:3-2.

(b) The attendance records of all adult high schools shall be maintained annually in the official New Jersey Adult High School Register in accordance with the procedures prescribed therein.

#### 6:30-2.17 Maintaining financial records

(a) The financial records of all adult high schools shall be:

1. Maintained in accordance with law and rule;
2. Maintained in the appropriate accounts.

#### 6:30-2.18 Staffing

(a) The adult high school shall have an adequate number of professional staff, properly certified for their respective assignments; however, those persons involved in adult advisement shall be certified as principal, supervisor, counselor or teacher.

(b) District boards of education shall assign position titles to professional staff members which are recognized in N.J.A.C. 6:11.

#### 6:30-2.19 Special conditions

The rules set forth in Title 6 of the New Jersey Administrative Code governing the operation of a high school within a school district shall govern the operation of an adult high school unless otherwise explicitly stated in this subchapter.

#### 6:30-2.20 Implementation

This subchapter shall be in effect until August 31, 1988 or at such earlier date when amended.

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF COASTAL RESOURCES

#### Boat Regulation Commission

#### Boating Regulations

#### Proposed Amendments: N.J.A.C. 7:6-1.4, 1.12, 1.14, 1.15 and 1.42.

Authorized By: New Jersey Boat Regulation Commission,  
Kenneth L. Husted, Chairman and Richard T. Dewling,  
Commissioner, Department of Environmental Protection.  
Authority: N.J.S.A. 13:1D-1 et seq., 12:6-1(e), 12:7-34.1 et seq.,  
specifically 12:7-34.40, 12:7-34.49 and 12:7-44.

Proposal Number: PRN 1986-134.

DEP Docket No. 013-86-03.

Submit comments by June 4, 1986 to:

Michael P. Marotta  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The Boating Rules (N.J.A.C. 7:6) were adopted over a number of years by the Department together with the State's Boat Regulation Commission. The Commission is a seven member body which represents the various geographical and boating interests throughout the State. The rules, which provide a comprehensive set of standards governing the operation, docking, mooring, anchoring and numbering of vessels on the waters of the State, are enforced by the Marine Bureau of the Division of State Police.

These proposed amendments are a result of the Bureau's experiences during the implementation of the rules. The amendments are intended to provide for a greater degree of safety for specific boating activities and to provide also for a more efficient administration of the boating program. These changes are summarized as follows:

At N.J.A.C. 7:6-1.4(c) the proposed modification would provide an additional exemption from the requirement to display number on vessels. The additional exemption would be in the case of vessels documented in accordance with Part 67 of Title 46 of the Code of Federal Regulations.

A proposed change to N.J.A.C. 7:6-1.12 would remove the provision that a certificate of number would become invalid after the date upon which the vessel is documented or required to be documented under the Federal Regulations.

At N.J.A.C. 7:6-1.14 the codification of the subsections is being corrected. In addition, the proposal would remove from N.J.A.C. 7:6-1.14(a) the requirement that the number and validation sticker be removed from the vessel when it is documented by the Coast Guard (pursuant to Part 67 of Title 46 of the Code of Federal Regulations). A new subsection (N.J.A.C. 7:6-1.14(d)) is being added which imposes this requirement in greater detail and requires also, that a documented vessel conform with the provision of N.J.A.C. 7:6-1.15 (Display of validation sticker and fee for duplicate) where the vessel is subject to the provisions of N.J.S.A. 12:7-34.44a.

The provisions of N.J.A.C. 7:6-1.15 would be modified at subsections (a) and (b) to provide more specific guidelines for the placement and location of the validation sticker on the vessel. This section would also be modified to delete the reference to "power" vessels thereby expanding its applicability to all vessels. The law (N.J.S.A. 12:7-34.36 et seq.) pursuant to which this section was promulgated was amended so that numbering requirements are applicable to all vessels, and not just power vessels.

At N.J.A.C. 7:6-1.42 certain modifications are being proposed to clarify the regulatory language of the section. Substantive modifications to this section would change the required dimensions of the buoyed flag required to be displayed by divers. Proposed amendments would also require that this flag be rigid and that no diver shall, in any water area within the State, surface beyond 25 feet from the flag. Presently, the regulations impose this surfacing requirement in specific bodies of water such as the Manasquan Inlet. Additional changes to this section would impose specific guidelines upon divers diving in certain waterways within the State.

#### Social Impact

It is anticipated that the proposed changes to the number display sticker validation and documentation requirements will not have a significant social impact. The proposed changes clarify the requirements and standards governing these procedures.

The proposed modifications to the standards relating to diving and swimming will have a substantial effect upon public safety. The proposed diving flag requirements will enhance visibility and reduce the potential for accidents involving divers and boaters.

The proposed amendment would require that divers surface no further than 25 feet from the diver flag. Since boats are required to stay beyond 50 feet from the flag, this will provide for a "buffer zone" to minimize the potential for accidents resulting from errors in the judgment of distances.

Additionally, the proposed changes to standards governing diving activities in specific locations will provide a greater degree of safety in those areas which have been determined to be higher risk areas because of boat traffic, currents and other factors.

#### Economic Impact

It is anticipated that the proposed procedural changes will have a negligible economic impact upon the recreational boating population within the State.

It is also anticipated that the proposed changes to safety standards will not result in a significant routine economic impact. However, inasmuch

as the proposed new standards will provide for a greater degree of safety, the amendments could result in a reduction of the number of boating accidents and, therefore, a reduction in the occurrence of personal injury and property damage.

#### Environmental Impact

The proposed amendments will not have an environmental impact upon the State of New Jersey.

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

#### 7:6-1.4 Display of numbers on vessels

(a)-(b) (No change.)

[(c) This Section does not apply to a vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the State in which the vessel is principally used.]

(c) **This section does not apply to the following:**

1. A vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the state in which the vessel is principally used.

2. A vessel documented in accordance with Part 67 of Title 46, Code of Federal Regulations.

#### 7:6-1.12 Certificate of number; validity

(a) In addition to any other provisions, a certificate of number is invalid after the date upon which:

[1. The vessel is documented or required to be documented under Part 67 of Title 46, Code of Federal Regulations;]

Renumber 2.-4. as 1.-3. (No change in text.)

(b) (No change.)

#### 7:6-1.14 Removal of numbers; removal of validation sticker

(a) The person whose name appears on a certificate of number as the owner of a vessel shall remove the number and validation sticker from the vessel when:

[1. The vessel is documented by the Coast Guard;]

Renumber 2.-3. as 1.-2. (No change in text.)

[(d)](b) (No change in text.)

[(e)](c) (No change in text.)

(d) **When a vessel is documented under Part 67 of Title 46, Code of Federal Regulations, the owner shall:**

1. **Remove the number and validation sticker from each side of the bow or the forward half of the vessel; and**

2. **Conform to the provisions of N.J.A.C. 7:6-1.15, Display of validation sticker and fee for duplicate, where the vessel is subject to the provisions of N.J.S.A. 12:7-34.44a, Documented Vessels under 500 Gross Tons based in this State.**

#### 7:6-1.15 Display of validation sticker and fee for duplicate

(a) Every [power] vessel on the waters of this State required to be numbered shall display [a] validation stickers [issued by the Department] to indicate the year of expiration of its registration. The validation stickers shall be [placed on the port side] **displayed on each side of the vessel**, three inches behind the State registration number assigned to the vessel, except for documented vessels.

[(b) After January 1, 1977, a validation sticker shall be displayed on each side of the vessel, three inches behind the registration number.]

(b) **Those vessels documented under Part 67 of Title 46, Code of Federal Regulations and required to register with this State pursuant to N.J.S.A. 12:7-34.44a shall display a validation sticker on each side of the vessel in an area adjacent to the main steering station affixed to a vertical surface plainly visible at all times from both the port and starboard sides.**

(c) (No change.)

#### 7:6-1.42 Diving and swimming

(a) General provisions **with respect to diving and swimming** are [that:] **as follows:**

1. (No change.)

2. Any person while diving shall mark his **or her** position with a buoyed flag approved by the New Jersey Boat Regulation Commission[.].

i. Such flag [should] **shall** be displayed from a buoy, float, boat or other floating object;

ii. Such flag shall be a minimum of [18 inches by 18 inches] **14 inches by 16 inches, shall be rigid to enhance visibility** and shall be a red background with a white diagonal stripe running from one corner to the other.

3. No person [may] **shall** operate a [power] vessel within 50 feet of the buoyed flag.

4. (No change.)

5. No person [may] shall swim or dive in a narrow, confined or improved channel or in a marked fairway, under a bridge or impede, obstruct or interfere with the passage of watercraft therein.

6. No diver shall surface more than 25 feet from the buoyed flag except in an emergency.

(b) Provisions for the Manasquan Inlet areas follows:

1.-2. (No change.)

[3. No diver shall surface more than 25 feet from his buoyed flag except in an emergency.]

(c) Provisions for the Barnegat Inlet areas follows:

1. (No change.)

[2. No person shall dive on the north side of the south jetty.]

2. No person shall dive in any of the waters of the Barnegat Inlet channel.

[3. Diving shall be permitted along the north jetty.]

3. No person shall dive in any of the waters between the south side of the north jetty and the Barnegat Inlet channel.

4. Underwater diving is permitted over the top of that portion of the north jetty which is submerged and in all waters on the north side along the entire length of the north jetty.

[4.]5. [Diver must] A diver shall mark his or her position with a boat and skin diver's flag.

[5.]6. Only "buddy diving" [will] shall be permitted in [this] the Barnegat [i]nlet.

(d) Provisions for the Shark River Inlet areas follows:

1. (No change.)

2. Divers [must] shall stay within 25 feet of the jetties and bulkheads in the area described.

3. [Diver must] A diver shall mark his or her position with a float and skin diver's flag.

4. No diver shall surface more than 15 feet from [his] the buoyed flag except in an emergency.

5. (No change.)

## DIVISION OF WASTE MANAGEMENT

Proposals numbered PRN 1986-135 and 158 are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Submit comments by June 4, 1986 to:

Joseph N. Schmidt, Jr., Esq.  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

### (a)

## Hazardous Waste Rules: Waste Oil

### Proposed Amendments: N.J.A.C. 7:26-1.4, 7.5, 7.7 and 8.13

Authority: N.J.S.A. 13:1D-9 and 13:1E-6(a)2.

DEP Docket No. 016-86-04.

Proposal Number: PRN 1986-158.

The agency proposal follows:

#### Summary

The New Jersey Department of Environmental Protection ("NJDEP" or "Department") proposes several amendments to the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26, concerning the management and classification of various types of waste oils. N.J.A.C. 7:26-1.4 currently defines "waste oil" as a petroleum based or synthetic oil which, after sale to a customer, through use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties." The proposed amendments will delete the language "after sale to a customer," from the definition of waste oil. This revision will allow NJDEP to regulate waste oil regardless of the arbitrary distinction of whether an oil is sold to a customer or not. Upon final adoption, the proposed amendments also would: 1. expand N.J. Hazardous Waste Number X724 at N.J.A.C. 7:26-8.13(b)4 to include waste petroleum oil generated from the cleaning of the storage portion of other vessels or vehicles, in addition to tank trucks; 2. create a new N.J. Hazardous Waste Number X729 at N.J.A.C. 7:26-8.13(b)9 for oil contaminated bilge water generated from the cleanout and/or maintenance of boats, barges, ships or other vessels; 3. delete the 1001 gallons/month limit for generator exemption applicability pursuant to N.J.A.C. 7:26-7.7(b) for those generating hazardous waste with N.J. Hazardous Waste Number X722 (see N.J.A.C. 7:26-8.13(b)2); 4. expand the scope

of the generator exemption found at N.J.A.C. 7:26-7.7(b) for generators who only generate any amount of hazardous waste with N.J. Hazardous Waste Number X722 (see N.J.A.C. 7:26-8.13(b)2); 5. add and expand the scope of the hauler requirements pursuant to N.J.A.C. 7:26-7.5(b) for haulers of hazardous waste who assume generator responsibilities for manifesting N.J. Hazardous Waste Number X729 (see N.J.A.C. 7:26-8.13(b)9); and 6. require haulers of hazardous waste who assume generator responsibilities for manifesting N.J. Hazardous Waste Numbers X721 through X729 to notify EPA of their generator activities (see N.J.A.C. 7:26-7.5(b)3v).

Currently, N.J. Hazardous Waste Number X724 is defined at N.J.A.C. 7:26-8.13(b)4 as "[w]aste petroleum oil generated when tank trucks are cleaned". The Department proposes to broaden this definition by including waste oil generated from the cleaning of any vehicle or vessel used to hold or transport crude petroleum or its refined products. Limiting X724 to waste oil generated only from the cleaning of tank trucks does not recognize the full range of current industry practice. Barges, ships, rail cars, and other vehicles and vessels typically are used to transport petroleum products or wastes. The hazardousness of the waste petroleum oil cleanout material is the same regardless of the type of vehicle or vessel utilized for transportation. Therefore, NJDEP has determined that this proposed amendment will correct this deficiency. NJDEP proposes to include in X724 oily ballast water from the product transport units of boats, barges, ships or other vessels.

The addition of N.J. Hazardous Waste Number X729 at N.J.A.C. 7:26-8.13(b)9 is defined as "[o]il contaminated bilge water generated from the cleanout and/or maintenance of boats, barges, ships or other vessels." Adoption of this proposed amendment will allow for more efficient handling of these hazardous wastes. An appropriate tracking system by manifest for engine related oil-water waste mixtures pumped from vessels during cleanout and maintenance will result from the proposed amendment. The proposed amendments will be compatible with the United States Coast Guard regulations at 33 CFR Parts 151 and 158 adopted on September 9, 1985 (50 FR 174) which provides the requirements for the proper handling and disposal of oily-water mixtures from ships and other vessels.

NJDEP also proposes an exemption to the 1001 gallon limit for generators who only generate X722 hazardous waste from tank cleanouts from residential/commercial fuel oil tanks. Owners of residential or commercial fuel tanks will not have to register with the United States Environmental Protection Agency ("USEPA") as a hazardous waste generator for infrequent tank cleanouts and the Department will be assured that any waste oil and bottom sludge generated will be properly manifested by the New Jersey registered hauler. In these cases, the New Jersey registered hauler will assume the role of the generator.

The Department also takes this opportunity to acknowledge the United States Environmental Protection Agency's ("USEPA") November 19, 1985 proposal to list waste oil as hazardous waste F030 for the purposes of the federal hazardous waste program. Adoption of this proposal by USEPA may require the Department to amend the waste oil provisions of N.J.A.C. 7:26 again at a later date to insure equivalency with the federal hazardous waste program.

#### Social Impact

The Department concludes that the proposed amendments will have a positive social impact. The proposed amendments will more clearly define the waste oils covered by the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26, and provide for more efficient and accurate manifesting of wastes to authorized waste oil facilities for treatment and reclamation in lieu of disposal.

#### Economic Impact

The proposed amendments do not list additional waste streams that are not now routinely manifested and handled as hazardous waste in New Jersey. The Department merely clarifies some waste oil type definitions, and offers relief to original generators of X722 hazardous waste. There is expected to be no negative economic impact and a positive economic impact on the infrequently generated X722 hazardous waste. Generators of X722 will be conditionally exempted from the generator requirements of N.J.A.C. 7:26-7.4 provided these generators comply with N.J.A.C. 7:26-7.7.

#### Environmental Impact

The Department believes that the proposed amendments will have a positive environmental impact. Defining more specifically what is regulated under clarified and expanded definitions of X724 or X729 will bring some additional generators into the NJDEP's jurisdiction with favorable environmental impacts.



Full text of the proposal follows (additions indicated in boldface thus; deletions shown in brackets [thus]).

#### 7:26-1.4 Definitions

"Waste oil" means a petroleum based or synthetic oil which, [after sale to a customer,] through use, storage, or handling, has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

#### 7:26-7.5 Hazardous waste hauler responsibilities

(a) (No change.)

(b) A hauler of hazardous waste must also comply with N.J.A.C. 7:25-7.4 if the hauler:

1.-2. (No change.)

3. Accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, [or] X727, or **X729** from generators exempted by N.J.A.C. 7:26-7.7(b) or (c).

i. A hauler of hazardous waste who accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, [or] X727, or **X729** from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall compile a list of sites corresponding to each manifested shipment at which the hauler accepts these hazardous wastes.

ii. The list of sites at which the hauler accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, [or] X727, or **X729** from generators exempted by N.J.A.C. 7:26-7.7(b) or (c) shall contain the waste owner's name and address, the quantity of waste accepted at the site, and the identification numbers of the manifest corresponding to the list.

iii. (No change.)

iv. The hauler shall obtain a signed receipt from each site at which he accepts hazardous waste with hazardous waste numbers X721, X722, X723, X724, X726, [or] X727, or **X729** from generators exempted by N.J.A.C. 7:26-7.7(b) or (c), retain a copy of these receipts on file for a period of three years, and shall make these receipts available to the Department upon request.

v. **The hauler shall notify the USEPA and update the hauler's notification of hazardous waste activities to include generator activities in addition to hauler activities.**

(c)-(i) (No change.)

#### 7:26-7.7 Exemption from manifest rules

(a) (No change.)

(b) Generators who only generate less than 1001 gallons/month of hazardous waste with hazardous waste numbers X721, [X722,] X723, X724, X726, [or] X727, or **X729**, or generators who only generate hazardous waste number **X722** in any amount are exempted from the generator requirements as contained in N.J.A.C. 7:26-7.4 provided they are the original generators and they comply with (d) below.

(c)-(d) (No change.)

#### 7:26-8.13 Hazardous waste from non-specific sources

(a) (No change.)

(b) N.J. Hazardous Waste Number	Hazardous Waste	Hazardous Code
1.-3. (No change.)		
4. X724	Waste petroleum oil generated when tank trucks or other vehicles or vessels are cleaned, including, but not limited to, oily ballast water from product transport units of boats, barges, ships or other vessels.	(T)
5.-8.		
9. X729	Oil contaminated bilge water generated from the cleanout and/or maintenance of boats, barges, ships or other vessels.	(T)

OFFICE OF ADMINISTRATIVE LAW NOTE: The current text of the remaining hazardous wastes in this subsection, that is, the current text of 9. through 12., is proposed for deletion in a companion proposal in this issue of the Register. See Dioxin-Containing Waste.

## (a)

### Dioxin-Containing Waste

**Proposed Amendments: N.J.A.C. 7:26-8.3, 8.4, 8.13, 8.15, 10.5, 10.6, 10.7, 10.8, 11.1, 11.5, 11.6, 12.2, and N.J.A.C. 7:14A-4.4 and 4.7**

Authority: N.J.S.A. 13:1D-9 and 13:1E-6(a)2.

DEP Docket No. 012-86-03.

Proposal Number: PRN 1986-135.

The agency proposal follows:

#### Summary

The New Jersey Department of Environmental Protection ("NJDEP") proposes amendments to N.J.A.C. 7:26 and N.J.A.C. 7:14A relating to the listing and management requirements for dioxin-containing wastes. These proposed changes parallel the provisions of the United States Environmental Protection ("EPA") regulatory adoption relating to Dioxin Listing and Management effective January 14, 1985 (see 50 FR 1978-2006) ("Federal Dioxin Amendments"). Furthermore, the proposed amendments expand upon earlier NJDEP rulemaking relating to dioxin-containing wastes consistent with the Federal Dioxin Amendments.

Chlorinated dibenzodioxins (CDDs) and chlorinated dibenzofurans (CDFs) are among the most toxic chemicals known. Tetrachlorodibenzodioxin (TCDDs) and two hexachlorodibenzodioxins (HxCDD) isomers have been shown to be carcinogenic, and EPA considers them to be potential human carcinogens. TCDD has also been shown in laboratory studies to be teratogenic, fetotoxic and embryotoxic at extremely low doses. CDDs and CDFs are capable of migrating from waste matrices and reaching environmental receptors in potentially dangerous concentrations. CDDs and CDFs are persistent and may accumulate in the food chain. They are mobile in the environment through adsorption to dust and soil particles which then become dispersed by water and wind.

As an early response, NJDEP promulgated an emergency amendment and concurrent proposal in the July 18, 1983 New Jersey Register at 15 N.J.R. 1185(a) listing at N.J.A.C. 7:26-8.13(b) four types of wastes shown to be contaminated with CDDs and CDFs. The dioxin-containing wastes were from the production or manufacturing use of certain chlorinated phenols and benzenes, as well as from the production of other materials utilizing equipment previously used for the production or manufacturing of these phenols and benzenes. Additionally, discarded unused formulations containing tri-, tetra-, penta-chlorophenol, or compounds derived from these chlorophenols were also listed. In addition, three dibenzo-p-dioxins and three dibenzofurans were added to the hazardous constituents listed at N.J.A.C. 7:26-8.16. The extreme toxicity of TCDD and two HxCDD isomers also was emphasized. The emergency adoption and concurrent proposal was published shortly after EPA's April 4, 1983 proposed listing of dioxin-containing wastes (see 48 FR 14514), and the discovery of dioxin contamination in Newark, New Jersey. The concurrent proposal was adopted in the November 7, 1983 New Jersey Register at 15 NJR 1861. One New Jersey corporation believed that NJDEP should adopt EPA's proposed exemption from the listing for the production of hexachlorophene from highly purified 2,4,5-trichlorophenol. NJDEP stated that evidence revealed levels below one part per billion of CDDs or CDFs may be a persistent problem in hexachlorophene production. Based upon NJDEP's experience, EPA's proposed exemption was not accepted by NJDEP upon final adoption. Furthermore, NJDEP still remains committed to regulatory requirements more stringent than EPA's regulatory scheme on this important point.

NJDEP carefully studied the provisions of the Federal Dioxin Amendments to maintain substantially equivalent or more stringent regulatory requirements compared to EPA's hazardous waste management program. This proposal will insure that New Jersey will continue to be fully authorized by EPA to administer the Resource Conservation and Recovery Act ("RCRA") hazardous waste management program. The provisions of the Federal Dioxin Amendments are briefly described below.

The Federal Dioxin Amendments expanded the proposed listing for dioxin-containing wastes from the current four categories to seven. Two of the proposed categories were subdivided, and residues from the incineration or thermal treatment of soil contaminated with any other listed dioxin-containing wastes were also listed. EPA designated the incinerator residues as toxic wastes and the other dioxin-containing wastes as acute hazardous wastes.

The Federal Dioxin Amendments designated discarded unused formulations containing tri-, tetra-, or pentachlorophenol, or unused formulations containing compounds derived from these chlorophenols as acute hazardous wastes with EPA Hazardous Waste Number F027. Six compounds covered by this listing were previously listed as toxic wastes under the categories of Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof on the hazardous waste classification list commonly referred to as the "U-List." EPA deleted the "U-List" number for these six compounds and instructed the reader to "see F027" in an attempt to avoid inconsistent listings as both acute hazardous and toxic wastes. Additionally, EPA listed six compounds in Appendix VIII of the Federal RCRA Regulations already adopted by NJDEP on November 7, 1983.

EPA's Federal Dioxin Amendments adopted specific management standards for listed dioxin-containing wastes, except for incineration or thermal treatment residues with EPA Hazardous Waste Number F028. These management standards address secondary containment, leak detection and removal, tank storage, and the placement of these dioxin-containing wastes in surface impoundments, waste piles, land treatment units, and landfills. Special requirements for incineration of dioxin-containing wastes and prohibitions on management of these wastes at interim status facilities also were presented. Additional information for completion of Part B applications for treatment, storage, and disposal facilities managing these dioxin-containing wastes also were further specified by EPA's Federal Dioxin Amendments.

NJDEP's proposal will revise New Jersey's Hazardous Waste Management Program at N.J.A.C. 7:26 to be substantially equivalent or more stringent than the Federal Dioxin Amendments. NJDEP's proposal parallels the Federal Dioxin Amendments in all areas for which New Jersey is not already equivalent or more stringent. Additionally, clarifications will be made to the NJDEP's current dioxin-containing waste requirements to reduce potential confusion concerning the Federal Dioxin Amendments by the regulated community.

The listing by NJDEP of acute hazardous wastes in N.J.A.C. 7:26-8.13 titled "Hazardous Wastes from Non-specific Sources" necessitates revising sections dealing with management of these dioxin-containing wastes. N.J.A.C. 7:26-8.3(d)1 and 2 titled "Special requirements for hazardous waste generated by small quantity generators" and N.J.A.C. 7:26-8.4(b)1 and 3 titled "Residues of hazardous waste in empty containers" will be revised to include acute hazardous waste listed in N.J.A.C. 7:26-8.13 and 8.14.

The listing in the Federal Dioxin Amendments of dioxin-containing wastes will be added at N.J.A.C. 7:26-8.13(a). However, EPA's exemption for wastes from the production of hexachlorophene for highly purified 2,4,5-trichlorophenol will not be included in N.J.A.C. 7:26. The listing of these dioxin-containing wastes currently listed as X620, X621, X622 and X623 will be deleted from N.J.A.C. 7:26-8.13(b). These listing revisions will reduce confusion resulting from comparison of New Jersey and Federal listings.

The proposal follows the Federal Dioxin Amendments by deleting hazardous waste numbers U212, U230, U231, U232, U233 and U242. In place of these numbers, N.J.A.C. 7:26-8.15(f) will include a reference to Hazardous Waste Number F027. This approach removes the inconsistent listing of these dioxin-containing wastes as both toxic and acute hazardous wastes.

The text of N.J.A.C. 7:26-10.5(e)3 has been revised to reflect the exact language of the Federal Dioxin Amendments concerning the immediate removal of leaked or spilled waste from tanks and replacement or repair of such tanks.

This proposal requires NJDEP approved hazardous waste management plans for dioxin-containing wastes placed in surface impoundments at N.J.A.C. 7:26-10.7(e)10 and in landfills at N.J.A.C. 7:26-10.8(e)21. N.J.A.C. 7:26-10.7(d)vi specifies a destruction and removal efficiency of 99.9999 percent for incineration of dioxin-containing wastes.

The proposal requires interim status facilities to manage the specified dioxin-containing wastes according to the requirements of N.J.A.C. 7:26-11.1(c). Furthermore, the proposal establishes the requirements for disposal of dioxin-containing wastes at interim status incinerators at N.J.A.C. 7:26-11.5(f) and thermal treatment units at N.J.A.C. 7:26-11.6(f).

The proposal requires additional information on containment systems for facilities storing or treating hazardous waste, including dioxin-containing wastes, in tanks at N.J.A.C. 7:26-12.1(f)2. Additional information requirements also will be specified for storage or treatment of the dioxin-containing wastes in surface impoundments at N.J.A.C. 7:26-12.2(f)3 and landfills at N.J.A.C. 7:26-12.2(f)5.

Finally, the proposal addresses additional requirements and information necessary for disposal of dioxin-containing wastes in land treatment units at N.J.A.C. 7:14A-4.4(b)3 and 4.7(a)3.

#### Social Impact

The proposal will affect generators, transporters and disposal facilities which manage materials contaminated with dioxin-containing wastes. Declaring these contaminated materials to be hazardous waste will require their management according to the New Jersey Hazardous Waste Management Rules, N.J.A.C. 7:26. Management of materials contaminated with dioxin-containing wastes under the NJDEP's comprehensive regulatory program as a hazardous waste is absolutely necessary for the protection of the public health and welfare of the citizens of the State of New Jersey.

#### Economic Impact

No specific predictions can be made concerning the economic impact of the amendment on generators, transporters and disposal facilities which manage dioxin-containing wastes. Most generators, transporters and disposal facilities of dioxin-containing wastes already fall within the jurisdiction of the NJDEP's comprehensive regulations, thus no significant additional economic impact will be incurred. However, NJDEP controls relating to the management of these contaminated materials will increase costs. When balanced against health and environmental hazards which would result from failure to comprehensively regulate dioxin-containing wastes, the NJDEP has determined that any economic impact will be justified.

#### Environmental Impact

The comprehensive regulation of dioxin-containing wastes as hazardous waste will insure proper management of these dangerous substances. This proposal will have a major positive environmental impact on the public health and welfare of the citizens of the State of New Jersey.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated as [thus]).

#### 7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a)-(c) (No change.)

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 11.1 et seq.

[1. A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in N.J.A.C. 7:26-8.15(e) and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in N.J.A.C. 7:26-8.15(e).]

[2. A total of 100 kilograms of any residue or contaminated soil, water, waste or other debris resulting from the clean-up of a spill into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in N.J.A.C. 7:26-8.15(e).]

**1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e).**

**2. A total of 100 kilograms of any residue or contaminated soil, water, waste or other debris resulting from the clean-up of a spill, into or on any land or water, of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e).**

#### 7:26-8.4 Residues of hazardous waste in empty containers

(a) (No change.)

(b) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15(e), is empty if:

1.-2. (No change.)

3. A container or an inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26-8.13, 8.14, or 8.15(e) of this chapter is empty if:

i.-iii. (No change.)

## 7:26-8.13 Hazardous waste from non-specific sources

(a) IndustryEPA Hazardous Waste Number	Hazardous Waste	Hazard Code
F001-F019 F020	(No change.) Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives.	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols.	(H)
F024 F026	(No change.) Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols.	(H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.	(T)
(b) IndustryEPA Hazardous Waste Number	Hazardous Waste	Hazard Code
1-8. [9.X620]	(No change.) [Wastes (except wastewater and spent carbon from hydrogen purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-, tetra-, or pentachlorophenol, or of intermediates used to produce their derivatives.]	[(H)]
[10.X621]	[Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.]	[(H)]
[11.X622]	[Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) or materials listed under X620 and X621.]	[(H)]

[12.X623] [Discarded unused formulations containing tri-, tetra-, or penta-chlorophenol, or discarded unused formulations containing compounds derived from these chlorophenols.] [(H)]

## 7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a)-(e) (No change.)  
 (f) The following commercial chemical products or manufacturing chemical intermediates, referred to in (a), (b) and (d) above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous Waste Number	Substance
[U242] See F027	Phenol, pentachloro-
[U212] See F027	Phenol, 2,3,4,6-tetrachloro-
[U230] See F027	Phenol, 2,4,5-trichloro-
[U231] See F027	Phenol, 2,4,6-trichloro-
[U233] See F027	Propionic acid, 2-(2,4,5-trichlorophenoxy)
[U233] See F027	Silvex
[U232] See F027	2,4,5-T
[U212] See F027	2,3,4,6-Tetrachlorophenol
[U230] See F027	2,4,5-Trichlorophenol
[U231] See F027	2,4,6-Trichlorophenol
[U232] See F027	2,4,5-Trichlorophenoxyacetic acid

## 7:26-10.5 Tanks

(a)-(d) (No change.)  
 (e) An owner or operator shall comply with the inspection requirements of this subsection.

1.-2. (No change.)  
 3. As part of the contingency plan required under N.J.A.C. 7:26-9.7 the owner or operator shall specify the procedures to be used to respond to tank spills or leakage, including procedures and timing for [expeditious] **immediate** removal of leaked or spilled waste and **replacement** or repair of the tank;

4.-6. (No change.)  
 (f)-(j) (No change.)

## 7:26-10.6 Surface impoundments

(a)-(d) (No change.)  
 (e) Operational and maintenance standards for surface impoundments include the following:  
 1.-9. (No change.)

## 10. Specific requirements for hazardous waste F020, F021, F022, F023, F026, or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026 or F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring techniques.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.



7:26-10.7 Hazardous waste incinerators

(a)-(c) (No change.)

(d) Performance standards for hazardous waste incinerators include the following:

1. Any person responsible for an incinerator burning hazardous waste shall ensure that it is designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under N.J.A.C. 7:26-10.7(f) and (g) below it will meet the following performance standards:

i. Except as provided in vi. below, [An] an incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under N.J.A.C. 7:26-10.7(e) below) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

(No change in the accompanying equation.)

ii.-v. (No change.)

vi. An incinerator burning hazardous waste listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated (under N.J.A.C. 7:26-10.7(e)) in its permit. This performance must be demonstrated on POHC's that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in N.J.A.C. 7:26-10.7(d)ii. In addition, the owner or operator shall provide 14 days prior written notification to the Department of its intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

(e)-(m) (No change.)

7:26-10.8 Hazardous waste landfills

(a)-(d) (No change.)

(e) Operational standards for hazardous waste landfills include the following:

1.-20. (No change.)

21. Specific requirements for hazardous waste F020, F021, F022, F023, F026 or F027 include the following:

i. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, and F027 shall not be placed in landfills unless the owner or operator operates the landfill in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accord with all applicable requirements of this subchapter. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design or monitoring requirements.

ii. The Department may determine that additional design, operating, and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, or F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

(f)-(j) (No change.)

7:26-11.1 Applicability

(a)-(b) (No change.)

(c) The following hazardous wastes shall not be managed at existing hazardous waste facilities subject to regulation under this subchapter:

1. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026 or F027 unless:

i. The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

ii. The waste is stored in tanks or containers;

iii. The waste is burned in incinerators that are certified pursuant to the standards and procedures in N.J.A.C. 7:26-11.5; or

iv. The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in N.J.A.C. 7:26-11.6.

7:26-11.5 Hazardous waste incinerators

(a)-(e) (No change.)

(f) Special requirements for hazardous wastes listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of incinerators subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they

receive a certification from the Department indicating that they can meet the performance standards of N.J.A.C. 7:26-10.7 when they burn these wastes.

2. The following standards and procedures will be used in determining whether to certify an incinerator:

i. The owner or operator will submit an application to the Department containing applicable information in N.J.A.C. 7:26-12.2(f)4 and 12.9(b) and demonstrating that the incinerator can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the incinerator can meet the performance standards in N.J.A.C. 7:26-10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Department will accept comment on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the incinerator.

7:26-11.6 Thermal treatment

(a)-(e) (No change.)

(f) Special requirements for hazardous wastes listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 include the following:

1. Owners or operators of thermal treatment devices subject to this subchapter may burn hazardous wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Department indicating that they can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

2. The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

i. The owner or operator will submit an application containing the applicable information in N.J.A.C. 7:26-12.2(f)4 and 12.9(b) and demonstrating that the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26-10.7 when burning these wastes.

ii. The Department will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in N.J.A.C. 7:26-10.7. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment unit is located. The Department will accept comments on the tentative decision for 60 days. The Department also may hold a public hearing upon request or at the Department's discretion.

iii. After the close of the public comment period, the Department will issue a decision whether or not to certify the thermal treatment unit.

7:26-12.2 Permit application

(a)-(e) (No change.)

(f) The following additional information is required from an owner or operator of specific types of hazardous waste management facilities that are used or to be used for storage or treatment:

1. (No change.)

2. For facilities that use tanks to store or treat hazardous waste, except as otherwise provided in N.J.A.C. 7:26-10.5 et seq. a description of design and operation procedures which demonstrate compliance with the requirements of N.J.A.C. 7:26-10.5 et seq., including:

i.-vi. (No change.)

vii. A description of the containment and detection systems to demonstrate compliance with N.J.A.C. 7:26-10 including at least the following:

(1) Drawings and a description of the basic design parameters, dimensions, and materials of construction of the containment system;

(2) Capacity of the containment system relative to the design capacity of the tank(s) within the system;

(3) Description of the system to detect leaks and spills, and how precipitation and run-on will be prevented from entering into the detection system;

(4) Description on how the design promotes drainage or how tanks are kept from contact with standing liquids in the containment system; and

(5) Description of how accumulated liquids can be analyzed and removed to prevent overflow.

3. For facilities that store or treat hazardous waste in surface impoundments, except as otherwise provided in N.J.A.C. 7:26-10.6(a), the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in N.J.A.C. 7:26-12.2(f)3i through xii. For new surface impoundments, the plans and specifications shall be in sufficient detail to provide complete information to a contractor hired to build the surface impoundment even if the owner or operator intends to construct the surface impoundment without hiring a contractor. For existing surface impoundments, comparable detail shall be provided, but the form of presentation

need not assume contractor construction except to the extent that the facility will be modified.

i.-xi. (No change.)

xii. For facilities that store or treat hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 in a surface impoundment, a waste management plan describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26-10.6(e) is required. This submittal must address the following items as specified in N.J.A.C. 7:26-10.6(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

4. (No change.)

5. For facilities that dispose of hazardous waste in a landfill, the owner or operator shall submit detailed plans and specifications accompanied by an engineering report which shall collectively include the information itemized in (f)5i through xi below. For new hazardous waste landfills, the plans and specification shall be in sufficient detail to provide complete information to a contractor hired to build the facility even if the owner or operator intend to construct the facility without having a contractor. For existing hazardous waste landfills, comparable detail shall be provided, but the form or presentation need not assume contractor construction except to the extent that the facility will be modified.

i.-xi. (No change.)

xii. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 in a landfill, a waste management plan describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:26-10.8(e). This submittal must address the following items as specified in N.J.A.C. 7:26-10.8(e):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(g)-(l) (No change.)

7:14A-4.4 Application for a permit

(a) (No change.)

(b) For land treatment facilities only.

1.-2. (No change.)

3. For facilities that dispose of hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, and F027 in a land treatment unit, a waste management plan describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of N.J.A.C. 7:14A-4.7(a) is required. This submittal must address the following items as specified in 7:14A-4.7(a):

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(c)-(d) (No change.)

7:14A-4.7 Standards for hazardous waste land treatment units

(a) The following applies to this section:

1.-2. (No change.)

3. Hazardous wastes which are listed in N.J.A.C. 7:26-8.13 as F020, F021, F022, F023, F026, or F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Department pursuant to the standards set out in this paragraph, and in accordance with all other applicable requirements of this subchapter. The factors to be considered are:

i. The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

ii. The attenuative properties of underlying and surrounding soils or other materials;

iii. The mobilizing properties of other materials co-disposed with these wastes; and

iv. The effectiveness of additional treatment, design, or monitoring techniques.

4. The Department may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

(b)-(c) (No change.)

## DIVISION OF WASTE MANAGEMENT

### (a)

## DIVISION OF WATER RESOURCES

### Disposal of Solid Waste

**Proposed Amendments: N.J.A.C. 7:26-1.4, 7:26-12.11 and 12.12**

**Proposed Repeal: N.J.A.C. 7:1-6, 7:26-2.1, 2.2, 2.3, 2.4, 2.5, 2.6(a)-(d), 2.7, 2.8, 2.11, 2.12, 2.14 and 7:26-5.**

**Proposed New Rule: N.J.A.C. 7:26-2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2A, 2B, and 7:14A-6.16.**

**Proposed Recodification: N.J.A.C. 7:26-2.6(e) to 7:26-2A.8(1), 7:26-2.9 to 7:26-2A.9, and 7:26-2.10 to 7:26-2.12.**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 13:1E-1 et seq. 58:10A-1 et seq. DEP Docket No. 017-86-04.

Proposal Number: PRN 1986-159.

**Public hearings** concerning this proposal will be held on:

June 24, 1986

2:00 to 5:00 P.M.

7:00 to 10:00 P.M.

Hackensack Meadowlands Development Commission

Environmental Center

2 DeKorte Park Plaza

Lyndhurst, NJ

June 25, 1986

2:00 to 5:00 P.M.

7:00 to 10:00 P.M.

Atlantic County Community College

Route 322

J Lobby

Mays Landing, NJ

June 26, 1986

2:00 to 5:00 P.M.

7:00 to 10:00 P.M.

New Jersey State Museum

Auditorium

205 West State Street

Trenton, NJ

Submit comments by August 8, 1986 to:

Roger S. Haase

Office of Regulatory Services

Department of Environmental Protection

CN-402

Trenton, NJ 08625

The agency proposal follows:

### Summary

The New Jersey Department of Environmental Protection (hereinafter Department) is proposing to amend N.J.A.C. 7:26-1 and 2 and add new subchapters N.J.A.C. 7:26-2A and 2B to govern the licensing of non-

hazardous solid waste facilities and operations. The proposal includes an expansion of the existing design standards and operational requirements for sanitary landfills, resource recovery facilities and transfer stations. The proposal includes provisions to accomplish the following:

1. Expand subchapter 1, "Definitions" to maintain consistency with the proposed subchapter 2 changes;
2. Reorganize subchapter 2 in a more orderly arrangement, in accordance with Departmental policy; develop procedures for applying for a non-hazardous solid waste facility permit; add requirements for preparing and submitting an environmental and health impact statement (EHIS); and add an expanded base line of general design and operational requirements for all types of non-hazardous solid waste facilities;
3. Create a new subchapter 2A which contains the specific performance and design standards, construction requirements, operational and maintenance requirements and closure requirements for sanitary landfills; and
4. Create a new subchapter 2B, which contains the specific design requirements for thermal destruction facilities and incinerators, transfer stations and composting facilities as well as specific operational requirements for thermal destruction facilities.

The proposed rules will provide the Department with a more effective means of managing non-hazardous solid waste disposal activities at a time when such disposal activities are beginning to experience a shift in emphasis away from landfilling to other technologies including an integrated program of recycling, transfer station, resource recovery facilities including composting, materials recovery and thermal destruction. The proposal serves to codify a number of Departmental policies that have been employed to implement the Department's administrative duties. This proposal has been developed based on those policies, existing State regulations, Federal guidelines and the Department's experience with past and present applications and permits.

N.J.A.C. 7:26-2.4 and 2.5 set forth the application procedures which the Department will use to review a complete application and the time-frames involved with that review. Additionally, these sections set forth the requirements for a complete application for review, the public notice procedure, the public comment procedures, the public hearing procedures and permit decision-making procedures.

The permit review procedures allow for a scaled-down review procedure and reduces the submission requirements for certain facilities depending on the type of facility's expected environmental impact and the size of the facility. This approach will permit the Department to conduct its statutorily required review of all facilities without overly burdening applicants for permits for facilities which are expected, by their nature, to have a minimal environmental and health impact.

N.J.A.C. 7:26-2.6 and 2.7 set forth the requirements for modification, revocation and reissuance, and termination of non-hazardous solid waste facility permits. All permit modifications, unless determined to meet the criteria for a minor modification, all revocations and reissuances and terminations will be required to undergo public review and hearing procedures as set forth in N.J.A.C. 7:26-2.4 and 2.5. The duration of the permit, renewal procedures, requirements for the continuation of an expiring permit and permit transfer requirements are also included in N.J.A.C. 7:26-2.7.

A majority of the procedures set forth in N.J.A.C. 7:26-2.4 through 2.7 have been mandated by N.J.S.A. 13:1E-5.1. In addition, the proposed procedures set forth in these sections are based on current Departmental policy and will bring the nonhazardous solid waste facility permit procedures in line with the New Jersey Pollutant Discharge Elimination System Permit and the Hazardous Waste Facility Permit procedures.

N.J.A.C. 7:26-2.8 sets forth registration procedures and the general prohibitions applicable to non-hazardous solid waste facilities. This section is a reorganization of requirements that appear throughout the existing Subchapter 2.

N.J.A.C. 7:26-2.9 sets forth the requirements for the preparation and submission of an environmental and health impact statement. This section was developed from the Departmental guidelines entitled "Guidelines: Preparation of an Environmental Statement", prepared by the Planning Group of the Department. The guidelines have been modified to include requirements specifically pertaining to solid waste facilities.

A provision has been added which requires that the health impacts of a proposed facility be assessed. While this provision will add to the time and cost requirements for the preparation of an impact statement, the Department has determined, based on comments raised at past public hearings for solid waste facilities, that the overriding concern with the design, construction, and operation of solid waste facilities is with the associated health impacts on the surrounding community by the facility. The information required by the addition of a health impact statement

will be based on a risk assessment of the technologies involved. The information gained can serve to support or refute the justification for the construction of a facility.

N.J.A.C. 7:26-2.10 and 2.11 set forth general requirements for preparation of an engineering design and the general operational requirements for all solid waste facilities. These sections are a reorganization of requirements that appear in the existing subchapter 2.

Sanitary landfill technologies have advanced rapidly in the last 10 years, making the existing regulations in N.J.A.C. 7:26-2.4, 2.5, 2.6, 2.7, 2.8, and 2.12 insufficiently comprehensive to adequately address these advances and the environmental concerns surrounding the construction and operation of sanitary landfills. The proposed standards and requirements of subchapter 2A have been largely employed, through guidance by the Department, in the interim, in the permitting of recently constructed sanitary landfills. The proposal, in part, represents a codification of that guidance based upon the Department's best engineering judgment and experience gained in recent years.

The proposed environmental performance standards, design standards, construction requirements and the operational and maintenance requirements of subchapter 2A will provide the comprehensive framework necessary to effectively manage these non-hazardous waste facilities and address the environmental controls needed to minimize and control adverse impacts and prevent pollution.

As the reliance on landfilling as the sole means of solid waste disposal is reduced, resource recovery facilities and transfer stations will assume a larger role in the waste disposal plans of the future. The existing regulations in N.J.A.C. 7:26-2.11 and 2.12 are not sufficiently comprehensive to adequately address the variety of pressing issues surrounding the use of resource recovery facilities and transfer stations. The proposed specific design and operational requirements of subchapter 2B are more comprehensive and will provide the framework within which these solid waste facilities will be regulated.

The **Basis and Background document**, which is available from the Department at the address given below for subchapters 2A and 2B explains the technical decision making for the development of these standards and requirements. In addition, a summary of the proposed regulations and a cross reference to the existing regulations in subchapter 2 appear in the Basis and Background document available from:

Albert Montague, Chief Engineer  
Division of Waste Management  
Office of Engineering  
CN 042  
Trenton, NJ 08625

#### Social Impact

The effects of reorganizing subchapter 2 and delineating the decision-making procedures for issuing a solid waste facility permit will have a positive social impact. Applicants and the general public will know what is required in applying for a permit, the steps in the decision making process and the time-frames involved. Providing this notice should reduce the time and moneys expended on an application.

The proposed sanitary landfill regulations in N.J.A.C. 7:26-2A will have a net positive social impact. All landfills will be required to be designed, constructed and operated to meet at least a minimum level of performance. The proposed standards will serve to ensure that the predicted net social gains from the construction of a sanitary landfill are achieved.

In terms of sanitary landfill operation, while maintaining stringent maintenance, inspection and monitoring requirements, the proposed regulations put more emphasis on the operator's ability to control environmental nuisances associated with the operation of the landfill such as odors, noise, dust, litter, fires and traffic. The proposed regulations in N.J.A.C. 7:26-2A require landfill operators to be properly trained to respond to any landfill emergencies and that a supervisor be on site at all times during the operational day. Future proposals will require the licensing of classes of sanitary landfill operators.

The shift in disposal emphasis from the predominant use of sanitary landfills to the integrated use of recycling, transfer stations, resource recovery facilities and sanitary landfills will result in a net favorable social impact. Resource recovery facilities occupy a much smaller land area, generate fewer adverse environmental and health impacts and by their use ensure a longer term disposal capacity than landfills, therefore scarce open space will be preserved at a lower social cost. Recycling and composting, in addition to thermal destruction and resource recovery facilities, will serve to reduce the waste load to landfills, conserving the latter's capacity and further preserving open space.



The operational requirements for resource recovery facilities will put more emphasis on the operator's ability to control potential environmental impacts associated with their operation. The proposed regulations in N.J.A.C. 7:26-2B require that the operator be properly trained to respond to any emergencies and that a licensed boiler operator be on site at all times. Future proposals, as with landfill operators, will require licensing of classes of resource recovery facility operators.

#### Economic Impact

The proposed regulations will result in an increase in the disposal cost for the construction and operation of a solid waste facility. This cost is dependent on the technology selected for disposal, the location of the facility and the design needed to meet the standards and requirements of the proposed regulations.

The increased cost will be due primarily to the utilization of state-of-the-art technologies and pollution control equipment. Transportation costs are also expected to increase due to the fewer number of facilities and increased transportation distance. Transfer stations will, however, become more widespread in the near future and this factor, along with increased recycling, should keep this increase in cost to a minimum.

Setting forth existing delineation of the application and decision-making procedures will serve to reduce the time expended on the preparation and review of an application. Expanded requirements for an EHIS will, however, add to the cost of completing an application.

The proposed sanitary landfill regulations will result in an increase in disposal costs. The cost estimated for design, construction, operation and maintenance of a sanitary landfill is approximately \$20.00 per ton, which represents an increase of approximately \$7.00 a ton over existing land disposal costs. The amount of increase in disposal costs is dependent on, among other factors, the location of the facility and the design of the landfill which may be required to meet the environmental performance standards of N.J.A.C. 7:26-2A.6. This cost could be substantially increased in some locations based on the design and operational cost for the mitigation of associated environmental impacts; however, this proposal will result in the overall environmentally sound performance of all landfills regardless of their location, thereby reducing closure or cleanup costs.

One of the main objectives of the Resource Conservation and Recover Act of 1976 (RCRA) is to "... promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of non recoverable residuals." Some of these improved techniques such as waste to energy incinerators, initially will be more costly than most of the State's current landfilling costs. Tipping fees at such facilities are predicted to be approximately \$40.00 per ton in the early years of operation. However, as the revenues generated from the sale of electricity and recoverable materials increase, the cost of resource recovery facilities should be reduced as these revenues will offset increasing operational costs.

#### Environmental Impact

The proposed subchapter 2A sanitary landfill regulations will result in a positive environmental impact. The purpose of the standards and requirements is to ensure that any adverse impact is minimized and controlled and that pollution resulting from the landfill is prevented.

The sanitary landfill, regardless of its location, will be required to meet minimum performance standards. Alternative designs will be required to meet any additional performance standards as determined by the landfill's location, and its expected impact on environmentally sensitive areas. In addition, all landfills will be required to meet minimum construction requirements, regardless of the designed performance to ensure the integrity and stability of the construction.

The net environmental impact of utilizing recycling and other forms of resource recovery as the prime method of solid waste disposal will be favorable. The potential impact on ground and surface waters will be significantly decreased. While waste to energy incinerators may have greater potential for an adverse impact on air quality than landfilling, state-of-the-art air pollution control equipment, utilized in conjunction with the facility design and operational standards, will effectively control such an impact. The specific design and operational standards for a waste-to-energy facility are contained within this proposal. The Department's Division of Environmental Quality regulates air pollution control equipment and established limits to air emissions from such facilities through the issuance of an air pollution control certificate.

The potential air and water impacts, as well as other environmental and health impacts, will be thoroughly evaluated in the context of the EHIS required to be prepared for each solid waste facility. The Depart-

ment will not allow a waste disposal facility of any type to begin operating without approval of its EHIS and engineering designs, the contents of which are outlined in this proposal.

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

### CHAPTER I RULES OF PRACTICE AND PROCEDURE

#### SUBCHAPTER 6. [BUREAU OF SOLID WASTE MANAGEMENT: PROCEDURAL RULES] (RESERVED)

OAL NOTE: The rules proposed for repeal appear in the New Jersey Administrative Code at N.J.A.C. 7:1-6.

##### 7:26-1.4 Definitions

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

...

"Act" means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., as amended and supplemented.

...

"Admixture" means two or more materials mixed together to be used as a liner. Admixtures include asphalt concrete, portland cement concrete and mixtures of soil and portland cement or bentonite.

...

"Buffer zone" means those on-site areas adjacent to the sanitary landfill property line which shall be landscaped and left undeveloped.

...

"Clay" means a fine grain soil containing sufficient plastic fines (N. 200 sieve), on the order of 20 percent or greater such that the soil acts as a clay and will achieve the required degree of impermeability. The soil should be classified as a CL, or CH (Unified Soil Classification System), with a liquid limit between 30-60, placed above the A-line on the plasticity chart and a minimum plastic index of 15. The soil should have a cation exchange capacity (CEC) greater than 15 meq/100 grams and be in the neutral pH range.

"Clean fill" means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products.

"Co-composting facility" means a solid waste facility which utilizes a controlled biological process of degrading mixtures of nonhazardous solid waste and sewage sludge.

...

"Commingled recyclable material" means nonputrescible, source separated, recyclable metal, glass, paper and plastic materials which would otherwise become nonhazardous solid waste which are commingled or mixed at the source of waste generation in order to improve the convenience of storage, handling, and transport to a recycling center.

"Composite liner" means a combination of clay or admixture liner and a geomembrane.

"Composting facility" means a solid waste facility which utilizes a controlled biological process of degrading nonhazardous solid waste.

...

"Continuous monitoring instrumentation" means a direct reading instrument which measures a given parameter on a continuous basis.

"Controlling slopes" means slopes on those areas of the liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

...

"Degree of uncertainty of strength measurement-high" means the soil conditions are complex and available strength data does not provide a consistent, complete or logical picture of the strength characteristics.

"Degree of uncertainty of strength measurement-low" means the soil conditions are uniform and high quality strength test data provides a consistent, complete and logical picture of the strength characteristics.

...

"Double liner" means a two liner system separated by a leak detection/leachate removal system.

...

"Environmental assessment" means an evaluation of the positive and negative changes to the environmental conditions at and around a particular site which may result from the implementation of a proposed action. In-

cluded is a determination of the magnitude of the potential changes and, where applicable, the identification of recommended mitigative measures to be incorporated.

"Environmental inventory" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"Environmentally unsound" means any persistent or continuous condition resulting from the methods of operation or design of the solid waste facility which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated Federal, State, county or municipal standard.

"Environmental upgrading" means the addition or modification of the construction, operation or maintenance of a solid waste facility to abate or prevent the occurrence of an environmentally unsound condition.

...

"Expansion" means the process of increasing the areal dimensions, vertical elevations or the slopes beyond the approved limits of the solid waste facility.

...

"Foundation" means the supporting soil layers beneath a liner or cutoff wall.

...

"Geomembrane" means a prefabricated continuous sheet of flexible polymeric material including synthetic membranes, polymeric membranes, flexible membrane liners and plastic liners.

...

"Hydraulic asphalt concrete" means a controlled mixture of asphalt cement and high quality mineral aggregate compacted into a uniform dense mass.

...

"Leaf composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves, either exclusively or in combination with other type ID 23 wastes, as identified in N.J.A.C. 7:26-2.13.

...

"Materials recovery facility" means a solid waste facility such as a transfer station which is designed, operated and permitted to process a nonhazardous solid waste stream by utilizing manual and/or mechanical methods to separate from the incoming waste stream categories of useful materials which are then returned to the economic mainstream in the form of raw materials or products for reuse.

"Modular design" means a design which provides for the sequential construction and filling of discrete units of a sanitary landfill in a phased manner.

...

"NJPDDES" means the New Jersey Pollutant Discharge Elimination System.

...

"Recyclable materials" means materials which would otherwise become nonhazardous solid waste which can be separated, collected and processed and returned to the economic mainstream in the form of raw materials or products.

"Recycling center" means a facility designed and operated solely for receiving, storing, processing and transferring source separated, nonputrescible or source separated commingled nonputrescible metal, glass, paper, plastic containers, and corrugated and other cardboard, or other recyclable materials approved by the Department.

...

"Regional" means the area encompassing three miles from the perimeter of the solid waste facility.

...

"Sanitary landfill" means a solid waste facility, at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months, except that it shall not include any waste facility approved for disposal of hazardous waste pursuant to this chapter. Sanitary landfills shall be further classified into one of the following classes:

1. "Class I sanitary landfill" means a solid waste facility which may accept all types of nonhazardous solid waste including ID 10, 13, 23, 25, 27, 72;

2. "Class II sanitary landfill" means a solid waste facility which may accept only ID type 27 or a specific category of ID type 27 of nonhazardous solid waste; and

3. "Class III sanitary landfill" means a solid waste facility which may accept only inert nonputrescible nonhazardous solid waste, ID 13 or 23.

...

"Set back" means those areas between the actual disposal area and the property line which can be utilized for construction of environmental control systems such as run-off diversion ditches, monitoring wells or scales.

...

"Soil cement" means a mixture of soil portland cement and water. As the cement hydrates the mixture forms a hard, durable, low strength concrete.

...

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center.

"Solid waste facility permit" or "SWF permit" means a certificate of approved registration and engineering design approval for a nonhazardous solid waste facility. For the purposes of N.J.A.C. 7:26-16 and 16A, a solid waste facility permit shall mean a license as that term is defined at N.J.A.C. 7:26-16.2.

...

"Source separated" means the process of separating recyclable materials from the solid waste stream at the point of waste generation.

...

"Subgrade" means the foundation of supporting soil layer beneath a constructed liner other than a recompacted in situ clay liner.

...

"Thermal destruction facility" means a nonhazardous solid chemical waste facility which utilizes a thermal device to either burn waste or chemically decompose waste by heating it in an oxygen deficient atmosphere. Energy recovery systems may be utilized in conjunction with the thermal device.

"Vicinity" means the area encompassing one half mile from the perimeter of a nonhazardous solid waste facility.

[7:26-2.1 Dumps prohibited] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

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

(a) This subchapter and N.J.A.C. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7 or 1.8.

(b) This subchapter does not apply to hazardous waste. See N.J.A.C. 7:26-1, 7, 8, 9, 10, 11, 12 and 13.

(c) This subchapter does not apply to the disposal of family wastes on the premises of one or two family dwellings where the family resides. This subsection shall not be interpreted as permitting the disposal of domestic sewage in any manner other than that prescribed by law.

[7:26-2.2 Registration] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

#### 7:26-2.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions.

[7:26-2.3 Domestic refuse] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

#### 7:26-2.3 Purpose

- (a) This subchapter is promulgated for the following purposes:
1. To establish the procedure for obtaining and maintaining a solid waste facility permit;
  2. To establish the submission requirements for an environmental and health impact statement (EHIS) for solid waste facilities;
  3. To establish the general engineering design requirements for solid waste facilities; and
  4. To establish the general operational requirements for solid waste facilities.

[7:26-2.4 Submission of engineering designs] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

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

(a) All applications for a solid waste facility (SWF) permit shall be submitted to:

Assistant Director for Engineering  
Division of Waste Management  
CN-042  
Trenton, N.J. 08625

(b) All applications for a SWF permit shall be accompanied by the following:

1. All fees, required by N.J.A.C. 7:26-4, paid in full;
2. Documentation establishing that the facility has been included in the applicable district solid waste management plan;
3. The disclosure statement described in N.J.A.C. 7:26-16.4. 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
4. For sanitary landfills, a closure plan submitted in accordance with N.J.A.C. 7:26-2A.9.

(c) All applications for a SWF permit shall include a completed registration statement meeting the requirements of N.J.A.C. 7:26-2.8, an EHS meeting the requirements of N.J.A.C. 7:26-2.9 and an engineering design meeting the requirements of N.J.A.C. 7:26-2.10, except for applications for the types of facilities identified in 1, 2, 3 or 4 below, which shall include only the material required to be submitted for that particular type of facility.

1. An application for a leaf composting facility shall include the following:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for composting consists of leaves, either exclusive or in combination with other type ID 23 wastes as classified in N.J.A.C. 7:26-2.13; and

(2) The design and maintenance program proposed will ensure achieving the conditions necessary to permit efficient and effective composting activity;

ii. A registration statement on forms provided by the Department; and

iii. An EHS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9(d)1.

2. An application for a small-scale incinerator or thermal destruction facility shall include the following:

i. Documentation and information sufficient to demonstrate, to the satisfaction of the Department, that the facility meets the following criteria:

(1) The waste intended for incineration or thermal destruction is nonhazardous;

(2) The waste is generated at the site of the incinerator or thermal destruction operation or at other associated intracompany plants located within the State of New Jersey;

(3) The small-scale incinerator or thermal destruction unit has a design capacity of less than 800 lbs. per hour (9.6 tons per day);

(4) The thermal destruction unit will be permitted, constructed and operated in accordance with the requirements of N.J.A.C. 7:27-8; and

(5) The incinerator or thermal destruction unit will be operated in compliance with N.J.A.C. 7:26-2.11 and all other applicable Departmental regulations.

ii. A registration statement on forms provided by the Department; and

iii. An EHS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9(d)2.

iv. This exemption from full application requirements is limited to one incinerator or small-scale thermal destruction unit for each company site.

3. An application for a small-scale materials recovery facility or transfer station shall include the following:

i. Documentation sufficient to demonstrate, to the satisfaction of the Department, that the capacity of the facility is less than 100 tons per day;

ii. A registration statement on forms provided by the Department;

iii. An EHS sufficient to meet only the requirements set forth at N.J.A.C. 7:26-2.9(d)3; and

iv. An engineering design sufficient to meet the requirements set forth at N.J.A.C. 7:26-2.10.

4. An application for a small-scale Class III sanitary landfill shall include the following:

i. Documentation sufficient to demonstrate to the satisfaction of the Department, that the total capacity of the facility is less than 300,000 cubic yards or the annual capacity is less than 50,000 cubic yards;

ii. A registration statement on forms provided by the Department;

iii. An EHS sufficient to meet only the requirements of N.J.A.C. 7:26-2.9(d)4; and

iv. An engineering design sufficient to meet the requirements set forth at N.J.A.C. 7:26-2.10.

(d) An application for a SWF permit shall be deemed to be adequate for review by the Department in accordance with (g)4 below.

1. Upon receipt of initial application materials, the Department shall assign an application number to the application. All correspondence on written comments relating to the application shall thereafter refer to the assigned application number.

(e) All applications shall be signed by the applicant as follows:

1. The completed registration statement shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

2. All engineering designs and reports and the environmental and health impact statement required by this subchapter and other information requested as "Addendums" by the Department pursuant to (f) and (g)4 below, in addition to the documents required to be submitted pursuant to N.J.A.C. 7:26-2.9 and 2.10, shall be signed by a person described in (e)1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. The authorization is made in writing by a person described in (e)1 above;

ii. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, or positions of equivalent responsibility (a duly authorized representative may be either a named individual or any individual occupying the named position); and

iii. The written authorization is submitted to the Department.

3. Any person signing the registration statement, engineering design and reports, environmental and health impact statement or addendum mentioned in (e)1 and 2 above, shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(f) The Department may require an applicant to provide additional data, reports, specifications, plans or other information where such information is necessary, as determined by the Department, to make the application technically complete or to make a final permit determination after the public hearing. The Department shall not make a final determination on any application until such time as the applicant has supplied the requested information. Any failure to submit such information shall constitute cause for denial of the permit.

(g) The procedures for Department review and approval or denial of a SWF permit application shall be in accordance with the following:

1. Prior to preparing and submitting the application for a SWF permit, other than for facilities specified in (c) above, the applicant shall schedule one or more pre-application conferences with the Department to discuss the registration submission requirements and procedures and the engineering design requirements. (See N.J.A.C. 7:26-2.10(b));

2. At least two weeks prior to the scheduled pre-application conference, the application shall submit information in the form of reports, maps, studies and other relevant project documentation providing a sufficient basis for review by the Department. The material submitted prior to the pre-application conference shall include the following:

i. A site location map plotted on a USGS topographic map;

ii. A written description of the type of facility;

iii. A written estimate of the proposed design capacity of the facility;

iv. A written description of the type of waste to be handled;

v. A written plan establishing the tentative construction schedules; and

vi. A written scope of work outlining the proposed EHS, geotechnical investigation or engineering design;

3. The Department shall not begin the processing of an application until the applicant has fully complied with the submission requirements of this subchapter and the signature and certification requirements of (e) above. However, the Department may begin reviewing material in preparation for the pre-application conference described in (g)2 above or in preparation for the application submission.

4. Upon receipt of a SWF permit application the Department shall review the application for a determination of completeness. After reviewing the SWF permit application, the Department shall, within 60 days of receipt



of the application, notify the applicant, in writing, whether the application is administratively complete for review or incomplete.

i. For the purposes of this section, "administratively complete" means that sufficient information required by the Department to begin technical review of the application has been submitted by the applicant.

5. If the application is deemed administratively or technically incomplete, the Department shall provide the applicant with a written list of the deficiencies and additional information required to make the application complete. Failure to correct the deficiencies shall constitute cause for denial of the permit without prejudice. A determination of incompleteness shall stop any review and shall negate the time limitations set forth in (g)4 above and 14 below.

6. Within 14 days after receiving a notification of deficiency, the applicant shall inform the Department, in writing, of its intent to either withdraw the incomplete permit application or supply the information requested to make the application complete and proceed with the application process. The Department shall establish a reasonable schedule for the submission of additional information. The requested additional information shall be submitted to the Department as an "Addendum to the Application for a Solid Waste Facility Permit" ("Addendum").

7. Upon receiving the Addendum, the Department shall review the Addendum and other information supplied by the applicant for a determination of application completeness in accordance with the procedure set forth in (g)4 above.

8. Upon determining that the application is administratively complete, the Department shall send notice that an application has been filed, identifying the applicant, describing the type of facility, location of the facility and locations where and when application materials are available for review to the following:

i. The mayor, planning board, any environmental commission and the health officer of any municipality in which any portion of the facility is proposed to be located;

ii. The mayor, planning board, any environmental commission and the health officer of any municipality the borders of which lie within one mile of the perimeter of the proposed facility; and

iii. The County Planning Board of any county in which any portion of the facility is proposed to be located;

9. Upon determining that an application is administratively complete, the Department shall submit a copy of the SWF permit application materials to the following for review:

i. The municipal clerk of any municipality in which any portion of the facility is proposed to be located;

ii. The Board of Chosen Freeholders of any county in which any portion of the facility is proposed to be located; and

iii. Any other governmental agencies that the Department deems appropriate, such as Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, surface and groundwater resources, air quality, and coastal zone management; the Pinelands Commission; Office of New Jersey Heritage; Department of Agriculture; Department of Transportation; Department of Community Affairs, Board of Public Utilities; and other affected states.

10. Once the Department certifies that an application is administratively complete, the application may be reviewed by an interested person at the Department's offices during normal working hours by making an appointment, at the address specified at N.J.A.C. 7:26-2.4(a), with the Division of Waste Management's, Bureau of Registration, Permits and Licensing. Copies may be obtained from the Department upon payment of the duplication fee prescribed by law.

11. All governmental agencies shall complete their review and submit comments to the Division within 90 days after receipt of the application materials to facilitate Division review of the application. The Division, in its discretion, may consider comments submitted by any governmental agency after the expiration of the 90 day period for review.

12. The Department shall determine whether a site visit and inspection are necessary in order to evaluate the proposed site of the facility. If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date for the visit shall be scheduled.

13. The Department shall publish notice in the DEP Bulletin of the receipt of each new application and each significant agency action on an application currently before it. Notice shall be given for significant actions including, but not limited to, the determination of completeness, tentative approval, rejection of an application, public hearings on a tentative approval, final decision on a permit, transfer of a permit and permit renewal. Publication of notice in the DEP Bulletin constitutes constructive notice to all

interested persons of the Department actions on SWF permits. The notice shall include, but not be limited to:

i. The applicant's name;

ii. The agency application number;

iii. The type of facility proposed by the applicant;

iv. The location of the proposed facility; and

v. The date and description of significant agency action on the application.

14. Not later than six months after the date upon the Department's letter notifying the applicant that the application is administratively complete, the Department shall reject the SWF permit application, without prejudice, as technically incomplete, deny or grant tentative approval of the application.

i. If the Department determines to deny the applicant a SWF permit, the basis for the denial shall be set forth in a letter to the applicant which shall also provide the applicant with notice of opportunity to request an adjudicatory hearing pursuant to (g)25 below.

15. A tentative approval shall establish draft design, construction, operational, and maintenance conditions for the proposed solid waste disposal facility, requirements for the monitoring thereof and any other conditions required under Federal or State laws or rules and regulations and as deemed appropriate by the Department.

16. Not later than 45 days after the granting of a tentative approval of an application for a SWF permit, the Department shall conduct a public hearing on the proposed facility and operator in accordance with the procedures set forth in N.J.A.C. 7:26-2.5. In the case of an application for a nonhazardous solid waste facility described in N.J.A.C. 7:26-2.4(c), an application for a permit renewal pursuant to N.J.A.C. 7:26-2.7(b), an application to transfer a permit pursuant to N.J.A.C. 7:26-2.7(d) or minor permit modification to require environmental upgrading, the Department shall provide public notice, in accordance with (g)17 below, of the opportunity for a public hearing on the proposed agency action. Upon the written request of any interested party which, in the opinion of the Department, raises issues of fact relevant to the proposed agency action within 30 days of the newspaper publication of a notice of opportunity for a hearing, a public hearing on the proposed agency action shall be held in accordance with N.J.A.C. 7:26-2.5.

17. Not less than 15 days before a public hearing the Department shall provide notice, as described in (g)18 below, of the tentative approval and scheduled hearing, by the following methods:

i. By mailing a copy of a notice to the following persons (any person entitled to receive notice under this paragraph may waive the right to receive notice for any classes and categories of permits):

(1) The applicant;

(2) The municipality in which the proposed facility will be located;

(3) Any Federal, State, county or municipal agency known to the Department to have issued or have jurisdiction to issue a permit for the same facility or activity;

(4) Any Federal, State, county or municipal agency which commented on the application or requested notice; and

(5) Any other persons required to receive such notice;

ii. By publication of a notice in two daily or weekly newspapers circulated within the area affected by or served by the facility or activity. Publication shall occur not more than 30 days prior to the date of the public hearing; and

iii. In cases where the Department is providing notice of the opportunity for a public hearing, such notice shall be provided in accordance with (g)17i above and published in two daily or weekly newspapers circulated within the area affected by or served by the facility. Where the notice of opportunity for a public hearing results in the scheduling of a hearing, a subsequent notice of the hearing date shall be provided in accordance with (g)17i and ii above.

18. All public notices issued pursuant to this section shall include the following information;

i. Name and address of the office processing the tentative approval for which notice is being given;

ii. Name and address of the applicant, and if different, the address of the facility or activity described by the SWF permit application materials;

iii. A brief description of the business to be conducted at the facility, including the activities described in the SWF permit application materials;

iv. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the fact sheet required by (g)19 below;

v. A brief description of the comment procedures by which the public may participate in the final permit decision and the time and place of the public hearing, if necessary; and

vi. The location of the administrative record, the times at which the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record.

19. A fact sheet concerning the proposed facility shall be prepared by the Department and shall be provided with the hearing notice required in (g)18 above. The fact sheet shall include the following:

- i. The principal facts and the significant factual, legal, methodological or policy questions considered in granting the tentative approval;
- ii. A description of the proposed facility;
- iii. The types and quantities of solid waste which may be disposed of at the proposed facility; and
- iv. A brief summary of the bases for the conditions of the tentative approval.

20. The public comment period shall be determined by the Department in accordance with the following:

- i. The public comment period shall be the opportunity for any interested person to submit comments to the Department concerning a proposed facility and operator;
- ii. For purposes of this subchapter the public comment period shall begin upon notice by the Department that a tentative approval has been issued or other agency action taken;
- iii. The public comment period shall close 15 days after the date of the last public hearing, if any, on any tentative approval, unless the Department decides to extend the comment period in accordance with (g)19v below or reopen the comment period in accordance with (g)21 below. For agency actions on which no public hearing is held, the public comment period shall close 30 days after publication of the notice of the agency action;
- iv. All interested persons, including the applicant, who believe any aspect of the tentative approval or other agency action is inappropriate shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations or other generally available reference materials;

v. A public comment period longer than 15 days following the public hearing may be necessary, in certain cases, to give interested persons an opportunity to comply with the requirements of (g)20iv above. Any interested person who reasonably requires additional time within which to supplement the administrative record should request, in writing, an extension of the public comment period, and the Department shall exercise reasonable discretion in setting the closing date for public comment;

vi. The Department shall publish notice, in accordance with (g)18 above of any decision to extend the period for public comment beyond the 15 days following the public hearing. Any notice of an extension of the public comment period shall clearly set forth the closing date of such extension.

21. Reopening of the public comment period shall be at the Department's discretion based upon the following:

- i. If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a tentative approval or other agency action, the Department may take one or more of the following actions:

- (1) Issue a permit, appropriately modifying the tentative approval to reflect the Department's response to the questions raised;
- (2) Prepare a revised fact sheet and revised tentative approval and reopen the comment period under this section; or
- (3) Reopen the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

ii. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening.

iii. Public notice of any of the above actions shall be published in accordance with (g)18 above. Any notice issued pursuant to this section shall clearly define the scope of the reopening for purposes of limiting the scope of comments submitted during the reopened period pursuant to (g)21ii above.

22. The Department shall base the final permit decision on the administrative record, which shall be complete on the date the SWF permit is issued and which shall include, but not be limited to:

- i. The application, including the registration statement, engineering design, EHIS, Addendums, if any, and all other materials submitted by the applicant in support of the application;
- ii. All written comments received during the public comment period, including any comments submitted during an extension or reopening of the comment period.

iii. The transcript of any public hearing held on the permit application;

iv. The hearing officer's report which shall contain the Department's response to comments made during the comment period;

v. The fact sheet prepared by the Department for any public hearing and other documents contained in the supporting file; and

vi. The tentative approval and final permit documents.

vii. Material readily available to the Department, or published material which is generally available, need not be physically in the same file as the rest of the administrative record as long as it is specifically referred to in the fact sheet, the written comments, the transcript, or in the response to comments.

23. The provisions of this subchapter shall not supersede the public hearing procedures required for facilities obtaining a NJPDES permit. The public notice and public comment provisions contained in N.J.A.C. 7:14A-8 shall govern NJPDES permit procedures.

24. The Department shall notify the applicant of the permit application decision by issuance of a SWF permit or by letter of denial on the application. In addition, the SWF permit or letter of denial shall be made available to all parties receiving copies of the application or notice of the application pursuant to (g)8 and 9 above and to any other interested person who has commented, orally or in writing, on the application, tentative approval or other agency action. Notice of the decision shall be published in the DEP Bulletin.

25. Within 20 calendar days from publication of notice of the Department's decision in the DEP Bulletin, the applicant may submit a written request to the Department for an adjudicatory hearing to contest any aspect of the Department's decision.

- i. Any request for an adjudicatory hearing must be based on specific relevant issues raised by the applicant during the public comment period;
- ii. Any request raising new issues shall be considered by the Department as a request to reopen the public comment period pursuant to (g)21 above;
- iii. The Department may base a denial of a request for an adjudicatory hearing on the failure of the applicant to have raised the issue during the public comment period; and

iv. The request for an adjudicatory hearing shall state the applicant's factual position on each question alleged to be at issue, its relevance to the permit decision, specific reference to contested permit conditions as well as suggested revised or alternative permit conditions and an estimate of the amount of hearing time necessary to adjudicate each factual issue. Supporting documentation shall be identified in the administrative record and shall be properly referenced.

26. The Department may extend the time allowed for submitting a hearing request under this section for good cause shown.

27. For 30 days following receipt of a request for an adjudicatory hearing, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as it deems appropriate.

28. If Department efforts at settlement fail, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

[7:26-2.5 Sanitary landfill operational requirements (General)] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

#### 7:26-2.5 Public hearing procedures

(a) The department shall be responsible for scheduling and conducting a public hearing in reasonable proximity to the location of the proposed facility.

(b) The Department shall designate a hearing officer who shall exercise reasonable discretion in the conduct of the hearing and shall encourage general discussion of the proposed facility, including public comment on the proposed operator, tentative approval or other action to be taken by the Department.

(c) The public hearing shall be a non-adversarial hearing at which any interested person may submit oral or written statements and data concerning the proposed operator, tentative approval or other agency action.

(d) The Department may make a presentation at the public hearing, describing the proposed facility and explaining the basis for the issuance of the tentative approval or other proposed action.

(e) The applicant shall appear at the public hearing on a tentative approval and be available to answer questions regarding the proposed facility. Failure of an applicant to appear and answer relevant questions at the public hearing may result in revocation of the tentative approval and denial of the application.

(f) The public hearing proceedings shall be transcribed or recorded and the transcript shall be part of the administrative record.

(g) The hearing officer, to the extent feasible, shall conduct the hearing in the following manner:

- i. All interested persons shall be afforded the opportunity to appear and comment at the hearing;
- ii. Time shall be allotted for individuals to present comments where necessary to accommodate those present and to limit repetition;
- iii. Testimony on irrelevant matters shall be excluded; and
- iv. The hearing officer shall ensure that the hearing proceeds in an orderly fashion.

(h) To help ensure that relevant questions are answered at the public hearing, such questions may be submitted to the Department no later than five days prior to the public hearing. At the time of the hearing, the Department or the applicant, in the Department's discretion, will make every reasonable effort to answer these questions and other relevant questions received at the hearing.

(j) In the event that a response to a question cannot be given at the hearing, a written response shall be prepared after the hearing by either the Department or the applicant, at the Department's discretion. A copy of that written response shall be included in the hearing officer's report and shall be provided to the individual asking the question and others requesting copies of the hearing officer's report.

(k) The cost of advertisement and other expenses of the public hearing, including provision and preparation of the transcript, will be certified to the applicant who shall pay the bill within 30 days thereafter. Payment of the bill, in full, shall be a condition of final permit issuance.

[7:26-2.6(a)-(d)] The Department is proposing to repeal these subsections of this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

7:26-2.6(e) The Department is proposing to move this subsection to 7:26-2A.8(1). The text of this subsection is printed in the New Jersey Administrative Code.

#### 7:26-2.6 Procedures and grounds for modification, revocation and reissuance and termination of SWF permits

(a) When the Department receives any information concerning a solid waste facility, it may determine whether or not one or more of the causes listed below for modification, or revocation and reissuance, or both exist.

1. If cause exists, the Department may modify, or revoke and reissue the SWF permit accordingly, subject to the limitations of this section, and may require an updated application, if appropriate. When a permit is modified, only the conditions subject to modification may be reopened for public comment. If a permit is revoked and reissued, the entire permit shall be reopened for public comment and the permit shall be reissued for a new term.

2. If a cause does not exist under this subsection or subsection (c) below, the Department shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in (d) below for minor modifications, the permit may be modified without issuance of a tentative approval or public comment thereon. Otherwise, a tentative approval shall be prepared and the procedures in N.J.A.C. 7:26-2.4(a) followed.

3. The following may be causes for modification at the discretion of the Department. The following may also be causes for revocation and reissuance, in place of modification, when the permittee requests and the Department agrees.

i. There are material and significant alterations or additions to the permitted facility or operation which occurred after permit issuance which justify the application of permit conditions that are different from or absent in the existing permit;

ii. The Department has received information that was not available at the time of permit issuance that would have justified the application of different permit conditions at the time of issuance. This shall include any information indicating that the effects on the environment are unacceptable or that the facility is being operated in an environmentally unsound manner;

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by a judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(1) For promulgation of amended standards or regulations, when the permit condition to be modified was based on a requirement of N.J.A.C. 7:26, and the Department has revised, repealed or modified that portion of the regulation on which the permit condition was based; and

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed a Department regulation or guideline, if the remand and stay concerned that portion of the regulation or guideline on which the permit

condition was based and a request is filed by the permittee in accordance with N.J.A.C. 7:26-2.3(k) within 90 days of judicial remand.

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of god, strike, flood or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

4. The Department shall follow the applicable procedures in (e) below while pursuing a modification or revocation and reissuance of any permit under this section.

(b) The Department may modify or, alternatively, revoke and reissue a permit if cause exists for termination under (c) below and the Department determines that modification or revocation and reissuance is appropriate.

(c) When the Department receives any information concerning a facility, it may determine whether or not one or more of the causes listed below for termination of the permit exist and shall proceed as set forth below.

1. The following are causes for terminating a permit during its term or for denying a permit renewal application.

- i. Noncompliance with any condition of the permit;
- ii. The permittee's failure in the application, during the permit issuance process or at any subsequent time to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- iii. A determination by the Department that the facility is being operated in an environmentally unsound manner;

iv. A determination that the permitted activity endangers human health or the environment, or has the potential to do so, and can only be regulated to acceptable levels by permit modification or termination; or

v. A change in ownership or operational control of a permitted facility not in compliance with N.J.A.C. 7:26-2.7(d);

2. The Department shall follow the applicable procedures in (e) below in terminating any permit under this section.

(d) Upon the request of the permittee, or for good cause, the Department may make certain minor modifications to a permit without issuing a tentative approval, providing public notice thereof or holding a public hearing thereon.

1. Minor modifications to the permit shall be made to accomplish only the following:

- i. Correct typographical errors;
- ii. Require more frequent monitoring or reporting by the permittee;
- iii. Change an interim compliance date in a schedule of compliance, provided the new date does not interfere with attainment of the final compliance date requirement;
- iv. Change the lists of facility emergency coordinators or equipment in the permit's contingency plan;
- v. Delete type of solid waste being accepted for handling, processing or storage at the facility or include types which are similar in nature to those included in the permit at the time of issuance without increasing the design capacity of the facility;
- vi. Change the testing methods or procedures in the permit as a result of changes to standardized methods or procedures;
- vii. Replacement of materials or equipment in kind;
- viii. Revisions as necessary to conform to a decision by the Department rendered after an adjudicatory hearing or any settlement of the issues for which an adjudicatory hearing has been requested, pursuant to N.J.A.C. 7:26-2.4(g);

(1) After settlement of the issues for which an adjudicatory hearing had been requested, those persons who commented on the tentative approval shall receive notice of any revised permit conditions; or

ix. Changes in the design of the facility which, in the best engineering judgment of the Department, will upgrade the environmental performance or reduce adverse environmental or human health impacts without increasing the design capacity of the facility.

(1) Prior to making this modification, the Department shall provide public notice and offer the opportunity for a public hearing pursuant to N.J.A.C. 7:26-2.4.

(e) Permits may be modified, revoked and reissued, or terminated either upon written request containing the relevant factors and rationale supporting the request, submitted by the permittee or upon the Department's initiative. Permits may only be modified, revoked and reissued, or terminated for the reasons specified in (a)3 and (d) above.

1. If the Department decides to modify or revoke and reissue a permit under (b) above it shall:

1. Prepare a tentative approval incorporating the proposed change pursuant to N.J.A.C. 7:26-2.4. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.



2. In a permit modification only those conditions to be modified shall be reopened when a new tentative approval is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

3. During any modification proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until the modification proceedings are completed.

4. When a permit is revoked and reissued, the entire permit shall be reopened for public comment in accordance with the procedures set forth at N.J.A.C. 7:26-2.4. During any revocation and reissuance proceeding, the permittee shall, at a minimum, comply with all conditions of the existing permit and such interim conditions as the Department may impose to protect human health and the environment until a new final permit is issued; or

5. Minor modifications as defined in (d) above are not subject to the requirements of this subsection.

6. If the Department tentatively decides to terminate a permit under (c) above, it shall issue a notice of intent to terminate. The notice of intent to terminate shall be processed in accordance with the same procedures as a tentative approval pursuant to N.J.A.C. 7:26-2.4.

[7:26-2.7 Disrupted landfill requirements] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) A permit issued pursuant to this subchapter shall be effective for a fixed term not to exceed five years, except as provided in (c) below. A permit may be renewed in accordance with (b) below only for the duration of the facility's inclusion in the District Solid Waste Management Plan and provided the permitted capacity, as specified in the approved engineering design, is not exceeded.

1. The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

2. Nothing herein shall be construed to allow the permittee to exceed the maximum permitted capacity of the facility as set forth in the SWF permit for the facility at any time during the term of the permit. Any expansion, extension, enlargement or other increase beyond permitted capacity conditions shall be considered a new facility and shall require the application for the Departmental approval of a new permit.

3. The Department may issue any permit for a duration that is less than the full allowable term under this section.

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. The permittee of a permitted solid waste facility shall apply for permit renewal at least 90 days prior to the expiration date of the existing SWF permit if the facility has remaining permitted capacity in accordance with its SWF permit and if the facility is included in the District Solid Waste Management Plan.

2. The permittee, owner or operator shall submit the following materials to the Department as an application to renew the SWF permit for that facility:

- i. A registration statement on forms provided by the Department;
- ii. An updated engineering design for the facility;
- iii. An updated Operations and Maintenance Manual for the facility; and
- iv. A disclosure statement as required pursuant to N.J.A.C. 7:26-2.16; and

v. A complete and detailed description of actual environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-2.4(a)8 and 9 of the SWF permit renewal application.

4. The Department shall review the application for completeness in accordance with procedures set forth at N.J.A.C. 7:26-2.4(a) 3,4,5,6 and 7.

5. The Department shall provide notice of its tentative decision on the permit renewal application and of the opportunity for a public hearing in accordance with N.J.A.C. 7:26-2.4(g)17iii.

6. A request for a public hearing must be filed within 30 days of publication of a notice of opportunity for such hearing in accordance with N.J.A.C. 7:26-2.4(g)17iii.

7. The public comment period shall close 15 days after the date of last public hearing or 30 days after the notice of opportunity for a public hearing on the renewal application.

8. The final agency decision on the SWF permit renewal application shall be based on the administrative record as defined in N.J.A.C. 7:26-2.4(a)22.

(c) The conditions of an expired permit are continued in force pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for a renewal pursuant to (b) above;

2. The Department, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit, due to time or resource constraints;

3. Permits continued under this section remain fully effective and enforceable; and

4. When the permittee is not in compliance with the conditions of the expiring or expired permit the Department may choose to do any or all of the following:

i. Initiate enforcement action based upon the permit which has been continued;

ii. Issued a notice of intent to deny the new permit under N.J.A.C. 7:26-2.4. If the permit is denied, the owner or operator would then be required to cease activities and operations authorized by the continued permit or be subject to an enforcement action for operating without a permit;

iii. Issue a new permit under N.J.A.C. 7:26-2.4 with appropriate conditions; or

iv. Take such other actions as are authorized by these regulations or the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(d) A permittee, owner or operator shall not transfer the SWF permit directly to a new owner or operator without the Department's approval.

1. Any transfer of a permit must be preapproved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 180 days in advance of the proposed transfer of ownership or operational control of a facility. The request for approval shall include the following:

i. A registration statement, completed by the prospective new permittee on forms provided by the Department;

ii. A disclosure statement as required by N.J.A.C. 7:26-16.4 completed by the proposed transferee;

iii. A demonstration that the final responsibility requirements of N.J.A.C. 7:26-2A.9 will be met by the proposed new permittee; and

iv. A written agreement between the existing permittee and the proposed new permittee containing a specific future date for transfer of ownership or operations.

2. A new owner or operator may commence operations at the facility only after the existing permit has been revoked and a permit is issued pursuant to N.J.A.C. 7:26-2.4.

3. The permittee of record remains liable for ensuring compliance with all conditions of the permit unless and until the existing permit is revoked and a new permit is issued in the name of the new owner or operator.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the permittee, owner or operator from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

[7:26-2.8 Smoking, smoldering or burning landfill] The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

7:26-2.8 Registration and general prohibitions

(a) The registration statement shall be executed, in accordance with the requirements of N.J.A.C. 7:26-2.4(e), on forms furnished by the Department, and shall state such information necessary and proper for the enforcement of this subchapter as the Department may require.

(b) Prior to May 1 of each calendar year, each permittee shall submit to the Department, a statement updating the information contained in the initial registration statement. This update shall be on forms furnished by the Department. In no case shall submission of an updated statement alter the conditions of the permit.

(c) The permittee shall notify the Department in writing within 30 days of any change in the information set forth in this current registration statement.

(d) The failure to submit an updated registration statement and to submit all applicable fees, required by N.J.A.C. 7:27-4, on or before July 1 of each calendar year shall be sufficient cause for the Department to revoke the permit or take such other enforcement action as is appropriate.

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1 or 1.7 or 1.8, in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

1. No person shall be issued an approved registration or a SWF permit if that person is disqualified for any of the reasons set forth in N.J.A.C. 7:26-16.8.

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit.

(g) No person shall continue to operate a solid waste facility without obtaining an approved SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved Solid Waste Facility Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) The fulfillment of the application and approval requirements set forth in this subchapter shall not exempt the applicant from obtaining all other permits or approvals required by law or regulations.

(i) No person shall engage or continue to engage in disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11.

(j) No person shall engage or continue to engage in disposal of solid waste in this State in a manner which does not meet all the conditions, restrictions, requirements or any other provisions set forth in its SWF permit.

(k) No permit condition shall be modified, revised or otherwise changed without prior written approval of the Department.

(l) No owner shall transfer ownership of the permit without receiving prior written approval of the Department, in accordance with N.J.A.C. 7:26-2.7(d).

(m) No permittee shall begin construction of a sanitary landfill until approval of the final Quality Assurance/Quality Control Plan submitted in accordance with N.J.A.C. 7:26-2A.8.

(n) No permittee shall begin operating a sanitary landfill, composting or co-composting facility, transfer station, materials recover facility, or thermal destruction facility until:

1. The permittee receives approval from the Department of the final Operations and Maintenance plan in accordance with N.J.A.C. 7:26-2.; and

2. The Department receives and approves the certification of construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2A.9(a).

(o) No thermal destruction facility shall begin operations until:

1. The Department receives and approves the certification of the construction prepared by a N.J. licensed professional engineer in accordance with N.J.A.C. 7:26-2B.; and

2. The Department issues an approval of the testing period results in accordance with standards and procedures set forth in N.J.A.C. 7:26-2B. [7:26-2.9 Closure and post-closure care of sanitary landfills] This section is being recodified, without change, at N.J.A.C. 7:26-2A.9. The text of the section may now be found at N.J.A.C. 7:26-2.9.

#### 7:26-2.9 Environmental and Health Impact Statement requirements

(a) The Environmental and Health Impact Statement, (hereinafter EHIS), shall be prepared utilizing a systematic, interdisciplinary approach in order to insure the integrated assessment of technical, economic, environmental and social parameters potentially affected by the proposed facility.

(b) The magnitude of the environmental assessment and the overall EHIS shall be relative to the nature, scale and location of the proposed facility.

(c) The EHIS for all solid waste facilities other than solid waste facilities for which specific requirements are set forth in (d) below, shall contain the following:

1. An executive summary which shall briefly describe the proposed facility, any significant associated positive and negative impacts and any mitigative measures which will be utilized to minimize or eliminate such negative impacts;

2. A detailed written description of the municipal and neighborhood setting of the proposed facility, including a certification that the facility is identified in the district solid waste management plan. The site location shall also be identified by the following:

i. An 8½ inch x 11 inch copy of the key map prepared in accordance with N.J.A.C. 7:26-2.10(b)4 and submitted as part of the engineering design; and

ii. An 8½ inch x 11 inch copy of the vicinity map prepared in accordance with N.J.A.C. 7:26-2.10(b)5 and submitted as part of the engineering design.

3. An environmental inventory, prepared for the site and, unless otherwise specified herein, a minimum area of one mile from the perimeter of the proposed facility's property lines, described existing conditions for each of the following categories:

i. Category I, the physical/chemical category, requires the following parameter descriptions:

(1) Describe the physical geology by identifying major characteristics of the formations present, including, but not limited to; thickness, lithology,

structural features, degree of weathering and amount of overburden. Provide a copy of the geologic map prepared in accordance with N.J.A.C. 7:26-2.10(b)7ii;

(2) Describe the soils by identifying major soil types and their characteristics including, but not limited to, drainage, erosion potential and sedimentation potential. Information shall be based on U.S. Soil Conservation Service Surveys. Provide a copy of the soils map prepared in accordance with N.J.A.C. 7:26-2.10(b)7i;

(3) Describe the subsurface hydrology by presenting groundwater quantity and quality data for the aquifers located beneath the site, including, but not limited to, depth to groundwater during seasonal high and low flow, flow direction, existing uses and future supply capabilities;

(4) For water bodies which directly abut the site, exist on the site, or drain directly onto or off the site, provide detailed water quantity and quality data. Such data shall include, but not be limited to, flow rates, current uses and supply capabilities, dissolved oxygen (D.O.), biochemical oxygen demand (B.O.D.), total organic carbon, (T.O.C.) total suspended solids (T.S.S.) and general temperature regime. Identify also all existing water classifications, designated uses and limitations of the surface water bodies in accordance with N.J.A.C. 7:9-4;

(5) For upstream tributaries of bodies of water which flow onto the site, and downstream tributaries of bodies which flow from the site, identify all existing water classifications, designated uses and limitations of the surface water bodies, in accordance with N.J.A.C. 7:9-4. Provide also a narrative description of the factors influencing the water quality in such bodies, including but not limited to major permitted discharges, tributaries or confluences with other bodies, etc. Information required by this subsection shall be provided for a distance of one mile from the site boundary;

(6) For all water bodies not named in (4) and (5) above, identify all existing water classifications, designated uses and limitations of the surface water, in accordance with N.J.A.C. 7:9-4;

(7) Provide documentation that the proposed facility will not be inconsistent with any facility or area wide water quality management plan developed pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

(8) Describe the topography by presenting contour data, drainage patterns and 100 year floodway and flood hazard areas delineations pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or areas identified pursuant to and based upon the most current Federal Flood Emergency Management Act (F.E.M.A.) maps and data;

(9) Describe the climate by presenting site specific data for wind direction, velocity and frequency, average annual and monthly precipitation and temperature. Unless specifically required to be otherwise obtained by the Department, meteorological data may be obtained from the nearest National Oceanographic and Atmospheric Administration (N.O.A.A.) sanctioned station;

(10) Describe the ambient air quality by presenting data for existing concentrations of the National Ambient Air Quality Standard pollutants as identified in 42 USC 7401 et seq., and provide a demonstration that the proposed facility will be consistent with the New Jersey State Implementation Plan and related air quality requirements established by the Division of Environmental Quality. Unless specifically required to be otherwise obtained by the Department, ambient air quality data may be obtained from the nearest State operated monitoring station.

(11) Describe the ambient acoustical conditions by providing day and night noise levels measured at the boundaries of the proposed site. Identify sources of impulsive and continuous noise.

ii. Category II, the biological/ecological category, requires the following parameter descriptions:

(1) Characterize the site and an area within one mile radius from the site boundary, with respect to major plant association (for example, mixed hardwood forest, old field successional, etc.). Delineate different associations present in a mapped format. Identify major dominant and minor species present in each plant association present. Provide estimates of the proportions of each;

(2) For game and non-game mammals, and for an area which includes the site and area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(3) For game and non-game birds, and for an area which includes the site and an area within one mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(4) For reptiles and amphibians, for those water bodies listed in i(4) and (5) above, and for an area within one-quarter mile radius from the site boundary, describe utilization by identifying species and estimating populations utilizing these areas for year-round, breeding, wintering and migratory purposes. Relate utilization of areas for these purposes to the plant associations described in (1) above;

(5) For fish, for all water bodies listed in i(4) and (5) above, and all water bodies within one-quarter mile of the site boundary, describe utilization by identifying species and estimating populations utilizing the site for year-round, breeding, wintering and migratory purposes;

(6) Describe the plant or animal species on the Federal and State endangered, threatened or rare plant or animal species lists and identify, in a mapped format, the extent of utilization by such species, if present. Quantify the amount of habitat at the site for each such species and the corresponding carrying capacity for each species. Evaluate applicable breeding, wintering and migratory patterns when identifying species utilization;

(7) Identify by mapping any unique, critical or unusual habitat including, but not limited to, wetlands, prime agricultural lands, steep slopes of greater than 15 percent, riparian lands, coastal zones or other areas as may be specified by the Department;

(8) Present a description of site visits actually undertaken to evaluate the site ecosystem. This description should include the date, duration of the visit, weather conditions, individuals present to conduct the study, parameters being studied and a copy of studies prepared in connection with preparation of the environmental inventory; and

(9) Describe the methodologies utilized to evaluate the biotic community and present a bibliography of all research materials utilized in the preparation of the environmental inventory. The description of the methodologies utilized shall be sufficient to permit an independent expert to form an opinion as to the scientific justification and integrity of the selected methodology.

iii. Category III, the cultural category, requires the following parameter descriptions:

(1) Describe recreational activities by identifying areas known to be used for such activities as hunting, fishing, trapping, boating, swimming, tourism, camping, nature photography and bird watching. Identify designated parks, forests and wildlife management areas, natural areas and other publicly or privately owned lands designated for open space or recreational activities;

(2) Describe the aesthetics by identifying surrounding architecture, open space areas and scenic areas; and

(3) Describe the areas of historical or archeological importance.

iv. Category IV, the Socioeconomic category, requires the following parameter descriptions:

(1) Describe the transportation facilities by identifying the network which will service the proposed facility, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service and average daily number of trips. Identify any proposed local, county, or State Department of Transportation traffic engineering plans for the network identified;

(2) Describe the sewage facilities by identifying the type of treatment system available, its existing treatment capacity, collection system capacity, average and peak flow data, and current committed capacity for treatment and collection system;

(3) Describe the stormwater management system by identifying the type of collection and treatment system available, and current collection and treatment capacity and utilization;

(4) Describe the water supply by identifying the water supply system, water sources, level and type of existing pre-treatment, capacity of the distribution system, current commitment of capacity, availability of additional supply, and peak and average demands;

(5) Describe the energy supply system by identifying existing power lines or pipelines, current commitment of capacity, their capability of supplying energy to the proposed facility and conveying any energy products generated by the proposed facility to available markets, if applicable;

(6) Describe the demography of the area by providing existing population totals and describing present and projected future population and trends for the immediate neighborhood of the proposed facility (if available), the municipality within which the proposed facility will be located, all municipalities within one mile of the proposed facility, the county within which the facility will be located and all districts which will utilize the proposed facility. State, county or local government sources may be used for all demographic data;

(7) Describe employment opportunities in the area by identifying existing levels of employment and present and projected future trends for the immediate neighborhood of the proposed facility (if available), the municipality within which the proposed facility will be located, all municipalities within one mile of the proposed facility, the county within which the facility will

be located and all districts which will utilize the proposed facility. State, county or local government sources may be used;

(8) Describe property values by generally describing the immediate neighborhood, the municipality within which the proposed facility will be located and all municipalities within one mile of the site with respect to median sales prices and recent (one to two year) trends. Describe factors such as zoning changes, development patterns, development approvals, etc. which can affect such values. The description of property values in the immediate area of the facility shall be sufficiently detailed to allow assessment of the effect construction and operation of the facility may have on such values;

(9) Describe public services available by identifying current local law enforcement, fire protection and health protection capabilities of the municipality in which the proposed facility will be located; and

(10) Describe the type and map the location of community and residential dwellings such as hospitals, nursing homes, food processing centers, playgrounds, parks, schools and residences.

4. A description of the proposed facility operations, which shall include, but not be limited to the following:

i. An identification of the project sponsor including name, address, and telephone number where the project sponsor can be contacted during normal working hours. Indicate if the project sponsor is presently, or was previously, associated with any other waste disposal or collection project or operation and, if applicable, identify the project or operation. Describe the responsibilities assumed during this association;

ii. An explanation of the purpose of the proposed facility, which shall include a description of the products or services being provided and a list of benefits to be realized by the owner, the community in which the facility is to be sited, and the surrounding communities;

iii. An identification of existing or potential markets for each of the products to be recovered from the solid waste disposal operation, if applicable. Identify the types, qualities and daily quantities of products to be recovered. Set forth the elements of a quality control plan for the recovered products. Provide a copy of any long-term contracts for the sale of the recovered products, if available. In the case where long term contracts have not been finalized upon submittal of the EHIS, a detailed letter of intent, describing areas of agreement and disagreement, shall be submitted. The end use of the recovered products, by the purchaser, shall be defined.

iv. An economic analysis for the proposed facility which projects and approximates capital, operating and maintenance expenditures, as well as any revenues to be realized from the anticipated sale of recovered products, if applicable. The economic analysis shall be prepared on an itemized basis. The analysis shall project the maximum and minimum charges to be assessed for the various waste ID types to be handled, including an estimate of the initial tipping charges to be levied;

v. An identification of the waste streams which the proposed facility will accept, and copies of any agreements which guarantee a steady flow of this waste to the facility;

vi. A time schedule for the development and start-up of the proposed facility including anticipated completion dates for major phases of construction; and

vii. A narrative statement of the type of disposal processes to be used, including control measures and monitoring instrumentation. A discussion of the following shall also be included:

(1) The types, capacities and number of units of the processing equipment to be utilized and their relationship to the overall operation; and

(2) The daily and hourly handling capacity of the overall facility in tons of refuse received per day and the anticipated operating time in hours per day and days per week; and

viii. A description of the quantity and physical/chemical characteristics of process residues and side-stream wastes resulting from the operation, if applicable. A detailed discussion of appropriate methods of disposal for all such materials such as, through contracts or inclusion in the appropriate district solid waste management plan, including, if available, the identification of primary and alternate disposal sites and methods of storage and handling and methods of reuse or recycling, if applicable.

5. A discussion of the relationship of the proposed action to Federal, State, County, and local land-use plans, policies and controls and environmental regulations. The discussion shall include the following:

i. A description of present land use for the site of the proposed facility and the area within two miles of the perimeter of the facility property line. Include a map or maps illustrating zoning designations and a chart setting forth use restrictions. If the site, any portion of the site or any areas adjacent to the site was previously used for waste landfilling, information relating to depth and area of deposition, type of material landfilled, gas concentration and migration, settling and other factors which may potentially affect construction and operation shall be provided;



ii. A description of how the project will conform or conflict with the objectives of any applicable Federal, State or local land use and environmental requirements including, but not limited to, those affecting the following:

(1) The floodway and flood fringe areas of the flood hazard areas as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or areas identified under the flood insurance studies prepared by the Federal Emergency Management Agency (FEMA);

(2) Areas designated as wild, scenic, recreational or developed recreational rivers pursuant to the Natural Wild and Scenic Rivers Act, 16 USCA 1271 or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45;

(3) Critical habitat of endangered or threatened species of plants, fish or wildlife as defined by the Federal Endangered Species Act of 1973, P.L. 93-205, or the New Jersey Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A-1 et seq.

(4) Wetlands, tidelands and coastal zone areas as identified by the Department pursuant to the Wetlands and Coastal Resource and Development Policies, N.J.A.C. 7:7E and as identified on the U.S. Fish and Wildlife Services National Wetlands Inventory Maps;

(5) The Preservation and Protection Areas as established by N.J.S.A. 13:18A-11 of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

(6) Nonattainment areas as defined in N.J.A.C. 7:27-18;

(7) Areas subject to the prevention of significant deterioration criteria as defined in 40 CFR 52.21;

(8) Areas which may significantly impact water quality pursuant to N.J.A.C. 7:15;

(9) Lands that have been duly certified by the State Agriculture Development Committee as agricultural development areas pursuant to the Agricultural Resource Development Act, N.J.S.A. 4:1C-11;

(10) Watershed areas for water classified by the Department as FW-1 waters or FW-2 Trout Production Waters pursuant to the Surface Water Quality Standards, N.J.S.A. 7:9-4;

(11) Areas over a sole source aquifer designated pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93-523;

(12) Areas within the critical supply areas as defined by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

(13) Areas which will encroach upon, damage or destroy any area, site, structure or object included in the National or State Register of Historic Places established by N.J.S.A. 13:1B-15.128;

(14) Areas within 10,000 feet of any airport runway which is equal to or greater than 3000 feet in length, within 5000 feet of any airport runway which is less than 3000 feet in length; and

(15) Areas dedicated to recreational or open space use including, but not limited to, national parks, national recreation areas, national forests, national wildlife refuges, state wildlife management areas, state parks, state forests, state designated natural areas and county or local parks, wildlife sanctuaries and recreational facilities.

iii. Where the potential for a land use or environmental conflict exists, the applicant shall describe the mitigation efforts to be undertaken to meet the intent of the applicable land use or environmental requirement.

6. A comprehensive description of the district solid waste and, if applicable, sludge management plans for the districts wherein the proposed facility is to be located, from which solid waste is to be received, or to which process residues are to be sent for disposal. The description shall include the following:

i. An identification of all affected municipalities and districts and a description of the strategy of each plan as it pertains to the proposed facility; including inter-district waste flow agreements and intra-district waste flow patterns, plan duration, recycling and waste reduction goals, implementation schedules and plan implementing agencies. A description of how the proposed facility will conform with the content and strategy of each plan shall also be included; and

ii. A discussion of the elements of the plan which indicate a need for the facility, its relation to current solid waste disposal capacities and the mechanisms established that will guarantee the necessary waste flows to the proposed facility.

7. A list and status report on all Federal, State, county and local licenses, permits and certifications necessary for the proposed facility;

8. An environmental assessment, which shall provide a detailed evaluation of the potential impacts of the proposed facility on the environment including, but not limited to, all parameters identified in the environmental inventory in 3 above. The assessment shall include, but not be limited to, the following:

i. An evaluation of both positive and negative, as well as, primary (direct or immediate) and secondary (indirect or long range) impacts on each

parameter under conditions of maximum usage or output and a correlation of such impacts with various stages of the site preparation, facility construction, operation, closure and post closure phases;

ii. An identification and description of the modeling techniques used to predict impacts on the various parameters identified in 3 above. Where applicable, a calibrated and verified model shall be used and a copy of the model in the appropriate format shall be transmitted to the Department. Where an accepted modeling techniques is not available best professional judgment may be used. A detailed description of the logical reasoning and assumptions made in the exercise of best professional judgment shall be incorporated to permit independent review;

iii. Isopleths, grid maps or other maps to depict potential zones of contaminant migration surrounding any and all sources of emission or discharge. Identify the type and location of each source;

iv. A quantification of impacts whenever possible (for example, lost habitat in acres) for all potential environmental impacts identified, where such quantification is not included, an explanation of the reason for such omission shall be provided;

v. A qualitative discussion of all potential environmental impacts identified; and

vi. A detailed description of the mitigative techniques proposed to address any potential environmental impact associated with the proposed facility.

9. A health impact assessment, which shall provide a detailed evaluation of the potential impacts of the proposed facility on human health, including, but not limited to the following:

i. A description and discussion of the health risk assessment methodology to be employed, including detailed descriptions of the logical reasoning and assumptions employed in the method. A bibliography of reference material utilized in the preparation of the assessment shall be provided. Applicants shall contact the Department prior to the initiation of the assessment to obtain the current guidelines for such activities;

ii. Quantification, where possible, of increased health risks and associated impacts (such as increased health care costs). Where such quantification is not included, an explanation for such omission shall be provided;

iii. A discussion of the level of uncertainty involved in the overall assessment. This discussion shall address the uncertainty involved in the estimation of individual parameters such as emissions rates, levels of exposure and health effects, as well as the implications of complex uncertainties;

iv. A listing of all potential contaminants which may reasonably be expected to be released from the facility, and the amounts, concentrations and pathways of each;

v. A listing of contaminants which will be utilized to assess health risks. All known carcinogens listed in iv above shall be included; additional contaminants shall be included, based on professional judgment. This list, together with a description of the rationale employed in choosing those materials included on the list, shall be submitted for Department review prior to the initiation of the detailed studies outlined below;

vi. For each of the contaminants listed in v above, a toxicity profile. This profile shall include data on the physical and chemical nature of the contaminant, as well as a description and discussion of data available regarding the environmental fate, acute effects (LD<sub>50</sub>, irritation), chronic effects (mutagenicity, teratogenicity, carcinogenicity) and epidemiology of the material. This profile shall include a listing of available toxicological, epidemiological or other acute or chronic health effects studies used or otherwise available on the material in question. Applicants should contact the Division prior to the initiation of development of these profiles, to obtain the current guidelines for such activities;

vii. A discussion and quantification of the relationship between the potential health impacts associated with the proposed facility and the demographics of the affected population, with particular attention to sensitive receptors potentially impacted by the facility;

viii. A discussion and quantification of the potential for additional risk to human health as a result of accidents occurring from human error, equipment malfunction, fires, explosions, natural catastrophes and other accidental occurrences at the facility. The discussion and quantification shall include an assessment of the probability of occurrence and associated risks, as well as an evaluation of the impact of the probable worst case conditions for each class of occurrence; and

ix. A detailed description of the mitigation techniques proposed to address any potential health impacts associated with the proposed facility

10. A summary discussion of any potential adverse impacts identified in the environmental and health assessment in 8 and 9 above that cannot be avoided should the proposed facility be implemented. For those impacts which cannot be avoided, their implications and the reasons why the proposed facility should be permitted shall be described. Where mitigation measures

are proposed to reduce these potentially adverse impacts, the projected effectiveness and costs of the mitigative measures shall be discussed.

11. A comparison of reasonable design alternatives to the proposed facility. The comparison shall be sufficiently detailed to permit independent and comparative evaluation of the benefits, costs and environmental impacts of the design of the proposed facility and each reasonable design alternative. The comparison shall include the following:

- i. Discussion of the alternative of no action or no project, and addressing the major foreseeable consequences of such a choice;
- ii. Discussion of the feasibility of various alternative design or process changes, including those which could reduce or avoid some or all of the adverse impacts identified above;
- iii. Preparation of economic analyses for both the chosen design and the identified design alternatives. Techniques such as cost-effectiveness analysis, cost-revenue analysis or other techniques approved by the Department may be employed;
- iv. Identification of the significant differences in environmental impact which would result from use of the design/process changes identified in ii above, as compared to those resulting from the chosen alternative;
- v. Comparison, in matrix or other appropriate format, of the degree of feasibility and economic and environmental impacts of both the chosen alternative and the set of feasible alternatives identified in ii above; and
- vi. A discussion of the reasons why the proposed action was selected over the alternatives.

12. A discussion of the relationship between local, short term uses of the environment and the effect of the proposed facility on available options for subsequent future uses. Short term refers to the construction phase of the proposed facility. A description of the following shall be included:

- i. Those cumulative and long-term effects of the proposed facility which either negatively impact or enhance the environment for the future;
- ii. The extent to which the proposed facility prohibits future options;
- iii. Plans which provide for the protection and maintenance of the environment during construction of the proposed facility, which shall include, but not be limited to, the following:

- (1) Procedures to be used during construction if archeological resources are uncovered;
- (2) Erosion and sediment control plans; and
- (3) Controls for dust, odors, noise, traffic, and soil tracking.

iv. Plans which provide for the protection and maintenance of the environment after termination of the facility operation.

13. A discussion of irreversible and irretrievable commitments of resources resulting from the construction and operation of the proposed facility. The discussion shall include an analysis of the use of renewable and nonrenewable resources during construction and throughout continued operation, including an assessment of energy consumption. Where applicable, alternative energy sources shall be discussed and compared to the type selected and the rationale for the selection shall be stated.

(d) The minimum EHIS requirements for other types of solid waste disposal operations are as follows:

1. The EHIS for leaf composting facilities shall:

- i. Be based on conceptual or preliminary engineering designs;
- ii. Describe the consistency of the proposed facility with the solid waste management plan of the district within which the proposed facility is to be located; and
- iii. Include a detailed narrative description of the following prepared in accordance with the Department's guidelines:

(1) Facility design and operations including volumes and types of waste to be handled, processing equipment, methods of processing and handling, facility layout, and use of end product;

(2) The site location of the proposed facility, including a copy of a tax map showing the lot and block number of the site upon which the facility is located; and

(3) The impact that the proposed facility will have on existing transportation patterns, drainage characteristics, surface and ground water quality, wetlands, and endangered and/or threatened wildlife and vegetation.

2. The EHIS for thermal destruction facilities, described in N.J.A.C. 7:26-2.4(c)2, shall be based on the engineering designs submitted to the Division of Environmental Quality and shall contain a description of the following:

- i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and residue disposal;
- ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design and identified in N.J.A.C. 7:26-2.10(a)5 and 6 shall be included;
- iii. The impact that the proposed facility will have on local transportation patterns, drainage characteristics, surface and ground water quality, en-

dangered and/or threatened wildlife and vegetation, storm water and waste-water collection/treatment capability, water supply capability, air quality and ambient acoustical conditions; and

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility.

3. The EHIS for small-scale materials recovery facilities, whose prime mode of operation relies upon the utilization of non-mechanical processing features, and solid waste transfer stations shall be based on engineering designs prepared in accordance with the requirements of N.J.A.C. 7:26-2.10, and shall contain a description of the following:

i. Facility operations, including volumes of waste to be handled, methods of handling, facility layout, and use of end product;

ii. The site location of the proposed facility. A copy of the vicinity map and the site plan map submitted as part of the engineering design and identified in N.J.A.C. 7:26-2.10(b)5 and 6 shall be included;

iii. The impact that the proposed facility will have on local transportation patterns, drainage characteristics, surface and ground water quality, endangered and/or threatened wildlife and vegetation, storm water and waste-water collection/treatment capability, water supply capability, and air quality; and

iv. A discussion of whether the proposed facility is consistent with the existing solid waste management district policies and solid waste management plans of those districts which will be affected by the proposed facility.

4. The EHIS for other types of solid waste disposal operations not identified in this section shall be prepared in accordance with requirements established by Department for the operation, based upon the potential for adverse environmental and health impacts caused by such operations;

5. In addition to the EHIS requirements enumerated in this section, the Department retains the right to request additional EHIS information from the applicant.

(e) Compliance with the EHIS requirements set forth in this section shall not preclude the necessity for the applicant to conform with any environmental analysis requirements of other agencies which may have jurisdiction by law.

(f) A preliminary EHIS may be submitted to the Department prior to the submission of a complete permit application package for review and approval in accordance with the procedures set forth in (g) below and shall include but not be limited to the following:

1. An executive summary prepared in accordance with (c)1 above;

2. A site description prepared in accordance with (c)2 above;

3. An environmental inventory of the proposed facility prepared in accordance with (c)3 above;

4. An environmental assessment of the proposed facility, based on conceptual or preliminary engineering designs shall be performed and analysed at maximum possible discharge or emission levels and on the parameter listed in the environmental inventory performed as required by 3 above;

5. A discussion of the relationship of the proposed facility to any Federal, State, county and local land-use or environmental plans, policies, controls or regulations. The discussion shall include the following:

i. A description of how the proposed facility will conform or conflict with the objectives of any of the Federal, State, county or local land-use or environmental requirements set forth in (c)5ii above.

ii. A description of the Federal, State, county or local land-use or environmental requirements which may restrict the construction and operation of the proposed facility; and

iii. A detailed description of the mitigative techniques proposed to address any potential land use or environmental impact associated with the proposed facility.

6. A discussion of any potential adverse impact identified in the environmental assessment in 4 and 5 above that cannot be avoided;

7. A comparison of alternatives to the proposed facility design, which shall be sufficiently detailed to permit evaluation of the benefits, costs and environmental impacts of the proposed facility design and reasonable design alternatives;

8. A discussion of the relationship between local, short-term uses of the environment and long-term future uses; and

9. An identification of irreversible and irretrievable commitments of resources that would be affected by the proposed facility.

(g) The following are the procedures for preliminary EHIS review and approval and the effect of the preliminary EHIS approval:

1. An applicant may, at its own option, submit a preliminary EHIS to the Department prior to the submission of a complete application for a SWF permit;

2. The preliminary EHIS shall contain all information required pursuant to (f) above and such other information as the Department deems necessary during a pre-application conference for preliminary EHIS review;

i. The applicant shall provide the Department with documentation demonstrating that the proposed facility is consistent with the adopted and approved objectives and strategies set forth in the applicable district solid waste management plan, and that the proposed facility can be acquired, constructed or operated pursuant to the standards set forth in this chapter.

3. The preparation of a preliminary EHS is not a precondition to the preparation and submittal of a complete application for a solid waste facility permit;

4. After submission of a preliminary EHS, the Department shall review the preliminary EHS and take one of the following actions:

i. Request, in writing, additional information required by the Department to conclude a review of the preliminary EHS. Such request shall specify any additional information such as modeling, environmental or health assessments or project alternatives necessary to sufficiently evaluate the preliminary EHS. The applicant shall respond within 14 days of the receipt of the written request and specify its intent to proceed with the submission of the information requested or terminate the preliminary EHS review;

ii. Recommend a reconsideration of project alternatives based upon a review of the facts and proposed impacts of the proposed facility;

iii. Approve the preliminary EHS; or

iv. Disapprove the preliminary EHS.

5. Preliminary EHS review and approval shall not preclude the necessity for an applicant to prepare and submit a final EHS to the Department as part of a complete permit application pursuant to N.J.A.C. 7:26-2.4(d);

6. Pursuant to N.J.S.A. 13:1E-26 and N.J.S.A. 13:1E-29, an applicant receiving preliminary EHS approval may:

i. Acquire real property intended for use in connection with the proposed facility; or

ii. Issue bonds or other obligations necessary to ensure available financing for the proposed facility's planning, development and implementation.

7. An applicant's decision to acquire property, issue bonds or take any other actions after receiving a preliminary EHS approval will be solely at the applicant's risk. Any acquisition action taken or expenditures made in reliance on the preliminary EHS approval are entirely at the applicant's own risk and the Department shall not be liable therefor; and

8. The issuance of any preliminary EHS approval pursuant to this section shall not be binding on the Department in its review of any subsequent submissions by an applicant for a SWF permit.

[7:26-2.10 Generator requirements for disposal of asbestos and asbestos-containing waste]

This section is being recodified without change, to N.J.A.C. 7:26-2.12.

#### 7:26-2.10 General engineering design submission requirements

(a) The engineering design submittal requirements set forth in this section are general requirements for all solid waste facilities unless exempted in N.J.A.C. 7:26-2.4(c). Additional engineering design submittal requirements for sanitary landfills shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2A.6 except for those facilities exempted as specified in N.J.A.C. 7:26-2.4(c). Additional engineering design submittal requirements for thermal destruction facilities, solid waste transfer stations, materials recover facilities, and composting or co-composting facilities shall be prepared in accordance with the requirements of N.J.A.C. 7:26-2B.2, 3 and 4 except for those facilities as specified in N.J.A.C. 7:26-2.4(c).

(b) The general requirements for the preparation and submittal of engineering designs for all proposed solid waste facilities, except those types of facilities specified in N.J.A.C. 7:26-2.4(c), are as follows:

1. Prior to developing the required engineering designs, all applicants shall have a pre-application conference with the Department for the purpose of discussing the scope of work for the proposed facility. During this conference the Department will specify the minimum number of complete sets of drawings the applicant shall be required to submit for each design. The exact number of sets necessary for each submission shall be based upon the type, scale, location and potential impact of the proposed facility.

2. Individual drawing sheets shall not be larger than 30 inches by 42 inches or smaller than 24 inches by 36 inches in size.

3. Each drawing sheet shall bear the date of preparation and the raised seal of the New Jersey licensed professional engineer responsible for the preparation of the design.

4. A key map, delineating the general location of the proposed facility, shall be prepared and submitted as part of the engineering design. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of three miles from the perimeter of the proposed facility boundaries. The key map shall depict the following:

i. All surface waters, coastal zone areas as defined in N.J.S.A. 13:19-1 et seq.; wetlands as defined in N.J.S.A. 13:9A-1 et seq.; water supply wells

and reservoirs; FW-1 and FW-2 Trout Production waters as defined in N.J.A.C. 7:9-4; wild, scenic, recreational or developed recreational rivers designated pursuant to the Natural Wild and Scenic River Act 16 USCA 1271 et seq., or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45 et seq., and all 100 year floodway and flood hazard areas as delineated in N.J.A.C. 7:13;

ii. All local zoning designations;

iii. All main service corridors, transportation routes and main access roads that will be used as routes of traffic flow; and

iv. All airports and runways.

5. A vicinity map shall be prepared and submitted as part of the engineering design. The vicinity map shall have a minimum scale of one inch equals four hundred feet (1" = 400') with contour intervals shown at 20 feet intervals. The vicinity map shall delineate an area of one-half mile from the perimeter of the property line of the proposed facility. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plane Coordinate Datum 1927. The vicinity map shall depict the following:

i. All buildings and structures that may be located within the one mile delineation, including the layout of the buildings which will comprise the proposed facility;

ii. The boundaries of the proposed facility;

iii. The limits of the actual disposal operations within the boundaries of the proposed facility;

iv. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties; and

v. The location of all existing and proposed utility lines, pipelines or other structures.

6. A site plan map, delineating the existing and final as-built contours of the site of the proposed facility, shall be prepared and submitted as part of the engineering design. The site plan map shall be prepared in accordance with the "Classification, Standards of Accuracy and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980 and the New Jersey Map Filing Law, N.J.S.A. 46:23-9, at a minimum scale of one inch equals 200 feet (1" = 200') with contour intervals shown at two foot intervals. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plane Coordinate Datum 1927. The site plan map shall depict the following:

i. The legal boundaries of the facility as determined by a survey performed by a licensed New Jersey Land Surveyor. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points, in accordance with the "Classification Standards of Accuracy and General Specification of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. A copy of the deed of record or other document proving ownership shall accompany the site map. If the property is leased by the applicant, a copy of the lease shall accompany the site map. In those cases where the applicant is scheduled to take title to the property or sign a lease for the property at a later date, submit a timetable for same;

ii. The total acreage of the facility property and the total acreage of the actual disposal operations;

iii. The boundaries of the area to be used for disposal operations; and

iv. The layout of all buildings, access roads, internal routes of traffic flow and environmental controls, as they will appear at the site.

7. A geotechnical report shall be prepared and submitted as part of the engineering design. The report shall include the following:

i. A soils map, published by the United States Department of Agriculture, Soil Conservation Service, depicting the site of the proposed facility and the area within one half mile from the perimeter of the facility;

ii. A geologic map, based on published or unpublished material and mapping available from the United States Geological Survey and New Jersey State Geologic Survey or unpublished mapping acceptable to the New Jersey Geologic Survey depicting the area within one mile from the perimeter of the facility; and

iii. A soil borings report, prepared by a qualified geologist, or geotechnical engineer which describes that portion of the property designated for actual disposal operations. This requirement is dependent on the type of proposed facility. The Department will specify the need for and scope of the soil boring requirements during the pre-application conference. The Department reserves the right to require further soil borings or testing, if necessary. Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation.

8. An engineering report shall be prepared and submitted as part of the engineering design. The engineering report shall include the following:



i. A descriptive statement and detailed specifications of all proposed waste disposal system processes;

ii. A description of the installation methods and procedures and the scheduling of events for construction of the facility;

iii. A description of the rated and proposed design capacity of the facility in terms of tons and cubic yards per day and tons per hour to be disposed of at the facility;

iv. A description of the daily number and types of vehicles which will transport solid waste to the facility and, if applicable, the reclaimed material and waste from the facility;

v. A presentation of the results and calculations, clearly noted, of all required design testing; and

vi. A projection of the life expectancy of the facility.

9. A preliminary operations and maintenance (O and M) manual shall be prepared and submitted as part of the engineering design. The preliminary O and M manual shall include the following:

i. A description of the proposed methods of facility operation, including, but not limited to, the following:

(1) Hours of operation;

(2) Types of equipment (indicate capacity and number of units);

(3) Implementation schedule for the solid waste facility;

(4) Monitoring;

(5) Security; and

(6) Methods to be employed to meet the operational requirements of N.J.A.C. 7:26-2.11.

ii. An inspection plan, which shall include a schedule for inspecting all applicable aspects of facility operations necessary to ensure compliance with the requirements of this subchapter and N.J.A.C. 7:26-2A or 2B, as applicable. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. Areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs, shall be inspected daily, when in use. The plan shall include a schedule for inspecting monitoring, safety, and emergency equipment; security devices and process operating and structural equipment. The plan shall identify the types of problems which are to be looked for during the inspection and the frequency of inspection;

iii. A maintenance plan, which shall include a failure analysis for the facility operation, an analysis of spare parts inventory needs, schedules for anticipated repairs and maintenance contracts with local equipment dealers to supply standby or emergency equipment;

iv. A description of the proposed measures to protect facility and other personnel from injury during operation;

v. A description of the proposed measures to control noise, litter, odors, rodents and insects at the facility;

vi. A description of the proposed measures to handle unusual peak loadings which may exceed designed facility capacity;

vii. A description of the proposed measures to handle incoming waste flow during periods of short term facility shutdown for normal equipment repairs and also for periods of longer term facility shutdown for more extensive repairs; and

viii. A description of the proposed equipment and procedures to be utilized in preventing and fighting fires.

10. The Department will review the preliminary O and M manual and notify the applicant of any deficiencies which need to be addressed. The necessary changes shall be incorporated into a final O and M manual. The final O and M manual shall be submitted to the Department subsequent to completion of the construction phase, but within 60 days of initiating full scale operations. Full scale facility operations shall not be initiated before formal Departmental approval of the final O and M manual.

11. A landscaping plan delineating the existing site vegetation to be retained, and discussing the methods to be employed in order to ensure protection during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted, shall be submitted as part of the engineering design. Information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan. Facility exterior grounds shall be landscaped in a manner which enhances the visual appearance of the property.

12. Foundation sources and basis documents supporting all factual information submitted and all conclusions drawn, shall be identified.

[7:26-2.11 General operational requirements for incinerators, transfer stations, processing facility and resource recovery facilities]

The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

## 7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities. Additional operational requirements for sanitary landfills are set forth in N.J.A.C. 7:26-2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26-2B.8.

(b) The general operational requirements for all solid waste disposal facilities, are as follows:

1. Within each 24 hour period the operator shall clean each area where waste has been deposited or stored, except for those storage areas at thermal destruction facilities which are designed for multiple day storage capability and as exempted by 10 below; for sanitary landfill all areas where waste has been deposited shall be covered with the appropriate cover material except as permitted by 10 below;

2. No waste shall be stored overnight at any facility without effective treatment to prevent odors associated with putrefaction;

3. Facility property surrounding the actual disposal area shall be maintained free of litter, debris, and accumulations of unprocessed waste, process residues and effluents. Methods of effectively controlling wind-blown papers and other lightweight materials such as fencing shall be implemented at all facilities;

4. Methods of effectively controlling dust shall be implemented at all facilities in order to prevent offsite migration;

5. The operation of the facility shall not result in odors associated with solid waste being detected off site in any area of human occupancy;

6. The operator shall maintain all facility systems and related appurtenances in a manner that facilitates proper operation and minimizes system downtime. When requested, the operator of the facility shall furnish proof that provisions have been made for the repair and replacement of equipment which becomes inoperative;

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

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

9. Only vehicles properly registered with the Division of Waste Management, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number shall be admitted for unloading of any solid waste at the facility. Vehicles exempt from registration shall not be admitted to the tipping area when registered, commercial type collection or haulage vehicles including, but not limited to, compactor trucks, trailers or any vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

10. The operator may designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those vehicles which are exempt from the registration requirement of N.J.A.C. 7:26-3.3. Bulky items and recyclable materials may be provided for in this manner. The facility operator shall be responsible for the sanitary condition and orderly operation of the designated area. It shall be the operator's responsibility to remove the bulky items, recyclable materials or other waste from the designated area at a frequency so as not to exceed the storage capacity of the area. Scavenging is prohibited;

11. The operator shall at all times comply with the conditions of the SWF permit, as well as all other permits or certificates required and issued by the Department or any other governmental agency. The operator shall not receive, store, handle, process or dispose of waste types not specifically identified in that facility's SWF permit or other permit or certificate issued by the Department;

12. The operator shall designate a secure area under the facility's control, located a safe distance from the active disposal area, where solid waste, including suspected hazardous waste, which the facility is not permitted to receive shall be deposited until the operator receives instruction from the Department as to the proper disposal of the unpermitted waste;

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversion shall be made by means of formulae furnished by the Department;

14. Departmental inspectors shall have the right to enter and inspect any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

- i. Sampling any materials on site;
- ii. Photographing any portion of the facility;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the facility's SWF permit or other permit or certificate issued by the Department, or
- v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

15. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit or certificate;

16. The facility shall be operated in a manner that employs the use of only that equipment and those techniques for the receipt, storage, handling, processing or disposal of incoming waste and process residues that are specifically authorized by the facility's SWF permit;

17. The operator shall provide a means of removing mud, solid waste or other debris from the tires of all vehicles. Vehicle tires shall be cleaned prior to the vehicle's departure from the facility's boundaries; and

18. The approved final O and M manual shall be maintained at the facility. A written description of any proposed changes to the approved, final O and M manual shall be submitted to the Department for review. These proposed changes shall not be implemented at the facility until the Department approves the changes.

[7:26-2.12 Guidelines and criteria for the preparation of engineering designs]

The Department is proposing to repeal the entire text of this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

**7:26-2.12 Generator requirements for disposal of asbestos and asbestos-containing waste**

The text of this section is being recodified from 7:26-2.10.

**7:26-2.13 Sanitary landfills, resource recovery facilities and transfer stations: records**

(No change.)

**7:26-2.14 [Applicability] (Reserved)** The Department is proposing to repeal this section. The text which the Department is proposing to repeal is printed in the New Jersey Administrative Code.

## SUBCHAPTER 2A. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR SANITARY LANDFILLS

**7:26-2A.1 Scope and applicability**

(a) This subchapter shall constitute the rules and regulations of the Department governing the design, construction, operation, maintenance and closure of sanitary landfills.

(b) The requirements of this subchapter are in addition to the general engineering design submission requirements in N.J.A.C. 7:26-2.10 and the general operational requirements in N.J.A.C. 7:26-2.11.

(c) This subchapter shall apply to the following facilities:

1. All newly proposed sanitary landfills and all existing sanitary landfills proposing to expand their existing operations onto previously unfilled permitted areas; and

2. Any existing sanitary landfills operating as an open dump or in an environmentally unsound manner.

(d) This subchapter does not apply to hazardous waste landfills. See N.J.A.C. 7:26-9, 7:26-10.8, 7:26-11.4 and 7:26-12.

(e) The provision of this subchapter and N.J.A.C. 7:26-2 shall not be interpreted as permitting the disposal of domestic sewage, sewage sludge, or septage in any manner other than that prescribed by law.

**7:26-2A.2 Construction**

These rules shall be liberally construed to permit the Department to discharge its statutory functions.

**7:26-2A.3 Purpose**

(a) This subchapter is promulgated for the following purpose:

1. To establish additional engineering design submission requirements for sanitary landfills;

2. To establish requirements and standards for the design and construction of sanitary landfills to insure that adverse impacts are minimized and controlled and that pollution of the environment is prevented; and

3. To establish additional requirements for the operation, maintenance, inspection and monitoring of sanitary landfills to ensure the proper operation of the sanitary landfill so as to minimize and control adverse impacts and prevent pollution of the environment.

**7:26-2A.4 General prohibitions and requirements**

(a) Open dumps are declared to be a nuisance, hazardous to human health and are prohibited.

(b) The owner or operator of any landfill which is determined to be an open dump, in accordance with the U.S.E.P.A. Criteria for Classification of Solid Waste Disposal Facilities and Practices, 40 CFR 257 or demonstrated to be environmentally unsound shall:

1. Within 90 days of notification by the Department, submit designs to close or environmentally upgrade the facility in conformance with the standards set forth in this subchapter;

2. Within 90 days of approval by the Department of the submitted design, begin construction of the environmental upgrading; and

3. Within one year of design approval by the Department, complete construction of the environmental upgrading.

(c) A one time extension of the compliance schedule established by (b) above may be granted by the Department provided a good faith effort has been made by the facility owner or operator to meet the schedule.

(d) Should the environmental upgrading required pursuant to (b) above not be completed, or should the continued operations result in classification of the landfill as an open dump or as environmentally unsound, the landfill shall temporarily or permanently cease operations and close, in conformance with the closure requirements set forth in N.J.A.C. 7:26-2A.9, or enter into receivership, as provided for in N.J.S.A. 13:1E-9, for that period of time necessary to rectify the unsatisfactory or environmentally unsound conditions as determined by the Department's enforcement action.

(e) No new sanitary landfill shall be constructed or any existing landfill continue to operate where solid waste is or would be in contact with the surface or ground waters. This provision shall not apply to cleanfill.

(f) Leachate from any sanitary landfill shall not be allowed to drain or discharge into the surface water or groundwater except as permitted pursuant to the NJPDES regulations, N.J.A.C. 7:14A.

(g) No sanitary landfill shall be operated in a manner that would result in the impairment of the quality of the surface or groundwaters to a degree that would degrade the quality of either the surface or groundwaters beyond the classification established by the Department in the Surface Water Quality Standards, N.J.A.C. 7:9-4, or the Ground Water Quality Standards, N.J.A.C. 7:9-6.

(h) No sanitary landfill shall be operated in a manner that would result in the degradation of the ambient air quality beyond the standards established by the Department pursuant to N.J.A.C. 7:27.

(i) No sanitary landfill shall be operated in a manner that would result in soil erosion and sedimentation beyond the standards established by the Department of Agriculture pursuant to N.J.A.C. 2:90.

(j) No new sanitary landfill shall begin construction or operation without first obtaining a NJPDES permit pursuant to N.J.A.C. 7:14A and approval of its Soil Erosion and Sediment Control Plan pursuant to N.J.A.C. 2:90.

(k) No existing sanitary landfill shall continue to operate without obtaining a NJPDES permit, and approval of its Soil Erosion and Sediment Control plan in accordance with N.J.A.C. 2:90.

(l) No new sanitary landfill shall begin construction or operation if located within the following distances of an airport, as measured from the nearest runway to the nearest property line:

1. Within 10,000 of any airport runway which is equal to or greater than 3,000 feet in length and that services turbo-engine planes; or

2. Within 5,000 feet of any airport runway which is less than 3,000 feet in length and that services prop-engine planes.

(m) No existing sanitary landfill shall continue to operate, within the restricted zone of an airport as set forth in N.J.A.C. 7:26-2A.6(g)11, when it is determined by the Department and the Bureau of Aviation of the Department of Transportation to present a real or potential attraction for birds, until an effective deterrent plan is implemented.

(n) No person shall engage in the disposal of solid waste at a facility that does not meet the operational and maintenance requirements of this subchapter and subchapter 2. In addition, each owner and operator of a landfill shall comply with any condition, limitation, or discharge requirement which may be specified in the Solid Waste Facility (SWF) permit for that facility.

(o) The owner or operator of an existing sanitary landfill shall be required to design in accordance with N.J.A.C. 7:26-2A.7(f)3 or 4, and after Departmental approval of the design, construct, operate and maintain, a gas collection, venting and monitoring system when gas is detected beyond the perimeter of the designated fill area.

(p) The owner or operator of an existing sanitary landfill shall install a groundwater monitoring system in accordance with the requirements of N.J.A.C. 7:14A-6.

(q) The owner or operator of an existing sanitary landfill shall be required to design and after Departmental approval of the design, construct, operate and maintain a leachate control collection and treatment system when leachate is determined to be impacting the quality of the surface and groundwaters of the area.

(r) The owner or operator of any existing sanitary landfill shall be required to design and after Department approval of the design, construct, operate and maintain a surface drainage system when it is determined that soil erosion and sedimentation will result in substantial soil losses and negative impacts upon the quality of the surface and groundwater of the area.

(s) The following waste types as defined in N.J.A.C. 7:26-2.13(d) shall not be disposed of in sanitary landfills:

1. Hazardous waste as defined by N.J.A.C. 7:26-8;
2. Septic tank clean-out wastes, waste ID number 73;
3. Liquid sewage sludge, waste ID number 74; and
4. Radioactive materials regulated by the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.

#### 7:26-2A-5. Additional engineering design submittal requirements for sanitary landfills

(a) In addition to the requirements of N.J.A.C. 7:26-2.10, the engineering design submission requirements for sanitary landfills shall include the following:

1. A regional map prepared and submitted in accordance with N.J.A.C. 7:26-2.10(b)4 which shall include, but not be limited to, the following additional information:

i. Location of all public community water supply wells and all wells permitted to pump over 100,000 gallons per day or 70 gallons per minute within one and one-half miles of the property line of the landfill. The service areas, if any, of the public community water systems, as defined in N.J.A.C. 7:10-1.3, within one and one-half miles of the property line of the sanitary landfill; and

ii. Location of all water wells within one-half mile of the property line of the sanitary landfill;

2. A site plan map delineating the existing contours of the proposed sanitary landfill area prepared and submitted in accordance with N.J.A.C. 7:26-2.10(b)6 which shall include, but not be limited to, the following additional information:

i. Delineation of the area-wide modular development of the sanitary landfill's construction and operations and, where applicable, the lateral limits of previously filled areas;

ii. Delineation of the vertical and horizontal control monuments and property corner markers. The elevations, in relation to the National Geodetic Vertical Datum of 1929 (Mean Sea Level 1929) of the control monuments, shall be indicated and keyed into the New Jersey Plane Coordinate Datum 1927;

iii. Location of all monitoring devices including, but not limited to, all groundwater monitoring wells, lysimeters, gas monitoring wells, gas vents, piezometers, inclinometers and bore hole extensometers. Elevations of the monitoring wells and piezometers shall be determined to the top of the outer casing and for the adjacent ground surface. The horizontal and vertical location shall be represented to the nearest 0.01 foot and accurate to the nearest 0.1 foot. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot; and

iv. Location of all borings, excavations and test pits. The horizontal and vertical location of all borings shall be represented to the nearest 0.01 foot and accurate to the nearest 0.1 foot. In areas, as dictated by the site geology, the vertical location accuracy may be required to be accurate to the nearest 0.01 foot;

3. Additional site plan maps which delineate in plan view and in detailed cross-sectional view the following:

i. The initial elevations of the proposed sanitary landfill showing all grades of the liner and, where applicable, the subgrade;

ii. The final elevations of any excavation showing all grades of the excavation and, where applicable, all grades of the subgrade;

iii. The leachate collection system showing all grades of the collection pipe, pipe envelope drainage layer, filter manhole/clean-out risers and sumps;

iv. All berms, dikes, ditches, swales or other protection devices as needed to divert or collect surface water run-on or run-off;

v. The system utilized for venting and monitoring the gases generated within the sanitary landfill and, if applicable, from beneath the liner;

vi. The final elevations and grades of the capping system including the subgrade for the impervious cap, the drainage and vegetative layers, the drainage pipes and drainage envelope;

vii. All grades of leachate treatment and disposal systems including the leachate removal pipes, the equalization pond, treatment or pre-treatment ponds or storage facilities; and

viii. All proposed landscaping and screening techniques to be utilized to minimize the visual impact of the sanitary landfill.

4. Additional drawings, designs or maps which describe, in sufficient detail, the construction specifications of the systems utilized in the sanitary landfill. These maps or drawings may be combined with those required by N.J.A.C. 7:26-2A.5(a)3 so long as the required details are clearly distinguishable and identifiable. They shall include, but not be limited to, the following:

- i. Subgrade;
- ii. Liner/cut-off wall;
- iii. Drainage layer and filter;
- iv. Collection pipe and drain envelope;
- v. Inlet/outlet structures;
- vi. Manholes, sumps, pumps, and pump station;
- vii. Leachate storage tanks;
- viii. Leachate treatment impoundments or tanks;
- ix. Leachate disposal systems;
- x. Gas vents, manifolds and pump station;
- xi. Monitoring wells/devices;
- xii. Surface drainage and erosion controls; and
- xiii. Cap.

5. An engineering report which includes but is not limited to the following additional information:

i. A description of the general installation methods and procedures for construction of the facility including materials required, equipment utilized, and scheduling of construction events and phases. To insure that the construction requirements of this subchapter are properly implemented the description, but not be limited to, the following:

- (1) Site preparation;
- (2) Subgrade;
- (3) Liner/cut-off wall;
- (4) Drainage layer and filter;
- (5) Collection pipes and drain envelope;
- (6) Inlet/outlet structures;
- (7) Manholes, sumps, pumps, and pump station;
- (8) Leachate storage tanks;
- (9) Leachate treatment impoundments or tanks;
- (10) Leachate disposal;
- (11) Gas vents, manifolds and pump stations;
- (12) Monitoring wells;
- (13) Surface drainage and erosion controls; and
- (14) Caps.

ii. A description of the construction contingency plan for the construction phase which shall describe procedures for responding to construction deficiencies resulting from circumstances including, but not limited to, inclement weather, defective materials or construction inconsistent with specifications as demonstrated by quality control testing. The plan shall provide a description of the criteria to be utilized in evaluating deficiencies, selecting corrective action methodology and implementing the corrective action;

iii. A description of the estimated solid waste capacity of the site in tons and cubic yards. Projection shall be made to determine the life expectancy of the site based on current and anticipated loading;

iv. The results with sufficient, clearly noted, calculations to verify the results, of the material testing required by this subchapter including, but not limited to, where applicable, the following:

- (1) N.J.A.C. 7:26-2A.5(a)6vi(9) and (10);
- (2) N.J.A.C. 7:26-2A.7(b)3;
- (3) N.J.A.C. 7:26-2A.7(c)2i, vii, and ix;
- (4) N.J.A.C. 7:26-2A.7(c)3i, ii, and x;
- (5) N.J.A.C. 7:26-2A.7(c)4i, iv(1) and (2), and ix;
- (6) N.J.A.C. 7:26-2A.7(c)5i, iv, vii and viii;
- (7) N.J.A.C. 7:26-2A.7(c)6i and iv;
- (8) N.J.A.C. 7:26-2A.7(c)7i, ii and v;
- (9) N.J.A.C. 7:26-2A.7(c)8ii and v;
- (10) N.J.A.C. 7:26-2A.7(c)9i and iv;
- (11) N.J.A.C. 7:26-2A.7(c)10i, ii, iii and iv;
- (12) N.J.A.C. 7:26-2A.7(d)2ii;
- (13) N.J.A.C. 7:26-2A.7(d)3i, iii, ix and xvii;
- (14) N.J.A.C. 7:26-2A.7(f)6, 12 and 14ii;
- (15) N.J.A.C. 7:26-2A.7(g)4 and 8;



- (16) N.J.A.C. 7:26-2A.7(i)3;  
 (17) N.J.A.C. 7:26-2A.7(i)9iv; and  
 (18) N.J.A.C. 7:26-2A.7(i)10i.

v. A description of how the sanitary landfill will meet the environmental performance standards required by N.J.A.C. 7:26-2A.6 and the design standards and construction requirements in N.J.A.C. 7:26-2A.7. The description shall provide sufficient, clearly notated design calculations to verify the results, including, but not limited to, the following:

- (1) Foundation and slope stability analysis;
- (2) Liner/cut-off wall efficiency and performance;
- (3) Leachate collection system's capacity, performance, and structural stability;
- (4) Three-dimensional mass transport modeling for the sanitary landfill performance;
- (5) Pumping system's performance;
- (6) Leachate treatment and disposal system's capacity and performance;
- (7) Run-on/run-off system's capacity and performance;
- (8) Gas venting and/or collection system's performance;
- (9) Monitoring system's efficiency;
- (10) Capping system's efficiency and performance; and
- (11) Cover material quantity analysis.

vi. A delineation of the environmentally sensitive areas listed in N.J.A.C. 7:26-2A.6(g) that are impacted by the sanitary landfill and a description of the additional design and construction measures that will be implemented at the sanitary landfill to increase performance of the environmental control systems of the sanitary landfill that will be utilized to minimize and control the potential adverse impacts and prevent pollution in accordance with N.J.A.C. 7:26-2A.6(h).

6. A geotechnical report prepared by a qualified geologist, or geotechnical engineer which includes but is not limited to, the following requirements or items:

i. A narrative section which contains:

(1) A general description of the major characteristics of the geological formations of the region where the proposed sanitary landfill will be located including thickness, lithology, structural features, degree of weathering and amount of overburden; and

(2) A site specific description, based on the data collected pursuant to vi below, of the soils, rocks, water levels and flows. Soils test data and evaluations of the soils or rocks underlying the sanitary landfill shall be submitted, including any recommendations for site design which may be appropriate, to minimize any adverse impacts from the construction of the sanitary landfill;

ii. A soils map shall be provided for the area including the sanitary landfill and vicinity. The soils map provided shall be a copy of the map published by the United States Department of Agriculture, Soil Conservation Service or by the State soils or geologic agencies;

iii. A generalized geologic map and geologic cross sections, based on published or unpublished material and mapping available from the United States Geological Survey and New Jersey Geological Survey or unpublished mapping acceptable to the New Jersey Geological Survey, shall be provided for the area including the sanitary landfill and region, and should include, but not be limited to, the following information:

- (1) Bedrock outcrop;
- (2) Dip and strike of sedimentary formations and foliation trend and dip angles of igneous and metamorphic rocks;
- (3) Faults and prominent shear zone trends;
- (4) Joint or fracture trends in bedrock including dip angles;
- (5) Trend direction of solution channels in carbonate rocks and sink holes; and
- (6) Location of any active or abandoned mine workings.

iv. A generalized potentiometric map shall be provided for the area, including the sanitary landfill and the region, based upon available data including, but not limited to, existing topography, surface drainage and existing well data;

v. A well report describing the use, depth, and yield of all wells located on the regional map required by ii and iii above and the diversion allocation for all public community water supply wells and wells yielding 100,000 gallons per day or greater;

vi. In preparing the site specific report, required by i(2) above, sufficient borings shall be made of the proposed landfill site to characterize and verify the geology and groundwater conditions beneath the site with respect to the types of material, uniformity, hydraulic conductivity, porosity and depth to groundwater. Borings of the proposed sanitary landfill site shall be provided at a minimum, in accordance with Table 1 below:

TABLE 1  
BORINGS

Acreage	Total Number of Borings	Number of Deep Borings Required
Less than 10	4	1
10-49	8	2
50-99	14	4
100-200	20	5
More than 200	24+1 boring/each additional 10 acres	6+1 boring/each additional 40 acres

(1) The Department reserves the right to require additional borings in areas in which the number of borings required by Table 1 above is not sufficient to describe the geologic formations and groundwater flow patterns below the proposed sanitary landfill in regard to potential contaminant migration paths;

(2) In highly uniform geologic formations, the number of borings may be reduced, as approved by the Department, if other techniques are employed, as recommended in (6) below, to correlate data collected from these methods to the boring data;

(3) The borings should employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the sanitary landfill in order to sufficiently define the geology. It is recommended that the soil borings be performed in a phased approach and that the number of borings in the proposed active landfilling area be minimized;

(4) Subsurface data obtained by borings shall be collected by standard undisturbed soil sampling techniques for engineering properties, and split spoon sampling or standard penetration tests for engineering indexes and classification. Diamond bit coring shall be used for rock boring. Samples shall not be composited. The sampling interval for the boring required by Table 1 above shall be determined by the geologist or geotechnical engineer and be approved by the Department. It is recommended that sampling be performed on a continuous basis for the first 20 feet below the lowest elevation of the sanitary landfill and collected at five foot intervals thereafter;

(5) All borings shall be a minimum depth of 20 feet below the lowest elevation of the sanitary landfill. The Department reserves the right to require a deeper minimum depth in areas in which 20 feet is not sufficient to describe the geological formation and groundwater flow patterns below the proposed sanitary landfill in regard to potential contaminant migration paths;

(6) The depth of deep borings shall be determined on a case by case basis. The depth should be, at a minimum, equal to or greater than the design height of the sanitary landfill;

(7) Excavations, test pits and geophysical methods may be employed to supplement the soil boring investigation;

(8) Field and final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include a soil or rock description in accordance with the Unified Soil Classification System or the Rock Qualification Description System, the method of sampling, the depth of soil or rock, the water levels encountered, the blow counts, the soil tests and date. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum;

(9) In addition to the sampling and testing requirements for foundation analysis set forth in N.J.A.C. 7:26-2A.7(b), three separate soil samples for each significant soil/rock class encountered shall be analyzed for unit weight, porosity, laboratory classification, cation exchange capacity, and hydraulic conductivity. The soil samples shall be taken from three separate borings;

(10) It is recommended that a sufficient number of samples, as determined by the geologist or geotechnical engineer, be analyzed for the index properties to verify the uniformity or nonuniformity of the geological formation encountered and to correlate the soils engineering properties. A soil profile for the index properties should be developed at intervals determined on-site;

(11) At a minimum, four of the borings shall be converted to water level observations wells or well nests. The total number of wells or well nests shall be determined on a case-by-case basis by the Department based on the complexity of the geology of the site;

(12) The groundwater shall be sampled and analyzed for each distinct aquifer encountered below the site in accordance with the requirements of N.J.A.C. 7:14A-10.12(e)2ix. It is recommended that the groundwater be

sampled and analyzed in accordance with N.J.A.C. 7:14A-10.12(e)2ix, for one year prior to operation of the sanitary landfill; and

(13) All borings, not to be utilized as permanent monitoring wells, and wells within the active disposal area shall be sealed in accordance with N.J.A.C. 7:9-9, Sealing of Abandoned Wells, and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration.

vii. Geologic maps of the proposed landfill, based on the site geologic investigation or literature review, prepared at a scale of one inch equals 200 feet (1"=200') and with contour intervals which sufficiently define the ground surface contours, and various geologic formations and aquifers beneath the proposed landfill;

viii. Detailed cross-sections which shall sufficiently describe the geologic formations identified by the geologic maps prepared in accordance with vii above prepared at a scale which clearly defined the geologic formations; and

ix. Potentiometric maps prepared at a scale of one inch equals 200 feet (1"=200') with contour intervals which sufficiently define the groundwater conditions in all aquifers encountered below the sanitary landfill based upon stabilized groundwater elevations. It is recommended that two seasonal contour maps based on stabilized water levels in the wells be developed, one representing the yearly low flow condition and the other representing yearly high flow condition.

7. A quality assurance (QA) and quality control (QC) plan for the construction phase shall meet the requirements set forth at N.J.A.C. 7:26-2A.7(a)7 through 24, shall be submitted. It shall include, but not be limited to, the following information:

i. A delineation of the QA and QC management structures, including the chain of command of the QA and QC inspectors and describing the quality control and corrective action implementation responsibilities of the QA and QC inspectors and the contractors;

ii. A description of the required level of experience for the contractor and his crew for every major phase of construction which shall be sufficient to insure that the installation methods and procedures as required in 5i above are properly implemented;

iii. A description of the required level of experience of the QA and QC inspectors for every major phase of construction to insure that the QA and QC testing as required by vi below is properly implemented;

iv. A description of the required level of training, if necessary, to be provided for the contractor's personnel and the inspectors, to insure that the installation methods and procedures and the contingency methods, as required by 5i and ii above, are properly implemented and that corrective action will be properly employed, when necessary;

v. A description of the QA and QC testing and inspections for every major phase of construction, which shall include but not be limited to the following:

- (1) The frequency of inspections;
- (2) The frequency of field testing;
- (3) The frequency of sampling for laboratory testing;
- (4) The sampling and field testing procedures to be utilized;
- (5) The sampling and field testing equipment to be utilized;
- (6) The calibration of field testing equipment;
- (7) The frequency of system or performance audits;
- (8) The sampling size;
- (9) The soils or geotechnical laboratory to be used;
- (10) The laboratory procedures to be utilized; and
- (11) The calibration of laboratory equipment and QA/QC of laboratory procedures.

vi. The QC testing and inspections shall include, but not limited to, the following:

- (1) N.J.A.C. 7:26-2A.7(b)4viii and x;
- (2) N.J.A.C. 7:26-2A.7(c)2v, vii, x and xi;
- (3) N.J.A.C. 7:26-2A.7(c)5vi;
- (4) N.J.A.C. 7:26-2A.7(c)6v;
- (5) N.J.A.C. 7:26-2A.7(c)7vi;
- (6) N.J.A.C. 7:26-2A.7(c)9vii and viii;
- (7) N.J.A.C. 7:26-2A.7(c)10 x, xi, xii, and xvii;
- (8) N.J.A.C. 7:26-2A.7(d)2vii and viii;
- (9) N.J.A.C. 7:26-2A.7(d)3viii and xxi;
- (10) N.J.A.C. 7:26-2A.7(g)6 and 7; and
- (11) N.J.A.C. 7:26-2A.7(i)9iv and 10i.

8. The preliminary O and M manual for the sanitary landfill shall include the following, in addition to the preliminary O and M requirements set forth in the general engineering requirements, N.J.A.C. 7:26-2.10(a)8:

i. A description of how the operations and maintenance of the sanitary landfill will meet the requirements set forth in N.J.A.C. 7:26-2.11 and N.J.A.C. 7:26-2A.8;

ii. An occupational health and safety plan established in conformance with the safety and health standards of the Federal Department of Labor, Occupational Safety and Health Administration pursuant to 29 CFR 1926 and 1910 Safety and Health Standards and Industrial Standards;

iii. A facility staffing plan containing the following:

- (1) The job title for each position at the facility;
- (2) A written job description for each position, including duties and performance standards. The description shall include the requisite skills, education, and other qualifications deemed necessary for employees assigned to each position;
- (3) An explanation of the criteria and reasons used in selecting the required number and types of positions, as well as the qualifications for each position; and
- (4) A statement of the staffing provided for each operating shift, including the job titles and number of employees for each title, and for each shift.

iv. A written training plan which shall include the type and amount of both the initial and annual followup training to be provided to facility personnel;

v. A emergency contingency plan which delineates procedures for responding to fire, explosions or any unplanned sudden or non-sudden releases of harmful constituents to the air, soil, or surface water. The emergency contingency plan shall be submitted to the local police and fire departments, and to the local and county health departments or other offices of emergency management. The emergency contingency plan shall contain:

- (1) A description of the actions facility personnel shall take in the event of various emergency situations;
- (2) A description of arrangements made with the Department and local police and fire departments which allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; and
- (3) A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

vi. A community relations plan for facilities with a design capacity of 500 tons per day or greater, identifying the steps that the owner will take to transfer information and solicit input from the community in which the facility is located. The community relations plan shall contain the following:

- (1) A minimum of two open meetings with the community or its representatives prior to and during facility construction. The purpose of such meetings will be to inform the community of the, operations of such a facility, including the progress of construction and projected initial tipping fees;
- (2) Annual open meetings with the community or its representatives subsequent to the initial startup of operations. The purpose of these meetings is to allow community input and to provide a forum for exchanging ideas; and
- (3) A notification procedure, whereby the community is provided a report of findings in the case of an emergency incident at the facility.

#### 7:26-2A.6 Sanitary landfill environmental performance standards

(a) Any sanitary landfill subject to regulation pursuant to N.J.A.C. 7:26-2A.1(c) shall contain a leachate containment system, leachate collection system, leachate treatment/disposal system, gas venting system, surface drainage control system, monitoring system, a final capping system and any other system or environmental control measure required by the Department, and shall be designed and constructed in accordance with the performance standards set forth in this section.

(b) In the design and construction of a sanitary landfill subject to regulation pursuant to N.J.A.C. 7:26-2A.1(c), consideration shall be given to ground and surface water conditions, geology, soils, topographic features, solid waste types and quantities, social, geographic and economic factors, and esthetic and environmental impacts in order to protect the environment and to minimize and control adverse impacts.

(c) The performance of the sanitary landfill shall be in accordance with the following:

1. The sanitary landfill shall not cause or result in any decrease in the quality of the ground or surface water at the property line of the sanitary landfill, within the aquifers located below or surface water adjacent to the sanitary landfill, beyond that allowed by N.J.A.C. 7:9-6, Ground Water Quality Standards or N.J.A.C. 7:9-4, Surface Water Quality Standards, as applicable; and

2. The sanitary landfill shall not cause or result in any significant decrease in the quality of water taken from any potable water well existing at the time of design and construction of the proposed sanitary landfill. In order to compare the quality, the applicant shall use the Student's t-test at the 0.01 level of significance to determine statistically a significant decrease in water quality.

(d) For a sanitary landfill located in a stable low permeable defined geologic formation having a hydraulic conductivity of less than  $1 \times 10^{-6}$  cm/sec., the standard for the design for the containment and leachate collection systems shall consist, at a minimum, of the following:

1. An impervious liner consisting of three feet of clay having a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/sec. designed and constructed in accordance with N.J.A.C. 7:26-2A.7(c); and

2. A leachate collection system consisting of a one foot sand drainage layer having a hydraulic conductivity equal to or greater than  $1 \times 10^{-2}$  cm/sec. The collection pipe spacing and liner slope shall be designed to ensure that the leachate head on the liner does not exceed one foot at any time based on actual flows from the area of drainage at real time events. The leachate collection system shall be constructed as specified in N.J.A.C. 7:26-2A.7(d);

3. An applicant may submit an alternate design for the containment and leachate collection system. The Department will only approve such alternate design if the applicant is able to demonstrate, to the satisfaction of the Department, that the alternate system design is an equivalent system which meets or exceeds the structural integrity, performance and efficiency requirements of 1 and 2 above and meets the performance standard established in (c) above.

(e) A sanitary landfill that is not located in stable low permeable geologic formations of sufficient thickness, having a hydraulic conductivity of less than  $1 \times 10^{-6}$  cm/sec., shall increase the performance and efficiency of the containment and leachate collection systems over that of the design required by (d)1 and 2 above. The design and performance of the sanitary landfill shall ensure an environmentally sound operation with consideration given to the geology, groundwater quality and groundwater usage of the area. Such design shall, at a minimum, also conform to the following:

1. A sanitary landfill located in stable low permeable defined geologic formation having a hydraulic conductivity equal to or less than  $1 \times 10^{-5}$  cm/sec. may, if approved by the Department, decrease the liner hydraulic conductivity or increase the liner thickness required by (d)1 above, so as to meet the performance standard established in (c) above;

2. Except where the applicant makes the demonstration permitted by 3 below, a sanitary landfill located in any geologic area other than that defined in 1 above, shall, at a minimum, have a containment system consisting of a double composite liner system. The primary and secondary geomembrane liners in the double composite liner system shall be in compressive contact with a clay or admixture liner below the geomembrane liner. A leak detection/collection system shall be located between the primary composite liner and the secondary composite liner;

3. Except for sanitary landfills located in geologic areas in which the bedrock is at or near the surface or which serve as a direct source of public community potable water supply, an applicant may submit an alternative design for the containment and leachate collection system which shall, at a minimum, consist of a double geomembrane liner system with an additional leak detection/collection system between the primary (top) liner and secondary (bottom) liner or a single composite liner system, provided the applicant demonstrates to the satisfaction of the Department that the alternate system design meets or exceeds the performance and efficiency requirements of 2 above and meets the performance standards required by (c) above.

(f) The evaluation of the performance of the sanitary landfill in the geologic formation within which it is located shall be analyzed with a three-dimensional mass transport model. The mass transport model shall have the capacity to represent the real world situation and should be developed in accordance with the guidelines set forth at Appendix A and in accordance with the following publications:

1. "Evaluation of Long-term Remedial Action Alternation," by George F. Pinder, June 1983; and

2. "Landfill and Groundwater Modeling Volume I: Final Report," by A.C. Dometracopoulos, L. Sehayek, E.L. Bourdinos and E.G. Navy prepared for NJDEP contract number 27-5026, June 1984.

(g) All sanitary landfills regulated pursuant to N.J.A.C. 7:26-2A.1(c) shall be designed and constructed, in accordance with (h) below, to protect environmentally sensitive areas including, but not limited to, the following:

1. The flood fringe areas of the flood hazard area as identified by the Department pursuant to the State Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;

2. Wetland buffer areas as identified by the Department pursuant to the Wetlands Coastal Resource and Development Policies, N.J.A.C. 7:7E;

3. Lands in municipally approved farmland preservation programs or lands which have been dedicated to agricultural use by the purchase of their development rights pursuant to the provisions of the Farmland Preservation-Bond Act, P.L. 1981, c.276, or equivalent independent county/municipal programs;

4. The watershed area for waters classified by the Department as FW-1 waters or FW-2 Trout Protection Water pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9-4;

5. Areas within 1000 feet of any lake or pond and 500 feet of any river or stream;

6. Areas within a critical water supply area as determined by the Water Supply Management Act Rules, N.J.A.C. 7:19-6, or a sole source aquifer pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974, P.L. 93-523;

7. The Protection Area as established by N.J.S.A. 13:18A-11a of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

8. Areas within one mile of a water supply well or well field producing over 100,000 gallons per day, or surface water reservoir used as a potable water source and areas within 600 feet of any potable water well;

9. Areas directly underlain by cavernous limestone, dolomite, or marble;

10. Areas directly overlying past or present subsurface mining activities;

11. Areas within three miles from either end of the nearest runway of any public-use airport owned by a public agency or designated by the Federal Aviation Administration as a reliever airport as determined by the Division of Aeronautics of the New Jersey Department of Transportation;

12. Areas which will encroach upon, damage or destroy any area, site, structure, or object included in the Register of Historic Places established by N.J.S.A. 13:1B-15.128 et seq.;

13. Within the buffer zone area of specimen trees as determined and defined by the Division of Parks and Forestry;

14. Areas with slopes exceeding 15 percent;

15. Areas where fractured bedrock is or will be within 200 feet from the bottom of the liner; and

16. Areas where groundwater is or will be within 10 feet from the bottom of the liner.

(h) In order to protect the environmentally sensitive areas identified in (g) above, the Department shall require the design, construction and operation of additional control systems or increased performance of the required systems to minimize and control adverse impacts and prevent pollution. The Department will consider documentation, submitted by the applicant, demonstrating that the topographical and geological conditions, in conjunction with the design, construction and operation of the sanitary landfill, will adequately prevent pollution of the environmentally sensitive area.

1. The additional environmental control systems or increased performance of the systems required to protect the environmentally sensitive areas identified in (g) above shall at a minimum include the following for the particular identified area:

Environmentally Sensitive Area Impacted	Type of System Upgrading Required
i. Flood fringe areas of flood hazard area, N.J.A.C. 7:26-2A.5(g)1;	Upgrading of the surface drainage system. Increase in the design storm size;
ii. Wetlands buffer areas, N.J.A.C. 7:26-2A.5(g)2;	Upgrading of the surface drainage system. Increase in the design storm size;
	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
iii. Lands in municipally approved farmland preservation programs, N.J.A.C. 7:26-2A.5(g)3;	Site configuration restrictions;
	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
	Operational restrictions;
iv. Watershed areas of FW-1 water or FW-2 Trout Production Waters, N.J.A.C. 7:26-2A.5(g)4;	Upgrading of the surface drainage system. Increase in the design storm size;
	Upgrading the liner/leachate collection systems to increase their performance and efficiency;
v. 1000 feet of lakes or ponds and 500 feet of rivers or streams, N.J.A.C. 7:26-2A.5(g)5;	Upgrading of the surface drainage system. Increase in the design storm size;



- |                                                                                                                                  |                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                  | Upgrading the liner/leachate collection systems to increase their performance and efficiency;                                                                                 |
| vi. Critical water supply areas or sole source aquifer<br>N.J.A.C. 7:26-2A.5(g)6;                                                | Upgrading the liner/leachate collection systems to increase their performance and efficiency;                                                                                 |
| vii. Pinelands Protection Area,<br>N.J.A.C. 7:26-2A.5(g)7;                                                                       | Upgrading of the surface drainage system. Increase in the design storm size;<br>Upgrading the liner/leachate collection systems to increase their performance and efficiency; |
| viii. One mile to a water supply well or surface water reservoir or 600 feet to a potable water well,<br>N.J.A.C. 7:26-2A.5(g)8; | Upgrading the liner/leachate collection systems to increase their performance and efficiency;                                                                                 |
| ix. Cavernous limestone, dolomite and marble, N.J.A.C. 7:26-2A.5(g)9;                                                            | Site configuration restrictions;<br>Upgrading of the subgrade support;<br>Upgrading of the surface drainage system;                                                           |
| x. Subsurface mining,<br>N.J.A.C. 7:26-2A.5(g)10;                                                                                | Site configuration restrictions;<br>Upgrading of the subgrade support;                                                                                                        |
| xi. Three miles to public use airport, N.J.A.C. 7:26-2A.5(g)11;                                                                  | Operational restrictions;                                                                                                                                                     |
| xii. Historic site preservation,<br>N.J.A.C. 7:26-2A.5(g)12;                                                                     | Site configuration restrictions;                                                                                                                                              |
| xiii. Buffer zones of specimen trees,<br>N.J.A.C. 7:26-2A.5(g)13;                                                                | Site configuration restrictions;                                                                                                                                              |
| xiv. Slopes exceeding 15 percent,<br>N.J.A.C. 7:26-2A(g)14;                                                                      | Site configuration restrictions;<br>Upgrading of the surface drainage system. Increase in the designed storm size;                                                            |
| xv. 20 feet to fractured bedrock,<br>N.J.A.C. 7:26-2A.5(g)15;                                                                    | Upgrading the liner/leachate collection systems to increase their performance and efficiency;                                                                                 |
| xvi. 10 feet to groundwater,<br>N.J.A.C. 7:26-2A.5(g)16.                                                                         | Upgrading the liner/leachate collection systems to increase their performance and efficiency.                                                                                 |

(i) Sanitary landfill setback areas and buffer zones shall be designed and constructed in accordance with the following:

1. In areas in which the groundwater flow velocity, in the geologic formation in which the proposed sanitary landfill will be located, is equal to or greater than one foot per day, the minimum setback area shall be 300 feet from the toe of the slope of the landfill to the property boundary line.

2. In areas in which the groundwater flow velocity, in the geologic formation in which the proposed sanitary landfill will be located, is less than one foot per day, the setback may be reduced based on the geology and topography of the area, the groundwater quality and usage, and the performance of the sanitary landfill as set forth in (c) above and as determined in accordance with (f) below, but in no case shall the setback area be less than 150 feet.

3. A greater separation than that required by 1 or 2 above may be required based on the geology and topography of the area, the groundwater quality, usage, and proximity of potable water wells and the performance of the sanitary landfill as set forth at (c) above and as determined in accordance with (f) above to prevent pollution within the aquifers.

4. A minimum of 50 feet of buffer zone within the setback area shall be maintained at all landfills.

(j) Reductions in the performance standards set forth in (d) and (e) above and the design standards and construction requirements set forth in N.J.A.C.

7:26-2A.7 for Class II and III sanitary landfills shall be determined by the Department based upon the following:

1. The performance required of Class II sanitary landfills shall be based upon the waste type to be disposed of at the sanitary landfill and shall be in accordance with the following analyses:

i. Historical data of the waste type proposed to be disposed of at the sanitary landfill demonstrating the degradation and immobilization of the waste within the soil matrix under similar conditions; or

ii. An analysis, by a New Jersey certified laboratory, of a composite sample of the waste, which shall include, but not be limited to, the following:

(1) A total analysis of metals listed in N.J.A.C. 7:26-8.12, performed in accordance with the American Water Works Association, AWWA Standard Method, Part 300;

(2) Extraction procedures for the metals listed in N.J.A.C. 7:26-8.12 using an extractant at a pH of 5 and with site water shall be performed in accordance with USEPA "Test Methods for Evaluating Solid Waste," SW 846 USEPA, Section 2 and USEPA "Solid Waste Leaching Procedure SW 924;"

(3) Steam distillation of any suspected organic shall be performed in accordance with USEPA "Test Methods for Evaluating Solid Waste SW 846;" Section 4.

iii. Background analysis shall be performed on soils taken from the proposed site in accordance with ii(1) and (2) above.

iv. Split sampling shall be performed concurrently with the Department at a time and place to be agreed upon by the applicant and the Department; and

v. A two-dimensional mass transport model shall be used to analyze the extent of any possible potential contaminant migration based on the site geology and groundwater flow at a maximum discharge rate.

vi. A certified copy of the bill for the Department's analysis of the waste and soils performed in accordance with ii and iii above, shall be forwarded to the applicant, who shall pay the bill within 30 days thereafter. Payment of the bill in full shall be a condition of the final permit approval; and

2. The design standards and construction requirements set forth at N.J.A.C. 7:26-2A.7 may be reduced as approved by the Department for Class II sanitary landfills, as determined based on the waste analysis performed in accordance with 1 above and the following:

i. Site access control and security;

ii. Length and scale of the operation; and

iii. Location of the proposed sanitary landfill in regards to the following:

(1) Geologic location in accordance with (d) and (e) above;

(2) Impacts on environmentally sensitive areas in accordance with (g) and (h) above;

(3) Groundwater flow velocity in accordance with (i)1 and 2 above; and

(4) The geologic and groundwater impacts and the geotechnical analysis needed for the two-dimensional model shall be determined based on a preliminary investigation performed in accordance with N.J.A.C. 7:26-2A.4(b)6.

3. The performance standards for Class III sanitary landfills may be reduced and Class III sanitary landfills may be exempted from one or more of the design standards or construction requirements of N.J.A.C. 7:26-2A.7 based on the following:

i. Site access control and security;

ii. Length and scale of the disposal operation; and

iii. Location of the landfill in regards to the following:

(1) Geologic location in accordance with (d) and (e) above;

(2) Impacts on environmentally sensitive areas in accordance with (g) and (h) above; and

3. Groundwater flow velocity in accordance with (i)1 and 2 above.

7:26-2A.7 Sanitary landfill engineering design standards and construction requirements

(a) The following are the general sanitary landfill engineering design standards and construction requirements:

1. All sanitary landfills regulated by N.J.A.C. 7:26-2A.1(c) shall be designed and constructed with a leachate containment system, leachate collection system, leachate treatment/disposal system, monitoring system, a surface drainage control system, gas venting system, a final capping system and any other systems or control measures required pursuant to the design standards and construction requirements set forth in this subchapter, unless exempted by N.J.A.C. 7:26-2A.6(j)3;

2. An on-site baseline consisting of two vertical and horizontal control monuments shall be constructed and installed in accordance with the New Jersey Map Filing Law, N.J.S.A. 46:23-9, and Department specifications, as listed in "Guidelines for Establishing Vertical and Horizontal Control Monuments on a Sanitary Landfill".

i. The control monuments shall be installed with, at a minimum, Second Order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce 1980. The control monuments shall be tied into the national or state geodetic survey network and keyed into the New Jersey Plane Coordinate Datum 1927.

ii. Sanitary landfills equal to or greater than 50 acres may be required to construct and install secondary control points in accordance with the Department's specifications listed in "Guidelines for Establishing Vertical and Horizontal Control Monuments on a Sanitary Landfill".

3. The sanitary landfill shall be constructed with a modular design. Each section of the modular design shall be hydraulically isolated from the adjoining section.

4. The degree of hydraulic isolation shall be determined based on the location of the landfill, and shall at a minimum include the following:

i. Sanitary landfills located in areas described in N.J.A.C. 7:26-2A.6(d) and (e), shall, at a minimum, include a temporary berm capable of isolating run-on from adjoining areas and run-off from the active landfill area and contain leachate generated within the sanitary landfill section.

ii. Sanitary landfills located in areas described in N.J.A.C. 7:26-2A.6(e)2 and 3 which require, at a minimum, a double liner or composite liner system and a leak detection system shall be designed so that each section drains, at a minimum, to separate sumps capable of isolating any potential leaks from that section.

5. The construction and operation of the modular sanitary landfill design should be initiated in the section which is most down gradient in relation to groundwater flow. Alternative designs to meet this requirement are acceptable in areas where the topography, such as steep surrounding slopes, make this requirement environmentally unsound.

6. The size of each section shall be designated to minimize the exposed active areas. It is recommended that no section be designated to be operated for longer than two years.

7. A quality assurance inspector, independent of the quality control inspector, approved by the Department and reporting directly to the Department, shall be at the site at all times during the initial construction phase of the containment and leachate collection systems to observe and perform all required systems audits of the quality control inspections, as set forth at 8, 9 and 10 below, to insure proper implementation of the design and permit requirements.

8. A meeting shall be held between the quality assurance inspectors and the Department to establish reporting procedures and frequency, in accordance with the construction scheduling.

9. Quality control inspectors shall be at the site during all phases of construction to ensure and verify that the design and permit requirements are properly implemented. The quality control inspectors shall, at a minimum, be at the site at all times during the construction of the containment and leachate collection systems.

10. The quality control measures and tests required by this subchapter and described in the QA and QC plan submitted in accordance with N.J.A.C. 7:26-2A.5(a)7 shall be employed to insure that the construction requirements are properly implemented and that the design and performance standards are achieved.

11. The quality control inspector shall inspect those aspects of the subgrade preparation including, but not limited to, the following:

- i. Site preparation, clearing, and grubbing;
- ii. Excavation of subgrade to required elevations;
- iii. Subgrade preparation to eliminate incompatibilities with the liner system;
- iv. Proper application of vegetation suppressant;
- v. Compaction of subgrade to design density at proper moisture content to achieve required strength and stability to support the liner;
- vi. Moisture content density and field strength tests performed as required;
- vii. Compacted lift thickness;
- viii. Compaction equipment, weight, speed, and number of passes;
- ix. Method of moisture addition;
- x. Proof-rolling of subgrade;
- xi. Fine finishing of the subgrade to required grades; and
- xii. Final inspection of the subgrade for acceptability of area to be lined.

12. The quality control inspector shall inspect those aspects of the containment systems including but not limited to the following:

- i. Liner material to ensure that the material being used meets specifications;
- ii. Liner material stockpiling, storage, and handling to prevent damage;
- iii. Inlet/outlet structure or penetration through the liner to ensure compatibility with the liner system;

iv. Final grades of liner to ensure that they are within acceptable tolerances;

v. Final inspection of liner for acceptability prior to backfill placement;

vi. Backfill placement;

vii. Geotextile placement;

viii. Compacted liners with respect to the following:

(1) Compaction of liner to design density at the proper moisture content to achieve the required hydraulic conductivity and maintain strength and stability;

(2) Uniformity of compactive effort;

(3) Compacted lift thickness;

(4) Compacted liner thickness;

(5) Compaction equipment weight, speed, and number of passes;

(6) Moisture content, density, hydraulic conductivity and field infiltration tests to ensure that they are performed as required;

(7) Mixing and blending of liner material to ensure that the activity is being performed as required; and

(8) Repairs and corrective or remedial action performed as required.

ix. Geomembranes with respect to the following:

(1) Liner panel placement is in accordance with required configuration;

(2) Permanent and temporary anchoring procedures are followed;

(3) The overlap and seam width are in accordance with the design;

(4) The area of seaming is clean and supported;

(5) The uniformity and continuity of seams or welds;

(6) Cap strips are installed on all seams;

(7) Qualitative and quantitative field seaming tests are performed as required;

(8) Imperfections in seams, wrinkles at seams and fishmouth are repaired as required;

(9) Corrective or remedial action taken.

13. The quality control inspector shall inspect those aspects of the leachate collection system including, but not limited to, the following:

i. Material stockpiling, storage, and handling to prevent damage;

ii. Drainage layer placement;

iii. Thickness of the drainage layer;

iv. Grain size analysis and relative density or compaction tests are performed as required;

v. Uniformity of the soil;

vi. Filter placement;

vii. Grades and alignments within acceptable tolerances;

viii. Envelope placement;

ix. Proper implementation of action taken to protect the collection pipe and liner from the loads and stresses due to the traffic of backfilling equipment;

x. Sump construction;

xi. Sump water tightness tests; and

xii. Pump placements.

14. Daily QC reports shall be prepared by the quality control inspector or quality assurance inspectors and maintained in a bound log book which shall be available at the job site at all times for inspection by the Department. All lab reports and field testing results shall be signed and dated by the inspector, and shall be attached to the log book reports. The log book reports shall include, but not be limited to, the following:

i. Identification of project name, location and date;

ii. Weather conditions including:

(1) Temperature (daily high and low);

(2) Barometric pressure;

(3) Wind direction and speed;

(4) Last precipitation event; and

(5) Amount of precipitation;

iii. Description and location of construction currently underway;

iv. Equipment and personnel at work at each unit;

v. Description and location of areas being tested or observed;

vi. Off-site material received and quality verification documentation;

vii. Calibration of test equipment;

viii. Description and location of remedial action taken; and

ix. Decisions and comments including conversations, directives and directions for the following:

(1) Acceptance or failure of inspection or tests;

(2) Acceptance or failure of daily work unit performance;

(3) Problems encountered and corrective action taken;

(4) On-going corrective action;

(5) In-field modifications; and

(6) Assessment of overall project quality.

15. The scheduled frequency of inspections by the independent quality assurance inspectors may be reduced or discontinued if approved by the

Department. The reductions or discontinuance shall be based on the results of the initial construction tests and the precision and consistency of the quality control test results.

16. At such time as the independent quality assurance inspector is discontinued, as approved by the Department, the activities performed by the quality insurance inspector shall be carried out by the permittee's quality control inspectors in accordance with the approved Quality Assurance and Quality Control plan.

17. The Department may reinstate the independent quality assurance inspection at the site if the results of the construction tests and the precision and consistency of the quality control testing warrant such reinstatement.

18. Best available engineering construction practices shall be employed for all phases of the facility construction.

19. The Department shall be notified within 24 hours at the Department hotline at (609) 292-7172, should failure of a major phase of construction occur or should an unforeseen event occur that could potentially result in failure of a major phase of construction.

20. A New Jersey licensed professional civil or geotechnical engineer shall certify, in writing, to the Department that he has inspected the construction of each major phase of the sanitary landfill's construction. He shall further certify that each phase has been prepared and constructed in accordance with the engineering design approved by the Department, prior to operations. The certification shall include a final documentation report which shall summarize the daily quality control of construction activities as required by 12 above, and should include as-built drawings.

21. A New Jersey licensed professional civil or geotechnical engineer shall certify that the materials utilized in the containment system and leachate collection system are in conformance with and meet the specifications of the approved engineering design.

22. There shall be no deviation made from the approved engineering design specification without the prior written approval of the design engineer and, at a minimum, prior verbal approval by the Department.

23. All certifications shall bear the raised seal of the New Jersey licensed professional engineer, his signature, and the date of certification.

24. The certification required in 20 and 21 above shall include the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(b) The sanitary landfill shall be designed and constructed on an appropriate foundation meeting the following minimum requirements:

1. The foundation of the proposed sanitary landfill area shall provide firm, relatively unyielding, planar surfaces to support the liner.

2. The foundation shall be capable of providing support to the liner and resistance to the pressure gradient above and below the liner resulting from settlement, compression or uplift.

3. A foundation analysis shall be performed prior to construction, to determine the structural integrity of the foundation to support the loads and stresses imposed by the height and weight of the sanitary landfill and the design loading rate of the facility. These loads and loading rates shall not result or give cause to failure of the containment or leachate collection systems. The foundation analysis shall include the following:

i. The strength of the foundation shall be determined for all appropriate conditions, utilizing appropriate American Society of Testing and Materials (hereinafter ASTM), American Association of State Highway and Transportation Officials (hereinafter AASHTO) or equivalent methods, for both field testing and laboratory testing. The stability of the foundation shall be determined for long-term, short-term or end-of-construction conditions, as appropriate, within the minimum factors of safety set forth in Table II below:

TABLE II

Degree of Uncertainty of Strength Measurement  
Factor of Safety

	Low	High
Static conditions	1.5	2.0
Seismic conditions	1.3	1.7

ii. The total settlement or swell of the foundation resulting from the initial, consolidation and compression settlement shall be determined utilizing appropriate ASTM, AASHTO or equivalent methods. The total settle-

ment or percent consolidation shall not result or give cause to failure of the containment or leachate collection systems;

iii. The ultimate bearing capacity of the foundation shall be determined and the actual loads and stresses imposed by the surface impoundment dikes, storage tanks, manholes, clean-out risers, and sumps shall not result or give cause to failure with a factor of safety of 3 or greater;

iv. The compaction curves or relative density of the foundation shall be determined by the appropriate method in accordance with ASTM, AASHTO, or equivalent methods; and

v. Sampling shall be performed in accordance with the following schedule:

(1) In uniform geological formations, the sampling shall, at a minimum, be performed to give three replicate results per site. Sampling locations shall be in the areas of expected maximum loads and at the toe of the proposed slope. The sampling locations should be delineated in the scope of work submitted in accordance with N.J.A.C. 7:26-2.2(g)1 and 2; and

(2) In non-uniform complex geological formations the number and depth of samples shall be determined on a case-by-case basis. The sampling locations should be delineated in the scope of work submitted in accordance with N.J.A.C. 7:26-2.2(g)1 and 2.

4. The foundation shall be prepared in the following manner prior to placement of the liner:

i. All trees, brush, stumps, logs, tree roots, boulders, and debris shall be removed;

ii. All surface dissimilarities (for example, fractured rock, cobble, angular gravel, organic soils, top soils, etc.) that would result in a potential degradation or failure of the liner systems shall either be stabilized, removed, or covered with a minimum of six inches of sand classified as a SP in the Unified Soils Classification System or equivalent;

iii. If a soil sterilant is to be utilized to inhibit any potential vegetative growth, it shall be an approved United States Environmental Protection Agency product and shall be applied in accordance with label specifications and the requirements of the New Jersey Pesticide Control Code, N.J.A.C. 7:30;

iv. The subgrade shall be compacted by modification of the compactive effort utilizing stage compaction to the design density, at the proper moisture content if applicable, based on laboratory analysis to achieve the required strength;

v. All depressions within the subgrade shall be filled with a suitable soil approved by the quality control inspector, and shall be compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

vi. Any soil fill utilized shall be spread in horizontal layers not exceeding the effective depth of the compaction equipment utilized, and shall be compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

vii. Placement of soil fill into frozen ground or placement of soil fill which is in a frozen state is prohibited;

viii. The subgrade shall be proof-rolled with a rubber-tired roller. Any weaving of the subgrade shall be an indication of failure which shall be over-excavated and filled with a suitable soils approved by the quality control inspector, compacted to the design density, at the proper moisture content if applicable, to achieve the required strength;

ix. Construction of the liner on a saturated subgrade is prohibited. After a rainfall event, the subgrade shall be given sufficient time to dry or drain to the design moisture content;

x. Prior to the construction of the liner system, the subgrade shall be tested for density and moisture content, where applicable, at 50 foot intervals on a grid pattern across the subgrade;

xi. In any area where the foundation is excavated, the side slope to the excavation prior to placement or construction of the liner shall not exceed a vertical rise of one foot for each horizontal distance of three feet; and

xii. Depth to groundwater from the top elevation of the foundation or bottom elevation of the liner shall be as follows:

(1) For sanitary landfills located in a stable low permeable formation having a hydraulic conductivity of less than  $1 \times 10^{-6}$  cm/sec., the depth, within the potentiometric surface, may be determined on a case-by-case basis as approved by the Department. This determination shall be based on the flow characteristics and attenuation capabilities of the geologic formation. There shall be, at a minimum, five feet of soil with a hydraulic of  $1 \times 10^{-6}$  cm/sec. or less between the bottom of the liner system and the aquifer. The depth to or within a perched water table may be less than five feet if this level can be cut-off by passive means, such as a cut-off wall or trench; and

(2) For all other sanitary landfills, depth to the seasonally high groundwater from the top elevation of the foundation shall be, at a minimum, five feet.



(c) The following are the design standards and construction requirements for containment systems:

1. The sanitary landfill containment system shall be designed and constructed in such a manner as to provide a closed system for the leachate generated therein during the operational, closure and post closure periods. The design and construction shall include the use of a liner consisting of recompacted or in-situ clay, an admixture material, geomembrane or composite material, or a cut-off wall consisting of clay or an admixture material.

2. A liner shall be provided to restrict the migration of leachate and to prevent pollution of the underlying aquifers. The minimum requirements for liner construction shall include the following:

i. The liner shall be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeological forces), physical contact with the waste and leachate, climatic conditions, the stresses of installation, and the stresses of daily operations;

ii. The final grades of the liner shall result in a relatively smooth surface through either fine finishing of the subgrade with use of a scraper/roller or smooth drum rolling of the compacted liner;

iii. The minimum slopes of the liner shall be two percent on controlling slopes and 0.5 percent on remaining slopes;

iv. The final grades of the liner shall be true to line and deviation of the controlling slopes of the liner shall not result in excessive ponding on the liner or decreased efficiency of the leachate drainage system. It is recommended that the deviation be less than 0.2 feet measured across any 10 foot section and less than 10 percent on the overall slope based on design elevations;

v. Survey stakes shall be placed in such a manner as to insure that the final grades meet the design specifications within the allowed tolerance;

vi. For penetrations through the liner (i.e. collection pipe to pump station), indicating devices, such as survey laths or stakes, shall be utilized at the area of penetration. The landfill should be designed to minimize the construction of penetrations through the liner;

vii. A soil backfill meeting the leachate drainage system requirements set forth in N.J.A.C. 7:26-2A.7(d) shall be placed on top of the liner to provide protection for the liner and leachate collection piping system in accordance with the following:

(1) Backfill soils should be placed on top of the liner immediately following completion of construction and testing procedures set forth in x. below. If backfilling operations are to be delayed, procedures as delineated in the approved construction contingency plan required by N.J.A.C. 7:26-2A.5(a) shall be implemented to minimize degradation to the liner system;

(2) The depth of the soil backfill shall be of sufficient thickness to insure that no damaging load is transmitted to the leachate collection pipe;

(3) The depth of the soil backfill shall be of sufficient thickness to insure that no damaging load causes the leachate collection pipes to penetrate through the liner;

(4) When placed above a compacted liner the thickness of the soil backfill shall be, at a minimum, 12 inches;

(5) When placed above a geomembrane the thickness of the soil backfill shall be, at a minimum 18 inches;

(6) The soil backfill shall be stable, compatible with the liner system and relatively free of organic matter;

(7) Equipment utilized to place the soil backfill over the liner shall consist of tracked or bulbous tired vehicles or equivalent equipment with relatively low weight transfer ratios; and

(8) Use of the backfill placement equipment shall not result in any damage to the liner system or the final grades. In cases utilizing geomembranes, the use of backfill placement equipment directly on the liner is prohibited and shall be permitted only over a minimum of 18 inches of soil backfill.

viii. All inlet/outlet structures installed through the liner shall be compatible with the liner system and shall be installed in such a manner as to minimize leaking through the penetration in accordance with the following:

(1) The subgrade around the penetration shall be properly compacted to the design density and at the proper moisture content, where applicable, to achieve the required strength;

(2) For compacted liners, the liner material around the penetration shall be hand compacted to the design density, at the proper moisture content to achieve the required hydraulic conductivity and maintain the strength and stability of the liner; and

(3) For geomembranes, a pipe shroud shall be utilized around the penetration. The leg of the pipe shroud shall be of a size equal to the diameter of the pipe. A flange shall be fastened to the leg by factory seaming, and shall overlap the opening in the liner material on all sides by a minimum

distance equal to the diameter of the pipe. The pipe shroud leg shall be attached to the inlet-outlet structure by a three-quarter inch stainless steel band.

ix. The liner material shall have a demonstrated hydraulic conductivity or chemical and physical resistance not adversely affected by waste emplacement or leachate generated by the sanitary landfill. Absent historical test results acceptable to the Department, this shall be demonstrated by testing which shall include, but not be limited to, the following:

(1) For compacted liners, E.P.A. Test Method 9100 shall be performed utilizing a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is unavailable). Initially a baseline hydraulic conductivity of the material shall be established. It is recommended that a modified triaxial device equipped to apply back pressure throughout the entire test be used and that the hydraulic gradient be within the laminar flow range. If changes in the leachate conductivity occur, a minimum of two pore volumes of the leachate shall be exchanged and the changes in conductivity, versus the pore volumes passed, shall be analysed. Any significant increase in leachate conductivity shall be considered to be an indication of incompatibility and will require a redesign of the containment system; and

(2) For geomembranes, E.P.A. Test Method 9090 shall be performed utilizing a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is unavailable). The specified physical parameter shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility and will require a redesign of the containment system.

x. The following quality control testing shall be performed on the as-built compacted liner system on an ongoing basis during the construction phase:

(1) Each lift or course of the liner shall be tested for moisture content and density at 50 foot intervals on a grid pattern across the surface. Two tests shall be performed in the immediate area around all inlet/outlet structures;

(2) Measurements shall be made periodically throughout the day during construction of the liner to insure that the lift or course thickness is within the allowable limits and in accordance with the design;

(3) Hydraulic conductivity testing shall be performed on undisturbed core samples of the final graded liner. Initially, such samples shall be taken at 200 foot (61 meter) intervals on a grid pattern across the surface. As the construction progresses, the number of samples may be reduced, as approved by the Department, based on the precision and results of the initial sampling program, but at a minimum, one sample per every three acres shall be taken provided the material sources remain constant;

(4) Whenever a sample fails to meet the minimum hydraulic conductivity, the area of failure shall be localized, reconstructed and retested in accordance with the requirements set forth in this subsection;

(5) All core sample holes shall be backfilled and recompacted by hand tamping at the proper moisture content to achieve the minimum liner hydraulic conductivity;

(6) It is recommended that a modified triaxial device, equipped to apply backpressure throughout the entire test, be used to measure the hydraulic conductivity after primary consolidation ends. Backpressure should be sufficient to dissolve all air in the specimen and the confining or chamber pressure should not exceed anticipated landfill design pressure. Deaired tap water or 0.010 CaSO<sub>4</sub> should be used as the permeant and the hydraulic gradient should be within the laminar flow range. The material should be prepared in accordance with the procedures outlined by A.W. Bishop and D.J. Henkel in the most current edition of The Triaxial Test." 1964; or the most recent version of the engineering manual "Laboratory Soils Testing," EM 1110-2-1906, published by the U.S. Army Corps of Engineers; and

(7) Field infiltration tests, utilizing a double ring infiltrometer or permeameter, shall be performed on the final graded liner. Such tests shall be performed initially at a minimum of one per every 10 acres and each time the source material changes. It is recommended that a modified air-entry permeameter be used to measure the field hydraulic conductivity of the soils and that the test be run on pre-construction sections. As the construction progresses the number of samples may be reduced, as approved by the Department, based on the precision and accuracy of the results of the initial sampling program, but, at a minimum, one sample per section shall be taken provided the material source remains constant.

xi. The following quality control testing shall be performed on the as-built geomembrane liner system on an ongoing basis during the construction phase:

(1) All field seams shall be quality tested after they have been allowed to develop to full strength. Such testing shall be carried out through the use of an air lance with 50 pounds per square inch of air directed through

a 3/16-inch nozzle or equivalent device. The lance shall be held no more than six inches from the seam edge and shall be utilized to detect any imperfections, tunnels or fishmouths. Any such imperfections in a seam shall be repaired and quality tested until a proper seam is achieved;

(2) Seams shall be tested for peel and shear strength, a minimum of three times per day at the beginning, middle and end of each work day, on either specially prepared sample seams constructed under the same conditions as the actual seaming process used that day or on a sample cut from the in-place liner; and

(3) During the construction phase, the geomembrane shall be continuously inspected for uniformity, damage, and imperfections (for example, holes, cracks, thin spots, or foreign materials). Immediately after installation, the liner shall be inspected to ensure tight seams and joints. Additionally, the liner shall be inspected to ensure the absence of tears, punctures, or blisters. Any imperfections shall be immediately repaired and reinspected.

3. The minimum requirements and testing for clay material utilized as a sanitary landfill liner shall include the following:

i. The following tests shall be performed on the clay material proposed for use, and all data shall be submitted to the Department. These tests shall be performed in accordance with current ASTM, AASHTO or equivalent methods. The number of samples taken and tests performed shall be adequate to define the material. At a minimum three analysis shall be performed on three separate samples for each source of clay material:

- (1) Classification;
- (2) Compaction;
- (3) Specific gravity;
- (4) Hydraulic conductivity (coefficient of permeability);
- (5) Porosity;
- (6) pH;
- (7) Cation exchange capacity;
- (8) Pinhole test (required only for clay liner construction over a coarse grain subgrade); and
- (9) Mineralogy (recommended, not required).

ii. The following tests shall be performed on the in-situ clay material or the clay mined from the borrow site for construction of a recompacted liner. A minimum of one analysis shall be performed on each 16,000 in-place cubic yards of clay:

- (1) Grain size analysis;
- (2) Compaction; and
- (3) Hydraulic conductivity (Index properties and grain size analysis may be used to determine the hydraulic conductivity provided the clay has been calibrated to these tests).

iii. The clay liner shall have a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/sec. It is recommended that a modified triaxial device, equipped to apply back pressure throughout the entire test, be used to measure the hydraulic conductivity after primary consolidation ends. Deaired tap water or 0.01N CaSO<sub>4</sub> should be used as the permanent and the hydraulic gradient should be within the laminar flow range. A range of confining pressures, water content, densities and degree of saturation shall be analysed to determine the optimal design parameters of the clay. The material should be prepared in accordance with the procedures outlined by A.W. Bishop and D.J. Henkel in the most current edition of "The Triaxial Test," 1964, or the most recent version of the engineering manual "Laboratory Soils Testing", EM 1110-2-1906 published by the U.S. Army Corp of Engineers;

iv. The thickness of the clay liner for a Class I sanitary landfill require in N.J.A.C. 7:26-2A.6(d)1 and 2, may be modified to be less than three feet but not less than two feet so long as the performance required in N.J.A.C. 7:26-2A.6(c)1 and 2 is met. For other classes of sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of, and the geologic siting of the landfill, but in no case shall the thickness of the liner be less than one foot;

v. The clay liner shall be applied and compacted in separate lifts, not to exceed the effective depth of the equipment utilized. The first lift should be no greater than six compacted inches. Subsequent lifts should be less than 2/3 of the length of the tamping feet or its equivalent;

vi. Prior to compaction the clay shall be mixed by disc-harrowing or an equivalent method to a homogenous consistency and each lift of the liner shall be compacted, by modification of the compactive effort, to the design density, and at the proper moisture content, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the clay;

vii. The liner shall be constructed in such a manner as to ensure that bonding between lifts is promoted;

viii. Placement of the clay liner on frozen ground or placement of clay material in a frozen state shall be prohibited;

ix. In-situ clay utilized in the design and construction of a liner system, unless exempted by x. below, shall be excavated, mixed by disc-harrowing or an equivalent method to a homogeneous consistency, and recompacted to the density at the proper moisture content, based on laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner; and

x. In-situ clay liner designs shall be left in the undisturbed state only if it can be fully demonstrated through the use of excavations, test pits, borings, undisturbed permeability testing, and field infiltration/permeability testing that the undisturbed clay will possess a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec and will meet all the requirements and standards of this subchapter.

4. The minimum construction and testing requirements for geomembranes utilized as a sanitary landfill liner shall include the following:

i. The material properties of the geomembrane proposed for use shall meet the minimum requirements as outlined in the most recent version of the National Sanitation Foundation's publication, "Standard Number 54 Flexible Membrane Liners";

ii. The geomembrane shall be compounded from first quality virgin materials. No regrinded or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the geomembrane;

iii. The minimum thickness for geomembranes shall be 30 mils;

iv. Single geomembrane liner systems are prohibited. Liner systems utilizing geomembranes shall be either a composite or double liner system constructed in accordance with the following:

(1) A composite liner system may be used only if the clay or admixture material is demonstrated to achieve sufficient strength and stability to insure the integrity of the geomembrane;

(2) If excessive settlement of the foundation is evident, as determined in accordance with N.J.A.C. 7:26-2A.8(b)4, the compressive and tensile strength of the clay or admixture material in the composite system shall be determined. An analysis of the clay or admixture liner strength, in conjunction with the subgrade settlement analysis, shall demonstrate that the design will not result or give cause to failure of the geomembrane. The analysis shall include a factor of safety equal to or greater than 1.5;

(3) The clay or admixture liner within the composite liner system shall be constructed in accordance with the requirements and standards of this subsection;

(4) In single composite systems an underdrain system shall be constructed at the low point within the secondary (bottom) clay or admixture liner of the composite system. The underdrain shall be constructed in accordance with the requirements set forth in N.J.A.C. 7:26-2A.7(d)3;

(5) In double geomembrane systems or double composite systems a leachate collection system to detect and collect leachate, shall be designed and constructed between the primary (top) and secondary (bottom) liner in accordance with N.J.A.C. 7:26-2A.5(d);

(6) The primary (top) geomembrane liner shall be scrim reinforced or possess an equivalent demonstrated strength. The scrim reinforcement shall be polypropylene, fiberglass or equivalent to prevent wicking. Nylon, dacron or equivalent scrims are prohibited. The scrim density should be no greater than six by six.

v. The liner shall be installed by a company having a documented minimum qualification of two million square feet of previous landfill or comparative geomembrane systems installation experience. This experience shall be available, at a minimum, at the field crew foreman level;

vi. The liner shall be installed in a smooth but relaxed manner. The practice of inserting folds into the liner to compensate for future settlement is not an acceptable practice to prevent failure;

vii. All field seams within the area of an excavated slope shall be made perpendicular to the toe of slope;

viii. Parallel field seams made at the bottom of an excavated slope shall be made no closer than 24 inches in from the toe of slope;

ix. The adhesive system of the field seaming to be employed shall be defined;

x. The peel and shear strength data of the field seams shall be submitted; and

xi. The following field seaming requirement shall be employed, unless manufacturer's recommended procedures demonstrate equivalent or better systems:

(1) Field seams made by employing solvent or bodied solvent adhesive shall have a minimum of six inches of overlap and a seam width of four inches from the edge of the top geomembrane; and

(2) field seams made by employing heat extrusion or welding shall have a minimum of three inches of overlap and a seam width of one inch from the edge of the top geomembrane;

xii. All field seams, after quality control testing and repairs, shall incorporate a cap-strip of unreinforced material a minimum of four inches in width centered over the seam. The cap-strip shall be field seamed in accordance with ix above, and quality control tested as required by N.J.A.C. 7:26-2A.7(c)2xi;

xiii. Field seaming procedures are prohibited when the ambient air temperature is less than 40°F (4.5°C), during storm events, or when winds are in the excess of 20 miles per hour (32 km/hr); and

xiv. The geomembrane shall be anchored a minimum of 24 inches horizontally back from the edge of the top of the slope. The liner shall be anchored by cutting a trench 12 to 16 inches in depth, laying the liner across three sides of the trench, backfilling the trench, and compacting the backfill material.

5. The minimum requirements and testing for hydraulic asphalt concrete utilized as a sanitary landfill liner material shall include the following:

i. The following tests shall be performed on the hydraulic asphalt cement proposed for use, and all data shall be submitted to the Department. All test shall be performed in accordance with ASTM, AASHTO or equivalent methods.

- (1) Grain size analysis of the mineral aggregate;
- (2) Density of the mineral aggregate and the asphalt mix;
- (3) Percent void in the compacted mix;
- (4) Swell test;
- (5) Penetration test;
- (6) Stability-triaxial compression test; and
- (7) Hydraulic conductivity of the mix.

ii. The hydraulic asphalt concrete liner for Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26-2A.6(c)1 and 2. In no case shall the hydraulic asphalt concrete liner for Class I sanitary landfills be less than six inches thick. For other classes of sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than four inches;

iii. To insure that complete mixing of the hydraulic asphalt concrete is accomplished, a central mixing plant shall be used. The plant shall include a means for accurately proportioning the material, as determined by laboratory analysis, either by weighing or by volumetric measurement, to ensure that the mixture shall meet the designed hydraulic conductivity;

iv. The plant shall be capable of producing a uniform mixture within permissible variation from the mix formula and should include a continuous mixer of a twin pug mill type;

v. Tanks for storage of the asphalt within the central mixing plant shall be equipped to heat the entire contents uniformly to the temperature required for the mixture;

vi. The following quality control testing shall be performed at the central mixing plant to ensure uniformity of the mix. The testing shall be performed at a minimum of once per every 300 cubic yards, except for temperature which shall be monitored continuously:

- (1) Temperature of the mix;
- (2) Grain size analysis; and
- (3) Percent asphalt.

vii. The design mix of the hydraulic asphalt concrete shall result in a final product of dense-graded asphalt concrete with a maximum penetration grade of 60-70;

viii. The asphalt content of the mix shall be of sufficient quantity to insure that the mixture meets the required design hydraulic conductivity based on laboratory analysis. It is recommended that at a minimum, the asphalt content be 9.5 percent by volume;

ix. Placement of the asphalt concrete liner is prohibited when the ambient air temperature is below 40°F (4.5°C) or during storm events;

x. The mix shall have a high degree of workability while hot, be stable enough to support its own weight on side slopes, and shall have a smooth finished surface;

xi. The liner shall be applied in courses with a maximum depth of two inches per course.

xii. The liner shall be applied utilizing a staggered joint construction technique and placement of the course shall, to all practical extent, be a continuous operation;

xiii. The hydraulic asphalt should be compacted to at least 98 percent of laboratory density and should have a maximum void ratio not to exceed two percent. The compacted percentage shall be measured by utilizing the Marshall Test Method;

xiv. When applying the finished product on side slopes, the material shall initially be deposited at the toe of the slope, and then pushed up the grade of the slope;

xv. After the hydraulic asphalt concrete has been compacted and allowed to cure for sufficient time to obtain its maximum strength, a sealant coating shall be applied to the surface;

xvi. The sealant coating applied to the compacted and cured hydraulic asphalt concrete, shall consist of an MC-20, or an equivalent, and shall be applied at a rate equal to or greater than 0.6 gallons per square yard; and

xvii. The sealant coating shall be applied in two courses of at least 0.3 gallons per square yard and shall be applied with a minimum of two feet of overlap.

6. The minimum requirements and testing for soil cement utilized as a sanitary landfill liner material include the following:

i. The following tests, performed in accordance with appropriate ASTM, AASHTO or equivalent methods shall be performed on the soil cement mixture proposed for use, and all data shall be submitted to the Department.

- (1) Grain size analysis of aggregate;
- (2) Soil cement content;
- (3) Wetting and drying;
- (4) Freezing and thawing;
- (5) Compressive strength;
- (6) Compaction; and
- (7) Hydraulic conductivity.

ii. The soil cement liner for Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26-2A.6(c)1 and 2. In no case shall the soil cement liner for Class I sanitary landfills be less than two feet thick. For other classes of sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than one foot;

iii. To ensure that complete mixing is accomplished, a central mixing plant shall be used. The plant shall include the means for accurately proportioning the material as determined by laboratory analysis, either by weighing or by volumetric measurement, in order that the mixture shall meet the designed hydraulic conductivity requirement;

iv. The plant shall be capable of producing a uniform mixture, within permissible variation, from the mix formula and shall include a continuous mixer of a twin pug mill type;

v. The following quality control testing shall be performed at the control mixing plant at a minimum of once per every 300 cubic yards of mixture to ensure uniformity of the mix:

- (1) Grain size analysis of the aggregate; and
- (2) Percent cement.

vi. Placement of soil cement liner is prohibited when the ambient air temperature is below 40°F (4.5°C) or during storm events;

vii. The transportation time from the central mixing plant to the construction site shall not exceed 30 minutes;

viii. No more than 60 minutes shall elapse between the start of mixing and the start of compaction. The compaction process shall be started within 30 minutes after the material is applied. The compaction process shall be completed within 1 1/2 hours after the mixing process is completed;

ix. It is recommended that the mixture be applied by a mechanical spreader in nine-inch loose lifts, and then compacted to six-inch layers. The soil cement should be compacted initially with a sheep foot roller, and then followed by a smooth wheeled vibrating roller;

x. The soil cement should be compacted to the design density, at the proper moisture content, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner;

xi. No later than 24 hours after compaction is completed, a bituminous or asphaltic emulsion seal (MC-20 or equivalent) shall be applied to the completed surface; and

xii. The addition of additives to the mix are prohibited except with the approval of the Department.

7. Minimum requirements and testing for bentonite utilized as a sanitary landfill liner material include the following:

i. The following tests, shall be performed on the bentonite proposed for use, and all data shall be submitted to the Department. All tests shall be performed in accordance with appropriate ASTM, AASHTO or equivalent methods:

- (1) Swelling index;
- (2) Layer permeability;
- (3) Colloidal yield; and
- (4) Cation exchange capacity.

ii. The following tests shall be performed on the bentonite/soil mixture proposed for use, mixed under field conditions with site water proposed for use, in accordance with ASTM, AASHTO or equivalent methods;



- (1) Grain size analysis of aggregate;
- (2) Bentonite content;
- (3) Compaction; and
- (4) Hydraulic conductivity.

iii. The bentonite liner or Class I sanitary landfills shall be designed and constructed to meet the performance requirements of N.J.A.C. 7:26-2A.6(c)1 and 2. In no case shall the bentonite liner for Class I sanitary landfills be less than two feet thick. For other classes of sanitary landfills, the thickness of the liner may be reduced, as approved by the Department, depending on the waste material to be disposed of and the geologic siting of the sanitary landfill, but in no case shall the liner thickness be less than one foot;

iv. To ensure that complete mixing is accomplished, a central mixing plant shall be used. The plant shall include the means for accurately proportioning the material, as determined by laboratory analysis, either by weighing or by volumetric measurement, in order that the mixture shall meet the required design hydraulic conductivity;

v. The plant shall be capable of producing a uniform mixture within permissible variation from the mix formula and should include a continuous mixer of a twin pug mill type;

vi. The following quality control testing shall be performed at the central mixing plant at a minimum of one test per every 300 cubic yards of mixture to ensure uniformity of the mix:

- (1) Grain size analysis of the soil; and
- (2) Percent bentonite.

vii. Placement of the bentonite liner in a frozen state or on frozen ground is prohibited;

viii. The bentonite/soil mixture should be applied by a mechanical spreader in a maximum of nine-inch loose lifts and compacted with a smooth drum vibratory compactor or rubber-tired compactor;

ix. The bentonite/soil mixture should be compacted to the design density at the proper moisture content range, based on the laboratory analysis, to achieve the required hydraulic conductivity and maintain the strength and stability of the liner.

8. A cut-off wall shall be constructed in those areas, where needed, to restrict the lateral migration of leachate, provide for a complete containment system, and prevent pollution of the underlying aquifer. The minimum requirements for cut-off wall construction include the following:

i. Borings shall be taken at 200 foot intervals along the proposed route of the cut-off wall. These borings shall extend to a depth at least three feet into the confining layer. In clay cut-off wall constructions, the boring interval may be increased, but shall be no greater than 500 feet, provided the excavation is continuously logged and inspected for conformance with the boring data by a qualified geologist or geotechnical engineer;

ii. Hydraulic conductivity tests of the confining layer shall be performed on undisturbed core samples at every other boring location;

iii. The cut-off wall shall extend a minimum of three feet into the confining layer. A lesser distance may be acceptable, if approved by the Department, provided the wall extends to competent rock;

iv. The cut-off wall shall be stable under all conditions, including long term and end of construction conditions, and shall not be susceptible to displacement or erosion under stress or hydraulic gradient;

v. Prior to construction the cut-off wall material shall be tested in accordance with (c)2ix above, to ensure that the material has a conductivity or chemical and physical resistance which will not be adversely affected by waste emplacement or the leachate generated by the sanitary landfill.

9. In addition to the requirements of (c)8 above, the minimum requirements and testing for clay utilized for cut-off wall construction include the following:

i. The tests performed, as specified in (c)3i and ii above, shall be performed on the clay material proposed for use in the cut-off wall.

ii. The cut face of the excavation shall be stable for all conditions that will be encountered during the excavation, including appropriate factors of safety for the material encountered;

iii. The clay cut-off wall shall be constructed to a minimum thickness of three feet;

iv. The clay cut-off wall shall have a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm./sec.;

v. The clay cut-off wall shall be constructed in separate lifts not exceeding the effective depth of the equipment utilized and in a manner which will ensure that bonding between lifts is promoted;

vi. Each lift of the clay cut-off wall shall be compacted to the design density, at the proper moisture content, to achieve the required hydraulic conductivity and maintain the strength and stability of the cut-off wall;

vii. Each lift shall be tested for moisture content and density at 50-foot intervals along the length of the construction; and

viii. Hydraulic conductivity testing shall be performed on undisturbed core samples of the constructed, compacted clay cut-off wall at 200-foot intervals along the route of the wall in order to verify in-field permeability of the constructed wall. Whenever a sample fails to meet the minimum permeability standard of  $1 \times 10^{-7}$  cm./sec. or less, the section of the wall which fails to meet the standard shall be localized and reconstructed in accordance with the procedures outlined in v and vi above. All core sample holes shall be backfilled and recompacted by hand tamping at the proper moisture content, to achieve the minimum requirement hydraulic conductivity. It is recommended that the modified triaxial device procedures, as set forth in (c)2x(3) above, be utilized to measure the hydraulic conductivity;

10. In addition to the requirements of 8 above, the minimum requirements and testing for soil and bentonite or cement utilized for slurry cut-off wall construction include the following:

i. The tests specified in (c)7i above, shall be performed on the bentonite proposed for use;

ii. The following tests shall be performed on the bentonite slurry proposed for use, mixed under field conditions with site water proposed for use in construction of the slurry wall, and all data shall be submitted to the Department:

- (1) Bentonite content and cement content, where applicable;
- (2) Marsh Cone viscosity;
- (3) Marsh Cone gelation;
- (4) Gel strength, initial and 10 minute strength;
- (5) pH;
- (6) Filtration loss;
- (7) Filter cake—thickness and strength; and
- (8) Sand content.

iii. The following tests shall be performed on the backfill proposed for use, mixed under field conditions, and all data shall be submitted to the Department:

- (1) Grain size analysis;
- (2) Slump;
- (3) Blowout tests, if the design or existing gradient is greater than 30; and
- (4) Cement content, where applicable.

iv. The water utilized in the slurry mix and the backfill shall be analyzed for the following parameters:

- (1) pH;
- (2) Chloride;
- (3) Total dissolved solids;
- (4) Hardness; and
- (5) Total volatile organics.

v. The water utilized in the slurry mix and the backfill shall be free of oil and organic matter, be relatively free of impurities and be in the neutral pH range;

vi. When the depth to the confining layer is less than 100 feet, the thickness of the wall shall be 0.6 feet per 10 feet of hydrostatic head on the wall and shall, at a minimum, be three feet;

vii. When the depth to the confining layer is greater than 100 feet, slurry wall thickness shall be determined on a case by case basis. This determination shall be based on a comprehensive engineering analysis of the ability of a given wall thickness to resist failure;

viii. There shall be a sufficient percent of fines in the backfill material to achieve a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm./sec.;

ix. The backfill material shall be completely mixed in such a manner as to insure a consistent quality of the material;

x. A slump test and gradation analysis shall be performed at a minimum of one sample for every 300 cubic yards of backfill mixture;

xi. A viscosity and density analysis of the slurry shall be performed at a minimum of twice daily;

xii. The backfill mixture shall not be put in place until the trench has been inspected, measured, approved, and certified by a New Jersey licensed professional engineer, or his agent who shall be a qualified geologist or geotechnical inspector, to ensure that the trench has penetrated a sufficient depth into the aquiclude;

xiii. A minimum of three feet of slurry head shall be maintained in the excavation above the maximum anticipated groundwater level and the slurry head should not fall below one foot of the ground surface elevation;

xiv. The backfilling of the slurry cut-off wall shall be performed by one of the two following methods. In either case, free dropping of the backfill into the trench through the slurry is prohibited;

- (1) Backfill shall be placed by use of a tremie process; or
- (2) Backfill shall be placed into a pre-cut trench in which a minimum backfill slope of six horizontal to one vertical (6:1) has been established.

xv. The backfill process shall continue until sufficient material has been placed in the slurry trench to permit the backfill material to become exposed at the top of the trench;

xvi. A three-foot thick layer of clay core soil backfill shall be placed on top of the complete portion of the cut-off wall after it has reached its intended level and before it is allowed to dry out;

xvii. Upon the completion and stabilization of the backfilling process of the cut-off wall, hydraulic conductivity testing of undisturbed core samples of the backfilled trench shall be performed at 200 foot intervals to verify the hydraulic conductivity of the wall. Whenever a sample fails to meet the minimum hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec. or less, the section of the wall which fails to meet the standard shall be localized and reconstructed in accordance with the procedures set forth in xii through xv above. All core sampling holes shall be refilled and recompacted to meet the minimum hydraulic conductivity; and

xviii. In the event that a failure of the slurry trench or construction platform should occur, the trench and backfill material shall be excavated and reconstructed, at a minimum, for a length of 100 feet from the outside point of failure in each direction. The hydraulic conductivity of the reconstructed portion of the wall shall be verified through hydraulic conductivity testing of undisturbed core samples in accordance with xvii above.

(d) The following are the design standards and construction requirements for leachate collection systems:

1. The leachate collection system shall consist of a leachate drainage system and a leachate removal system;

2. A leachate drainage system shall be designed and constructed to provide for effective drainage of the leachate generated within the proposed sanitary landfill in accordance with the following:

i. The slope, hydraulic conductivity and porosity of the drainage layer and the spacing of the collection pipes of the leachate drainage system shall be designed in such a manner as to ensure that the performance requirements of N.J.A.C. 7:26-2A.6(d)1 and 2 are met during the operational life of the facility;

ii. The following tests shall be performed on the soil proposed for use in the drainage layer and all data shall be submitted to the Department. These tests shall be performed in accordance with current ASTM, AASHTO or equivalent methods. The number of samples taken and tests performed shall be adequate to define the material. At a minimum, three analyses shall be performed on three separate samples for each source of drainage material.

(1) Classification;

(2) Porosity;

(3) Relative density or compaction;

(4) Specific Gravity; and

(5) Hydraulic conductivity.

iii. The leachate drainage system shall be designed utilizing two different modeling techniques approved by the Department, and the more conservative of the results from two methods shall be employed for the design of the leachate collection system. The methods used should be those specified in the US E.P.A. Technical Resource Document SW-869 "Landfill and Surface Impoundment Performance Evaluation Manual," revised edition, and the "Analysis of Design Parameters Affecting the Collection Efficiency of Clay Lined Landfills," by Kmit, Quinn, and Slavik, published in the proceedings of the Fourth Annual Madison Conference of Applied Research and Practice on Municipal and Industrial Waste, September 28-30, 1981, or equivalent methods approved by the Department;

iv. Data from the nearest meteorological station to the site with a minimum data base of five years, shall be utilized to design the leachate drainage system. The moisture input variable of the design model required by iii above shall be based on 100 percent of the infiltration rate to the area at an effective frequency to represent the average time between precipitation events greater than 0.1 inches resulting from precipitation;

v. The drainage layer shall, to the maximum extent possible, consist of a uniform soil having a coefficient of uniformity equal to or less than 2.5 and shall have a hydraulic conductivity equal to or greater than  $1 \times 10^{-3}$  cm/sec after compaction. It is recommended that a granular filter or geotextile be designed and constructed above the drainage layer to minimize the intrusion of fines into the drainage layer;

vi. The drainage layer shall be designed and constructed in such a manner as to maintain laminar flow throughout the system to prevent scouring of the liner;

vii. The following quality control tests shall be performed on the soil utilized within the drainage layer of the leachate collection system:

(1) Hydraulic conductivity;

(2) Relative density or compaction;

(3) Grain size analysis; and

(4) Drainage layer thickness.

viii. The tests required in vii above shall be performed in accordance with ASTM, AASHTO or equivalent methods and in accordance with the following schedule:

(1) Hydraulic conductivity and grain size analysis shall be performed once per every 3,000 cubic yards of in-place fill material. The hydraulic conductivity may be determined from the grain size analysis, provided the hydraulic conductivity is calibrated to the particular grain size distribution of the soil used;

(2) Relative density or compaction tests shall be performed on the complete drainage layer at 50 foot intervals on a grid pattern across the surface; and

(3) Drainage layer thickness shall be measured periodically throughout the day during construction to ensure that the thickness is within allowable limits and in accordance with the design.

ix. The drainage layer shall have the appropriate minimum thickness specified in (c)2vii above. Furthermore, based on the design permitted by i above, the drainage layer shall be constructed with a minimum depth equal to, or greater than, the maximum anticipated leachate head generated within the landfill during the operational life of the landfill.

3. A leachate removal system shall be designed and constructed to provide for removal of the leachate within the drainage system to a central collection point for treatment and disposal in accordance with the following:

i. The following tests shall be performed in accordance with ASTM methods, or an equivalent determination shall be performed on the material proposed to be utilized in the leachate collection piping system:

(1) For rigid pipes, a three-edge bearing test shall be performed under 0.1 inch crack loading and ultimate loading conditions;

(2) For flexible pipe, a parallel plate deflection test shall be performed under five percent deflection and buckling capacity loading conditions;

ii. The piping material utilized within the leachate removal system shall possess an adequate structural strength to support the maximum anticipated static and dynamic loads and stresses that will be imposed on the pipe by the drainage layer, gravel pack, overlying wastes, and any equipment used at the sanitary landfill. The supporting strength of the pipe shall be equal to, or greater than, the loads and stresses imposed on the pipe with, at a minimum, a factor of safety of 1.5;

iii. The material utilized for the piping system shall have demonstrated chemical resistance to the wastes to be disposed of in the landfill and the leachate expected to be produced within the proposed sanitary landfill. The requirement for demonstrated chemical resistance shall be satisfied either by the use of ASTM approved chemically resistant piping material or by testing the piping material in accordance with the requirements of (c)2ix(1) above;

iv. The piping system shall have a slope that will provide a self-cleaning velocity within the pipe based on actual maximum flows from the area of drainage. The minimum flow velocity should not be below two feet per second as designed based on full flow or half flow capacity;

v. Laterals within the piping network shall have, at a minimum, an inside diameter of four inches and shall be capable of handling peak flows;

vi. Mains within the piping network shall have, at a minimum, an inside diameter of eight inches and shall be capable of handling peak flows;

vii. The piping system shall employ flexible joints to allow for at least 0.5 degree movement between the pipe sections;

viii. The final grades of the piping system should be true to line and the departure from grade and alignment of the piping system shall not result in excess ponding on the liner or reduced efficiency of the leachate collection system. The maximum allowable departure from grade should not exceed 10 percent of the inside diameter of the collection pipe;

ix. The collection pipes shall be designed to function without clogging throughout the operational phase of the proposed sanitary landfill. The collection pipes shall be constructed within a coarse gravel envelope inside a geotextile fabric. The material utilized in the coarse gravel envelope shall meet the specifications, or equivalent, of the cumulative grain size distribution curves calculated in accordance with (1) through (5) below, where "D" equals the effective size or diameter of the soil articles:

(1) The envelope aggregate shall be compatible with the material with which it is placed in contact;

$$(2) \frac{D_{15} \text{ (envelope)}}{5} < D_{85} \text{ (backfill);}$$

$$(3) \frac{D_{15} \text{ (envelope)}}{5} \leq D_{15} \text{ (backfill);}$$

$$(4) \frac{D_{85} \text{ (envelope)}}{\text{Slot width}} \geq 1.2;$$

## (5) for circular holes:

$$\frac{D_{85} \text{ (envelope)}}{\text{hole diameter}} \geq 1.0; \text{ and}$$

(6) The envelope thickness should be a minimum of 10 cm. around the pipe and should be related to the  $D_{50}$  of the envelope/drainage layer ratio in accordance with Table III below:

TABLE III

Envelope/drainage layer $D_{50}$ ratio	Envelope thickness (cm)
$\leq 24$	10
24-28	15
28-40	23
40-50	30

x. When the requirements of 9 above cannot be satisfied by a one-layer envelope, a zoned envelope shall be constructed that satisfies the specifications in ix. above;

xi. The collection pipe shall be installed within a depression constructed within the liner or liner and subgrade, and shall meet the following minimum specifications:

(1) A minimum of three inches of bedding material shall be placed at the bottom of the trench; and

(2) The depth of the depression should, at a minimum, be equal to the outside diameter of the pipe plus the bedding material.

xii. The collection piping system shall, at a minimum, extend completely around the perimeter of the proposed sanitary landfill. An interior grid herring bone or offset herring bone system shall be employed, when needed, to ensure that the maximum leachate head exerted on the liner does not exceed the design head and that it controls the leachate head at the perimeter of the proposed sanitary landfill;

xiii. Except in an underdrain system of a single composite liner system, as described at (c)4iv(4) above, the drainage distance between the collection pipes shall not exceed 300 feet;

xiv. Construction and earth-moving equipment shall be prohibited from operating over the piping system, and sanitary landfill equipment shall be prohibited from operating over the piping system until a minimum of five feet of refuse has been mounded over and around the pipe;

xv. Manholes or cleanout risers shall be located along the perimeter of the leachate removal system. The number and spacing of the manholes or cleanout risers shall be sufficient to insure proper maintenance of the leachate removal system by water jet flushing or an equivalent method;

xvi. A rubber gasket or an equivalent seal to ensure a tight joint shall be installed between the sump or manhole inlet and the collection pipe. A flexible pipe joint shall be connected to the manhole and a second flexible pipe joint shall be installed within the piping system within three feet of the first flexible pipe joint;

xvii. Material used for the construction of the manhole or cleanout riser shall have a demonstrated chemical resistance to the leachate expected to be produced within the sanitary landfill;

xviii. The leachate collection system shall be designed to drain by gravity to a sump system. In double lined systems, the leachate collection piping systems shall be designed to drain to separate independent sumps;

xix. The sumps, pumps, and pumping station capacity shall be designed based on an evaluation of percolation, resulting from precipitation and infiltration into the system through the side or bottom of the liner or cut-off wall;

xx. The sump shall be a prefabricated structure coated inside and outside with a minimum of two coats of waterproofing sealant. The joints between the sump section shall be sealed with a rubber gasket or equivalent seal and grouted to ensure a watertight seal;

xxi. All sumps shall be tested for watertightness prior to the startup of landfilling operations in accordance with the following:

(1) The sumps shall be filled with water and covered;

(2) The depth of water elevation shall be measured daily for a period of five days;

(3) Any significant decrease in the depth of water within the sump shall be an indication of failure. The sump which fails the test shall be recoated with waterproofing sealant and the joints regouted. The sump shall be retested for watertightness in accordance with this subparagraph. If failure of the retest should occur the sump shall be reconstructed;

xxii. Should the sumps be located outside of the lined area, an unsaturated zone monitoring lysimeter shall be installed beneath the sump;

xxiii. The pump station shall be housed in a suitable structure capable of the pumps, motors and electrical equipment in accordance with, but not be limited to, the following:

(1) Explosion-proof equipment for the pump motors and electrical equipment shall be utilized and shall be constructed in accordance with the most current version of the National Electrical Code, "Special Occupancy, Hazardous Location", Volume 6 of the National Fire Code published by the National Fire Prevention Association;

(2) Adequate lighting and ventilation shall be provided. The ventilation system of the pump station shall be constructed in accordance with the most current version of the National Fire Code, "Explosion Venting" Volume 14, published by the National Fire Prevention Association;

(3) Two separate and independent sources of electric power shall be provided from either two separate utility substations or from a single substation and a work-based generator;

(4) Automatic sound alarms, operating independently of the pump station power, shall be installed to give warning of high water, power failure, or breakdown. The alarm system shall be wired to the location where assistance will be available to respond to the emergency;

(5) The total number of operating pumps as determined in accordance with (6) below, shall be designed to handle the maximum expected leachate production for the area of drainage based on the average peak monthly flow;

(6) A minimum of two pumps shall be provided in the leachate pump station. The number of pumps should be designed based on the requirements of Table IV below:

TABLE IV

Total Flow to Pump Station	Number of Pumps in the Pump Station
500 gpm	2 pumps (1 standby);
500-1500 gpm	3 pumps (2 operating, 1 standby); and
1500-3000 gpm	4 pumps (3 operating, 1 standby);

(7) If more than two pumps are provided, their capacity shall be such that upon failure of the largest pump the remaining pumps shall be capable of handling the maximum expected leachate production for the area of drainage based on the average peak monthly flow.

(e) A leachate treatment and disposal system shall be designed and constructed in accordance with the following:

1. All leachate treatment and disposal systems shall be required to obtain a NJPDES permit in accordance with the NJPDES regulations, N.J.A.C. 7:14A;

2. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

i. Complete treatment on-site with direct discharge to surface or groundwater;

ii. Pretreatment on-site with discharge to an off-site treatment works for final treatment; or

iii. Storage on-site with discharge to an off-site treatment works for complete treatment.

3. Leachate recirculation within the sanitary landfill shall not be permitted as a disposal option;

4. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with 13 below;

5. Storage of leachate for a period exceeding one month shall be prohibited except as set forth at 10iii below during start-up operations;

6. The following requirements shall be met prior to start-up of sanitary landfilling operations:

i. The leachate treatment and disposal system shall be on line and fully operational;

ii. An agreement with a treatment works facility to accept the leachate shall be in place if either option 2ii or iii above was elected for use with the sanitary landfill; and

iii. All necessary federal, State and local permits for the treatment and disposal system shall have been obtained.

7. All leachate treatment and disposal systems shall be designed and constructed to prevent anaerobic conditions from developing;

8. All leachate treatment and disposal systems shall be designed and constructed to control odors pursuant to N.J.A.C. 7:27;

9. For all leachate discharges planned for publicly owned treatment works (P.O.T.W.), the owner or operator shall determine the acceptability of such discharges on the operations of the P.O.T.W. in accordance with the guidelines entitled, "Requirements for Treatability Study of Landfill Leachate Discharged to P.O.T.W.," available at the Office of Industrial Waste Management, Division of Water Resources, CN 029, Trenton, NJ 08625;

10. In addition to complying with the requirements of the NJPDES regulations, N.J.A.C. 7:14A, the Rules and Regulations for the Preparation of Plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9-1, and the Pretreatment Standards for Sewerage, N.J.S.A. 58:11-49.1 et seq., on-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:



i. The on-site treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot scale plant or written information documenting the performance of an equivalent leachate treatment system;

ii. On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment facility to account for variability of the leachate quality and quantity; and

iii. The use of mobile or temporary treatment units may be permitted prior to the construction of a permanent facility satisfying the requirements of 6 above, provided that in all cases a permanent leachate treatment and disposal system shall be on-line within 12 months.

11. The residuals from any treatment facility shall be analyzed in accordance with the requirements of the Sludge Quality Assurance Regulation, N.J.A.C. 7:14-4, and disposal of in accordance with the following:

i. The analysis shall be submitted to the Bureau of Hazardous Waste Planning and Waste Classification of the Division for classification;

ii. Should the sludge be classified as a non-hazardous waste, the sludge shall be disposed of at a solid waste facility permitted to accept the waste type ID classification; and

iii. Should the sludge be classified as a hazardous waste, the material shall be disposed of in accordance with N.J.A.C. 7:26-7 through 12.

12. In addition to complying with the requirements of N.J.A.C. 7:14A-10.7, the Dam Safety Standards, N.J.A.C. 7:20, and the Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90, surface impoundments utilized as on-site treatment units shall be designed and constructed in accordance with the following:

i. Surface impoundments shall include a liner system that is designed to meet or exceed the performance standards set forth in N.J.A.C. 7:26-2A.6(d)1 and 2 under the maximum anticipated hydrostatic head and the liner shall be constructed in accordance with (b) and (c) above;

ii. Surface impoundments shall be designed and constructed to contain the expected flow with sufficient reserve capacity to contain accumulated precipitation from previous rainfall events and sediment and sludge accumulation;

iii. The stability of the surface impoundment dikes shall be determined, as appropriate, for long term, short term or rapid drawdown conditions by modeling techniques and the factor of safety shall be within the minimum values set forth in Table II in 3i above;

iv. The inner and outer slopes of all dikes of the surface impoundment shall not exceed a 3:1 slope;

v. The inflow to the surface impoundment shall be designed and constructed so that any flow of waste into the impoundment can be immediately shut-off; and

vi. Upon closure of the surface impoundment, unless the surface impoundment is within the containment and leachate collection systems of the landfill area, the surface impoundment shall be removed and disposed of in accordance with 10 above and NJPDES regulations, N.J.A.C. 7:14A.

13. The minimum standards for the design and construction of storage tanks include the following:

i. The tank shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate expected to be produced within the landfill and contained within the tank;

ii. The storage tank area shall have a liner system consisting of a minimum of 18 inches of clay or a single 30 mil geomembrane and a leachate collection system. The liner system and leachate collection system shall be capable of containing and collecting any spills or leaks, and shall be designed and constructed in accordance with (b), (c) and (d) above;

iii. The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or American Concrete Institute (ACI) standards or an equivalent standard depending on the material used, such as metal, fiberglass reinforced plastic, or concrete, and the minimum shell thickness shall be equivalent to a 3/16th of an inch metal tank;

iv. All storage tanks shall be equipped with a venting and odor control system. The venting system shall be designed in accordance with API Standard 2000 Venting Atmosphere and Low-Pressure Storage Tank or an equivalent design and permitted in accordance with N.J.A.C. 7:27-8;

v. Control of emissions and odors from the storage tank shall be in compliance with the rules and regulations of the Bureau of Air Pollution Control, N.J.A.C. 7:27;

vi. All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency; and

vii. All storage tanks shall be constructed and maintained in accordance with applicable provisions of the NJPDES regulations including, but not limited to, N.J.A.C. 7:14A-10.7.

14. Spray irrigation of treated effluent systems shall be designed and constructed in accordance with the NJPDES regulations, specifically N.J.A.C. 7:14A-10.9.

i. The spray irrigation system shall not result in increased hydraulic head on the liner system in excess of the design head.

(f) The following are the design standards and construction requirements for sanitary landfill gas collection and venting systems:

1. Sanitary landfill gas collection and venting systems shall be designed and constructed to prevent and control the migration of sanitary landfill gases off-site and shall consist of a perimeter collection system and an interior collection system which shall:

i. Prevent and control the accumulation of any methane concentrations in any structure;

ii. Prevent and control damage to vegetation beyond the perimeter of the property on which the sanitary landfill is located; and

iii. Contain malodorous gaseous emissions on-site.

2. All gas venting and collection systems shall be permitted in accordance with the rules and regulations of the Bureau of Air Pollution Control, N.J.A.C. 7:27;

3. The detection of 25 percent of the lower explosive limit of combustible gases, beyond the perimeter of the sanitary landfill property, or any concentration of gas within any structures shall trigger the construction of an induced draft or active venting system which shall be designed and constructed in accordance with the following:

i. The perimeter gas collection and venting system shall be designed and constructed to prevent and control landfill gas migration;

ii. Passive gas venting systems may be designed and constructed initially as a preventive measure against sanitary landfill gas migration. In situations where gas migration is detected in amounts greater than or equal to the limits set forth in ii and iii below, passive gas venting systems are prohibited;

iii. The Department may require the construction of an active gas collection system if a significant concentration of gas is detected within the setback area which in the opinion of the Department poses a threat to the health and welfare of the surrounding community;

iv. The number of collection well pipes shall be sufficient to prevent any off-site gas migration. It is recommended that vents be installed, at a minimum, at 50 foot intervals along the perimeter of the sanitary landfill area; and

v. The depth of the gas collection wells shall be sufficient to prevent migration of sanitary landfill gases off-site in accordance with the following:

(1) When located within the lined area of the sanitary landfill, the gas collection wells shall not result in or give cause to failure of the liner or leachate collection systems; and

(2) When located outside of the lined area of the sanitary landfill, the gas collection wells shall be constructed, at a minimum, to the bottom of the liner system or to the top of the groundwater table whichever is higher.

4. Malodorous emissions emanating from the sanitary landfill which result in odors being detected in any area of human use or occupancy shall be cause for requiring the construction of the interior gas collection and venting system which shall be designed and constructed in accordance with the following:

i. The interior gas collection and venting system shall be designed and constructed to control malodorous emissions resulting from gaseous emissions;

ii. The interior collection system shall be an induced draft or active venting system;

iii. The number of collection wells shall be sufficient to maximize the efficiency of the gas recovery system. It is recommended that, at a minimum, three gas vents per acre be installed; and

iv. The depth of the collection wells shall not result in or give cause to failure of the liner or leachate collection systems.

5. Sanitary landfills in which active gas collection systems are constructed shall develop a gas recovery system;

6. The sanitary landfill gases, prior to the design and construction of the gas collection and venting system in accordance with 3 and 4 above, shall be sampled and analyzed to define the quality and quantity of the sanitary landfill gases. The sampling and analysis of sanitary landfill gases shall include, but not be limited to, the following:

i. Prior to combustion, sanitary landfill gases shall be sampled and analyzed for the following:

(1) Volatile organic compounds (VOC);

(2) Total chlorine;

(3) Total sulfur;

(4) Carbon dioxide;

(5) Oxygen;

(6) Moisture content;

- (7) Heat valve; and
- (8) Flow rate.
- ii. After combustion, sanitary landfill gases shall be sampled and analyzed for the following:
  - (1) Particulates;
  - (2) Sulfur oxides;
  - (3) Hydrochloric acid;
  - (4) Carbon monoxide;
  - (5) Nitrogen oxides; and
  - (6) Volatile organic compounds (VOC).
- 7. The gas collection system shall be designed to control condensate and to drain the condensate into the leachate collection system;
- 8. Each collection well shall be constructed with a valve to enable control and tuning of the system;
- 9. The gas collection system shall be designed to compensate for settlement. Collection wells shall be designed with slip joints, telescoping joints or equivalent joints. The valves, condensation traps and manifold connections shall be designed with flexible joints;
- 10. Gas transport modeling, approved by the Department, shall be performed to properly size the number of collection wells, collection well diameters, header lengths, pump capacities and recovery systems;
- 11. The pump station shall be a suitable, permanent structure, which affords protection to the pumps, motors, and electrical equipment, and shall include the following:
  - i. Explosion-proof equipment for the pumps, motors, and electrical equipment in accordance with the most current version of the National Electrical Code "Special Occupancy, Hazardous Location" Volume 6 of the National Fire Code published by the National Fire Prevention Association; and
  - ii. Adequate lighting and ventilation which shall be in accordance with the most current version of the National Fire Code's "Explosion Venting" Volume 14 published by the National Fire Prevention Association.
- 12. Materials used in the gas collection and venting systems shall be compatible with the sanitary landfill environment, sanitary landfill gases and condensate, and shall be ASTM approved chemically resistant materials;
- 13. Construction of any buildings on top of landfilled areas shall be prohibited during the operational and closure phases. Construction during the post-closure phase, as approved by the Department, shall be in accordance with the following:
  - i. The building shall be an above-grade structure. Construction of a basement is prohibited;
  - ii. The building shall be constructed to prevent gas accumulation within the structure in accordance with the requirements of 15 below or an equivalent method, which may include an active gas collection and venting system; and
  - iii. All utility connections shall be designed and constructed with flexible connections.
- 14. On-site buildings within the sanitary landfill properties should be designed and constructed in accordance with the following, or in accordance with an equivalent design which will prevent gas migration into the building:
  - i. A geomembrane or equivalent system with high gas impermeability should be installed between the slab and the subgrade or equivalent design;
  - ii. A permeable layer of open-graded material of clean aggregate, with a minimum thickness of 12 inches, should be installed between the membrane and the subgrade or slab. The material should be in accordance with the following requirements of the grain size distribution curves:
    - (1)  $D_{85} < 4D_{15}$ ; and
    - (2)  $D_{15} > 0.1$  inch;
  - iii. A geotextile filter should be utilized to prevent the intrusion of fines into the permeable layer;
  - iv. Perforated venting pipes shall be installed within the permeable blanket and shall be designed to operate without clogging;
  - v. The venting pipe shall be designed and constructed with the ability to be connected to an induced draft exhaust system;
  - vi. Automatic methane gas sensors shall be installed within the venting pipe/permeable blanket and inside the building to trigger an audible alarm when methane gas concentrations are detected; and
  - vii. All buildings shall be constructed in accordance with the National Fire Code's, Life Safety Code Volume 9 as published by the National Fire Prevention Association.
- (g) The following are the design standards and construction requirements for surface drainage systems:
  - 1. Sanitary landfills shall be designed and constructed in such a manner as to hydraulically isolate the sanitary landfill from surface water drainage in a controlled manner. The surface drainage system shall be designed and constructed to protect the sanitary landfill from run-on and control run-off, from, at a minimum, the peak discharge of a 24-hour, 25-year storm;

- 2. Run-on/run-off structures shall be designed utilizing the United States Department of Agriculture, Soil Conservation Service, methods and in accordance with the Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90;
- 3. Diversion structures shall be designed to minimize ponding behind the structure;
- 4. Laboratory classification, and compaction or relative density tests shall be performed on the soils to be utilized in the construction of the run-on/run-off structures in accordance with current ASTM, AASHTO or equivalent methods. The number of tests and samples shall be sufficient to define the material;
- 5. The run-on/run-off structures shall be constructed by modification of the compactive effort utilizing stage compaction, not exceeding the effective depth of the compaction equipment. The compaction shall be performed to the design density and at the proper moisture content where applicable, based on the laboratory analysis performed pursuant to 4 above, to achieve the required strength or hydraulic conductivity;
- 6. The following quality control tests shall be performed on the soils utilized within the run-on/run-off structure construction:
  - i. Grain size analysis; and
  - ii. Relative density/compaction.
- 7. The tests required by 6 above shall be performed in accordance with ASTM, AASHTO or equivalent methods in accordance with the following:
  - i. Grain size analysis shall be performed once per every 3000 cubic yards of in-place fill material; and
  - ii. Relative density or compaction testing shall be performed on the completed structures at 50 foot intervals on a grid pattern across the surface;
- 8. The strength of the run-on/run-off structures shall be determined utilizing appropriate ASTM, AASHTO or equivalent methods for both in-situ and laboratory testing for the appropriate conditions. The stability of the structure shall be determined for long term, short term, and rapid drawdown conditions by modeling techniques and the factor of safety shall be within the minimum values set forth in Table II in N.J.A.C. 7:26-2A.7(b)3i;
- 9. Run-on controls shall meet the following requirements:
  - i. Diversion structures shall be designed to minimize run-on onto the landfilled areas in accordance with 1 above and N.J.A.C. 7:26-2A.6(g) and (h);
  - ii. Detention basins where required in accordance with the Water Quality Management Planning and Implementation Process regulations, N.J.A.C. 7:15, shall be designed to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment in accordance with the Standards for Soil Erosion and Sediment Control, N.J.A.C. 2:90;
- 10. Run-off controls shall meet the following requirements:
  - i. Diversion structures shall be designed to prevent run-off generated within the active landfilled areas during the operational phase from moving off site of the lined areas; and
  - ii. All diversion structures of the active landfilled areas shall be designed to channel run-off to the leachate treatment and disposal system. Run-off from the final capped areas may be directed to the detention ponds.
- (h) The following are the design and construction requirements and standards for monitoring systems:
  - 1. The monitoring system shall be designed and constructed in such a manner as to ensure its ability to observe and record the performance of the sanitary landfill and its various environmental control systems and to detect any potential malfunctions and possible pollutant migration;
  - 2. The monitoring system shall consist of a groundwater monitoring system, hydrostatic pressure gradient monitoring system, gas monitoring system, leachate monitoring system, meteorological monitoring system and slope and settlement monitoring system;
  - 3. All monitoring systems, where appropriate, shall be constructed and operated in accordance with the NJPDES regulations, N.J.A.C. 7:14A;
  - 4. A ground water monitoring system shall be designed and constructed in accordance with the NJPDES regulations, N.J.A.C. 7:14A-6;
  - 5. A hydrostatic pressure gradient monitoring system shall be designed and constructed in accordance with the following:
    - i. In facilities with cut-off wall designs, a system to measure the hydrostatic pressure across the wall shall be constructed in accordance with the following:
      - (1) The location of the piezometers shall be directly opposite the groundwater saturated zone wells; and
      - (2) The depth and location of the piezometers within the sanitary landfill shall not result in damage to the containment system.
    - ii. A system to define and measure the hydrostatic head on the liner shall be constructed consisting of, but not limited to:

- (1) Piezometers installed through the sanitary landfill;
- (2) Clean out risers with depth gauges; and
- (3) Manholes with depth gauges;
- iii. The depth and location of piezometers within the sanitary landfill shall not result in damage to the containment system.
6. A gas monitoring system shall be designed and constructed in accordance with the following:
  - i. The system shall be capable of detecting any possible methane gas migration from the sanitary landfill and shall be located as close to the toe of the slope of the sanitary landfill, depending on the gas flow characteristics of the soils, as is reasonably possible, in order to rapidly detect any possible gas migration;
  - ii. The methane gas monitoring wells shall be screened in the unsaturated zone to at least five feet below the lowest elevation of the landfill or to the top of the water table;
  - iii. A periodic gas survey performed in accordance with N.J.A.C. 7:26-2A.10(a)5ix may be substituted for the design and construction of methane gas monitoring wells; and
  - iv. Where required in accordance with the Permits and Certificates Rules of the Bureau of Air Pollution Control, N.J.A.C. 7:27-8, a gas monitoring system for the gas collection systems, capable of defining the quality and quantity of the landfill gas, shall be designed and constructed.
7. A leachate monitoring system shall be designed and constructed which shall be capable of measuring the flow, and capable of sampling leaching influent and the treatment system effluent;
8. A meteorological monitoring system shall be installed within the landfill properties to measure and continuously record the daily precipitation onto the sanitary landfill; and
9. A slope and settlement monitoring system shall be designed and constructed in accordance with the following:
  - i. In areas which exhibit a high degree of uncertainty of the strength data, such as meadow mat, peat, or expansive clay soils, a system to measure the settlement of the sanitary landfill and liner systems shall be installed which should include, but not be limited to, borehole extensometers; and
  - ii. Sanitary landfills, when required by the Department, based on the final elevation and grades of the capping system and the foundation analysis, shall install slope inclinometers to adequately measure the slope stability and integrity.
- (i) A capping system consisting of a vegetative layer, a drainage layer and an impermeable cap shall be designed and constructed in accordance with the following:
  1. The capping system shall minimize long term infiltration and percolation of liquids into the sanitary landfill throughout the closure and post-closure periods;
  2. The capping system, in conjunction with the containment system, shall completely isolate the landfilled solid waste from the surrounding environment;
  3. The long term stability of the final slopes shall be determined by modeling techniques in conjunction with the information gathered pursuant to N.J.A.C. 7:26-2A.5(a)6 and 7(b)3, and the factor of safety shall be within the minimum values set forth in Table II in N.J.A.C. 7:26-2A.7(b)3i;
  4. The grades of the final slope shall be constructed in accordance with the following minimum standards:
    - i. The top slope final grades, after allowing for settlement and subsidence, shall be, at a minimum, three percent;
    - ii. Top slope final grades should be, at a maximum, five percent. Steeper top slopes which will promote drainage and not subject the closed sanitary landfill to excessive erosion will be permitted provided the maximum erosion rate does not exceed two tons per acre as determined by the United States Department of Agriculture, Universal Soil Loss Equation;
    - iii. The side slopes of the final grades shall be, at a maximum, no steeper than three horizontal to one vertical (3:1) up to an elevation of 50 feet above existing grades;
    - iv. The side slopes of the final grades, in areas on which the foundation is built upon material which exhibits a high degree of uncertainty of the strength data, such as meadow mat, organic peat and expansive clay soils, shall be, at a maximum, no steeper than four horizontal to one vertical (4:1) up to an elevation of 50 feet above existing grades; and
    - v. For each additional 20 foot increase in vertical rise above the elevation as defined in iv above, the horizontal run of the slope ratio shall be increased by one for that portion of the slope;
  5. The final grades of the capping system shall have a surface drainage system, designed and constructed in accordance with the requirements of N.J.A.C. 7:26-2A.7(g), capable of conducting run-off across the final grades without the development of erosion rills or gullies;

6. The construction of the capping system should accommodate initial settlement so that the integrity of the impermeable layer is maintained throughout the closure and post-closure period. A temporary cover may be allowed, provided the leachate collection system is operating properly, in accordance with the following:
  - i. The temporary cover should be capable of minimizing infiltration into the sanitary landfill;
  - ii. The thickness shall be a minimum of 12 compacted inches and shall be maintained to prevent erosion and exposure of solid waste; and
  - iii. The temporary cover shall be exposed for no greater than six months;
7. The grading and stabilizing of the final lifts of solid waste shall result in a relatively planar surface and provide a sufficiently firm base for the placement and construction of the impermeable cap.
8. The final lifts of solid waste shall be physically or chemically stabilized in accordance with the following:
  - i. The density of the final lift shall be increased to the largest extent practicable by:
    - (1) Reducing the thickness of the layers as compacted;
    - (2) Increasing the ballast or load of the compaction equipment; and
    - (3) Increasing the number of passes of the compaction equipment.
  - ii. Blending of gravel, stone, cobble, or selected demolition material (for example brick, concrete, asphalt) into the upper 12 to 24 inches of the final lift of the solid waste; or
  - iii. Chemically stabilizing the upper 12 inches of the final lift of solid waste with the addition of soil cement, lime treated soil or soil asphalt. Ash-lime treated soil or ash-cement treated soil may be used, provided the ash has been demonstrated to be non-hazardous in accordance with N.J.A.C. 7:26-8.5.
9. The impermeable cap shall be designed and constructed in accordance with the following:
  - i. The cap shall, at a minimum, be as impermeable as the most impermeable component of the containment system;
  - ii. The minimum thickness for a clay impermeable cap shall be 12 inches;
  - iii. The minimum thickness for a geomembrane impermeable cap shall be 20 mils;
  - iv. The impermeable cap shall be constructed and tested in accordance with N.J.A.C. 7:26-2A.7(c), except that N.J.A.C. 7:26-2A.7(c)2vii, viii, and ix will not apply;
  - v. Geomembranes utilized as an impermeable cap shall be restricted to areas with slopes equal to or less than seven percent unless the applicant can demonstrate the long-term stability and erosion control of the geomembrane capping system on slopes greater than seven percent. In no case shall a geomembrane cap be utilized on a slope greater than four horizontal to one vertical (4:1).
  - vi. The geomembrane shall be protected from below and above by a minimum thickness of six inches of bedding and cover which is no coarser than a poorly graded sand (SP), as determined in the Unified Soil Classification System (USCS), and which is free of rocks, fractured stones, debris, cobbles and solid waste. An equivalent geotextile may be utilized as approved by the Department; and
  - vii. The impermeable cap shall be located wholly below the average depth of frost penetration in the area as determined by United States Department of Agriculture and mapping.
10. A drainage layer shall be designed and constructed in accordance with the following:
  - i. The design testing of materials and the quality control testing of the drainage layer of the capping system shall be performed in accordance with N.J.A.C. 7:26-2A.9(d)2ii, vii and viii;
  - ii. The material utilized in the drainage layer shall be an open graded material of clean aggregate. The material should be in accordance with the following criteria of the cumulative grain size distribution curves:
    - (1)  $D_{85} < 4D_{15}$ ; and
    - (2)  $D_2 < 0.1$  inch;
  - iii. The drainage layer shall be designed and constructed so that the discharge flows freely in the lateral direction to minimize the hydrostatic head on the impermeable cap, flows through the drainage layer, and provides a path for infiltrated liquids to exit the capping system;
  - iv. The drainage layer shall have a thickness and hydraulic conductivity capable of transmitting the estimated percolation, based on modeling of the system, and shall be constructed, at a minimum, in accordance with the following:
    - (1) When located above a clay impermeable cap, the drainage layer shall be, at a minimum, six inches thick; and
    - (2) When located above a geomembrane impermeable cap, the drainage layer shall be, at a minimum, 12 inches thick.



v. Drainage pipes where necessary to control the hydrostatic head on the impermeable cap, should be located within the drainage layers in accordance with the following:

(1) The drainage pipe should be installed at a distance sufficient to insure that the hydrostatic head on the impermeable layer does not exceed the thickness of the drainage layer during a 25 year, 24 hour storm;

(2) A coarse gravel envelope, within a geotextile fabric, shall be installed in accordance with N.J.A.C. 7:26-2A.5(e)3ix around the drainage pipe to minimize the movement of soil particles in the drainage pipe.

vi. A soil filter or geotextile should be designed and constructed above the open graded aggregate in order to minimize the intrusion of fines into the drainage layer.

11. The vegetative layer shall be designed and constructed in accordance with the following:

i. The vegetative layer shall be thick enough to contain the effective root depth or irrigation depth for the type of vegetation planted;

ii. Fertilizer, mulch, and seeding applications shall be performed in accordance with Standards for Soil Erosion and Sedimentation Control, N.J.A.C. 2:90, for permanent vegetative cover for soil stabilization;

iii. The minimum thickness of uncompacted topsoil in the upper layer of the vegetative layer shall be five inches; and

iv. The application of sludge to the final grades of the vegetative layer shall be performed in accordance with the NJPDES regulations, N.J.A.C. 7:14A.

#### 7:26-2A.8 Sanitary landfill operational and maintenance requirements

(a) All sanitary landfills shall be opened in accordance with the requirements set forth in N.J.A.C. 7:26-2.8, and the following additional operational, maintenance, inspection and monitoring requirements.

(b) The sanitary landfill shall be operated in accordance with the following additional minimum requirements:

1. The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment, in order that the area of waste material exposed during the operating day is minimized. The width of the working face shall be in accordance with the following:

i. Sanitary landfills receiving 400 or less truck loads of waste per day, shall have a working face no greater than 150 feet;

ii. Sanitary landfills receiving more than 400 truck loads of waste per day may submit a request for a working face greater than 150 feet. The size of the working face approved by the Department will be based on the sanitary landfill equipment and cover material available on-site and the on-site traffic flow patterns.

2. All waste shall be thoroughly compacted throughout the operational day to yield the smallest practical volume;

3. Solid waste shall be compacted in shallow layers. The layers should be less than two feet in thickness and should be compacted with a minimum of four passes of the compaction equipment, except over leachate collection pipes where compacting shall be performed in accordance with N.J.A.C. 7:26-2A.7(d)3xiv;

4. The lift height of the daily cell, as measured vertically from the previous day's cover surface, shall not exceed 12 feet;

5. The slope of the working face shall be maintained so as to maximize compaction of the solid waste and minimize infiltration into the solid waste. The slope shall be no steeper than three horizontal to one vertical (3:1). The slopes of the final grades shall be constructed in accordance with the requirements set forth in N.J.A.C. 7:26-2A.7(i).

6. Separate areas designated on the site plan, as approved by the Department, may be used for the storage of demolition waste or recyclable materials in accordance with the following:

i. The stockpiled solid waste or recyclable materials shall not contain putrescible material;

ii. The stockpiled solid waste or recyclable materials shall not cause or result in a public health or environmental nuisance or impose a safety hazard as determined by the Department; and

iii. A schedule or time frame for reuse of the material in a timely fashion, shall be submitted to and approved by the Department.

7. All exposed surfaces of solid waste shall be covered at the close of each operating day with a minimum of six inches of earth cover, unless it meets the following:

i. The uncovered solid waste will not create an environmental or public health nuisance as determined by the Department;

ii. The uncovered solid waste will not create a safety hazard as determined by the Department;

iii. The solid waste is a clean fill; and

iv. The solid waste is an inert material.

8. The daily covering of solid waste shall be a progressive operation so that no greater than 15,000 square feet of solid waste is exposed at any time throughout the operating day for each 150 feet of working face;

9. Intermediate cover, a minimum of 12 inches of earth cover, shall be applied to all surfaces to be exposed for any period exceeding 24 hours;

10. The grade and thickness of the intermediate and final cover material on all surfaces shall be maintained until stabilized. All cracks, erosion swales, rills and uneven areas shall be maintained to prevent extrusion of solid waste and to minimize infiltration and ponded water;

11. All areas with intermediate cover shall be graded so as to facilitate drainage of run-off to the surface drainage system and minimize infiltration and ponded water;

12. Heavy clays and very fine grain materials, such as fly ash, shall not be used as daily and intermediate cover. The daily and intermediate earth cover should be of a quality that is manageable under all weather conditions. A sufficient quantity of earth cover shall be at the site to adequately meet the requirements of 7 through 10 above. For landfills without on-site supplies of cover material, a standby supply for cover material equal to 25 percent of the volume of waste received and compacted at the landfill in ten normal disposal days shall be stored within the boundaries of the landfill property;

13. Final cover constructed in accordance with N.J.A.C. 7:26-2A.7(i) shall be applied to all surfaces where the final approved elevation has been reached and to all surfaces when the landfill operation is terminated;

14. There shall be sufficient types of quantities of equipment for digging, spreading, compacting or covering waste or applying cover material to adequately meet the requirements of 7 through 10 above, to ensure a smooth flow of traffic at the working face and to achieve the maximum compaction efficiencies;

15. At sanitary landfills that accept an annual waste flow of greater than 1,000,000 in-truck cubic yards (300,000 tons), the compaction equipment should include the use of steel wheel type compactors with a minimum operational weight of 45,000 pounds;

16. Sanitary landfill equipment shall be equipped with hand-portable fire extinguishers of a multipurpose dry chemical type, an automatic fire suppression system, and rollover protection structures and any other safety equipment required by the Occupational Health and Safety Administration standards;

17. In case of breakdown on the equipment required by 14 above, the permittee shall repair the equipment or obtain replacement equipment within 24 hours after breakdown. Written maintenance contracts with a local equipment dealer shall be in force at all times. A copy of the contract shall be submitted with the O&M plan to verify compliance with this requirement;

18. Access to the sanitary landfill for solid waste disposal shall be permitted only during the operating hours set by the Division of Solid Waste of the Board of Public Utilities and shall be restricted to 7:00 A.M. to 7 P.M. in areas within 1000 feet of a residential zone;

19. The sanitary landfill shall be adequately secured with a six-foot high chain link fence with an entrance gate, posted with the operating hours, that can be locked to prevent unauthorized entry into the facility. Fencing may be exempted, as approved by the Department, in areas where topographic features restrict access to the sanitary landfill;

20. A scale house and scales meeting the requirements of N.J.S.A. 13:1E-117 and the guidelines promulgated pursuant thereto, shall be constructed at the sanitary landfill. The location of the scale house and scales shall be situated so as to minimize the queuing-up of trucks onto the public roadway and so as to maintain a smooth and safe flow of traffic to and from the working face and while entering and exiting the landfill;

21. An all weather road shall be provided to the working face;

22. Litter shall be controlled through the use of moveable fences of sufficient height or by an equivalent means. The litter fence shall be policed daily and the litter collected shall be properly disposed of at the working face;

23. Dust control shall be effected by the spraying of water or the spreading of calcium chloride or an equivalent approved by the Department, as needed. Spraying of waste oil is prohibited;

24. Malodorous emissions emanating from the sanitary landfill shall not result in odors being detectable in any area of human use or occupancy beyond the property boundary line. Malodorous emissions shall be controlled by the use of daily cover. In the event that this is not satisfactory, a suitable deodorant shall be used. Odorous solid waste shall be covered immediately after unloading with a minimum of six inches of earthen cover;

25. Mud, soil, and other materials shall not be tracked onto any public road by an exiting vehicles. A rumble rack or wheel washing station shall be used to control the off site tracking of mud, soil, and other material;

26. The sanitary landfill shall be operated in a manner which minimizes the propagation and harborage of insects, rodents, and birds;

27. The sanitary landfill shall be operated in a manner which will protect all monitoring devices and environmental systems from damage. Any damage shall be immediately reported to the Division of Waste Management, Office of Solid Waste Enforcement at (609) 292-5560;

28. Any monitoring device or environmental control system which is damaged so as to impair the proper operation of the monitoring device or environmental control system shall be reconstructed in accordance with the following:

i. The operator shall repair the monitoring device or environmental system in accordance with the plans and schedule approved by the Department; and

ii. The Department may require immediate remedial action for repair of the damaged monitoring device or environmental control system should such damage endanger human health or the environment.

29. The sanitary landfill shall be operated in a manner which will facilitate the filling of each section to final grade and which will minimize the operational phase of each section;

30. An adequate number of qualified personnel shall be at the sanitary landfill to maintain the smooth flow of traffic at the sanitary landfill and to operate the sanitary landfill in a manner that is in compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., this chapter, and the conditions of the SWF permit;

31. A supervisor shall be at the sanitary landfill during all operating hours to insure proper operation of the sanitary landfill, to evaluate the monitoring data and inspection reports, to determine the performance of the sanitary landfill and to direct and implement all operational decisions to ensure the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., this chapter, and the conditions of the SWF permit;

32. All sanitary landfill personnel who are involved in waste management activities or who operate, service or monitor any facility equipment, machinery or system, shall complete a program of on-the-job training which shall include, at a minimum, the following:

i. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the SWF permit;

ii. The training shall include instruction in the operation and maintenance of the equipment, machinery and systems which facility personnel must operate, service or monitor in the course of their daily job duties. The training shall instruct facility personnel in the performance of their duties in a manner that ensures the facility's compliance with the requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., this chapter, and the conditions of the SWF permit;

iii. The training program shall ensure that the facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise;

iv. The training program shall provide instruction in the use of safety and emergency equipment and the use of communication or alarm systems; and

v. The training program shall provide instruction in the procedures for emergency response for sanitary landfill fires or explosions, gas leaks, leachate treatment system failure or leaks, detention basin breaches or other emergencies and shall include procedures to shut down operations.

33. The sanitary landfill facility personnel shall complete the initial training program required by 32 above within six months after the effective date of this subchapter or six months after the date of their employment, whichever is later;

34. The sanitary landfill facility personnel shall take part in an annual update of the initial training program;

35. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the sanitary landfill;

36. The following actions shall be implemented in the case of an emergency:

i. The supervisor or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;

ii. Concurrently, the supervisor or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

iii. If the supervisor or emergency coordinator determines that the facility has had an uncontrolled discharge, a discharge above standard levels permitted by the Department, or a fire or explosion, he or she shall:

(1) Immediately notify appropriate local authorities if the assessment indicates that evacuation of local areas may be advisable;

(2) Immediately notify the Department at (609) 292-7172; and

(3) When notifying the Department, report the type of substance and the estimated quantity discharged, if known, the location of the discharge, actions the person reporting the discharge is currently taking or proposing to take in order to mitigate the discharge and any other information concerning the incident which the Department may request at the time of notification.

iv. The supervisor shall take all reasonable measures to ensure that fires, explosions and discharges do not recur or spread to other areas of the facility. These measures shall include, where applicable, the cessation of operations and the collection and containment of released waste;

v. Immediately after an emergency, the supervisor or emergency coordinator shall provide for treating, storing or disposing of waste, contaminated soil or water or any other material contaminated as a result of the discharge, fire or explosion;

vi. The supervisor or emergency coordinator shall insure that no waste is processed until cleanup procedures are completed and all emergency equipment listed in the contingency plan is again fit for its intended use;

vii. The supervisor or emergency coordinator shall notify the Department and appropriate local authorities when operations in the affected area of the facility have returned to normal; and

viii. Within 15 days after the incident, the supervisor or emergency coordinator shall submit a written report on the incident to the Department. The report shall include, but not be limited to:

(1) The name, address and telephone number of the facility;

(2) The date, time and description of the incident;

(3) The extent of injuries, if applicable, with names and responsibilities indicated;

(4) An assessment of actual damage to the environment, if applicable;

(5) An assessment of the scope and magnitude of the incident;

(6) A description of the immediate actions that have been initiated to clean up the affected area and prevent a recurrence of a similar incident; and

(7) An implementation schedule for undertaking longer term measures to effect cleanup and avoid recurrence of the incident, if applicable.

37. An on-site baseline consisting of two vertical and horizontal control monuments shall be constructed and installed in accordance with the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., and the Department's specifications in the "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills" available from the Division of Waste Management, Office of Engineering.

38. The control monuments shall be installed with, at a minimum, Second Order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey", published by the U.S. Department of Commerce, 1980;

39. The control monuments shall be tied into the national or state geodetic survey network and keyed into the New Jersey Plane Coordinate Datum, 1927; and

40. Sanitary landfills equal to or greater than 50 acres in size may be required to construct and install secondary control points. The control points shall be installed in accordance with the Department's "Guidelines for Establishing Vertical and Horizontal Control Monuments on Sanitary Landfills."

(c) While the sanitary landfill is in operation all environmental control systems shall be maintained in a proper functioning manner and shall be inspected to insure compliance with the operational and construction requirements and the design and performance standards.

(d) The inspections, required by (c) above, shall be performed, unless otherwise stated, on a weekly basis and after storm events to detect evidence of deterioration, malfunction or improper operation.

(e) The owner or operator shall record the results of the inspections in a bound log book which shall be maintained at the sanitary landfill office and be available, at all times, for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial action.

(f) If deterioration which would result in failure, malfunction or improper operation is evident during inspection, the operator shall make repairs in accordance with N.J.A.C. 7:26-2A.8(b)28 and as listed in the approved final O and M manual.

(g) The sanitary landfill shall be maintained and inspected by the owner or operator in accordance with the following additional minimum requirements:

1. The buffer zone shall be maintained free from litter. The entire area shall be policed on a daily basis, weather permitting, and the collected litter shall be properly disposed of at the working face;

2. The all weather road shall be maintained as necessary to provide access to the working face;

3. The public roads providing access to the sanitary landfill shall be maintained free of mud, dirt, and litter. The entrance shall be properly policed on a daily basis, weather permitting;

4. The vertical and horizontal control monuments shall be maintained and resurveyed by a licensed New Jersey Land Surveyor and certified for accuracy biennially. The survey shall be, at a minimum, second order accuracy in accordance with the "Classification, Standards of Accuracy, and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce 1980. The control monuments shall be tied into the national or state geodetic survey network;

5. All emergency equipment shall be maintained in a proper functioning manner. The equipment shall be tested on an annual basis;

6. The cap on the cut-off wall, required by N.J.A.C. 7:26-2A.7(c) 10xvi., shall be maintained at a three foot thickness to prevent the erosion of the cut-off wall;

7. The leachate collection pipes shall be maintained to ensure a free flow of leachate. The leachate collection pipes shall be inspected and if blockage and clogging of the system is evident the collection pipes shall be cleared by water jet flushing or an equivalent method. The mains shall be tested annually to insure a free flow of leachate;

8. The structural integrity of the manholes or clean-out risers shall be maintained to insure a free flow of leachate;

9. The structural integrity of the sumps shall be maintained to ensure water tightness of the sump;

10. The structural integrity of the leachate pump station and gas pump station, and the electrical, venting and alarm systems of the leachate pump station and the gas pump station shall be maintained to ensure a free flow of leachate and gas;

11. The leachate pumping system and gas pumping system shall be maintained as necessary. They shall be completely overhauled, at a minimum, on a biennial basis and shall be inspected on a daily basis to ensure a free flow of leachate or gas;

12. The leachate treatment and disposal systems shall be inspected on a daily basis and maintained in a manner which will prevent anaerobic and malodorous conditions from developing;

13. The structural integrity of the storage tanks shall be maintained to ensure containment of leachate. The tanks shall be inspected annually for leaks;

14. The structural integrity and erosion protection shall be maintained on all areas of the surface impoundments to ensure stability of the dike and emergency spillways and containment of the leachate and run-off. The surface impoundment shall be inspected on a daily basis to ensure that the minimum depth of freeboard is maintained;

15. The leachate treatment and disposal system units, storage tanks, surface impoundments, and detention/retention ponds shall be dredged, as necessary, to maintain the design capacity. Dredging shall not result in or cause damage to the containment system;

16. The structural integrity of the vents, manifolds and piping of the gas venting system shall be maintained to insure a free flow of gas;

17. The structural integrity of the gas flaring or recovery/combustion systems shall be inspected on a daily basis and shall be maintained to ensure proper disposal or use of the collected gas;

18. The structural integrity of all monitoring devices shall be maintained to ensure their workability and reliability; and

19. The structural integrity and erosion protection of the surface run-on/run-off structures shall be maintained on all areas of the capping system to ensure the stability of the slope and prevent excess erosion. The top grades shall be maintained at their proper slopes to minimize ponding.

(h) Monitoring shall be performed in accordance with the following parameters and schedules:

1. Sampling and analysis of water from the groundwater monitoring wells and lysimeters shall be performed in accordance with the NJPDES regulations, N.J.A.C. 7:14A-6 and 10.12;

2. Sampling and analysis of surface water taken from the surface water monitoring locations shall be performed in accordance with N.J.A.C. 7:14A-6 and 10.12;

3. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed in accordance with the appropriate section of the NJPDES regulations N.J.A.C. 7:14A-3, N.J.A.C. 7:14A-10.4, 10.5, 10.6, 10.9 and 10.10, N.J.A.C. 7:14A-12, and 13;

4. In addition to the requirement of 3 above, samples of leachate effluent and influent shall be analyzed on a daily basis for the following parameters:

i. Flow;

ii. pH;

iii. Temperature;

iv. Chemical oxygen demand (COD);

v. Specific conductance; and

vi. Chlorides;

5. The daily leachate monitoring results shall be compiled on a quarterly basis and submitted along with the quarterly groundwater monitoring results to the Division;

6. Residuals from the treatment and disposal systems shall be sampled and analyzed in accordance with the requirements of the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4;

7. Residuals from the treatment and disposal systems shall be sampled 60 days prior to planned disposal and the results of the analysis shall be submitted to the Bureau of Waste Classification and Manifest of the Division for classification 30 days prior to disposal;

8. The hydrostatic pressure of the cut-off wall and the liner system shall be monitored on a quarterly basis and the results shall be submitted with the groundwater monitoring results to the Division;

9. Sanitary landfill gases shall be sampled and analysed in accordance with the following:

i. A gas quality analysis shall be performed on the gas venting and collection systems as constructed in accordance with N.J.A.C. 7:26-2A.7(g)3 and 4 on an as-needed basis as determined by the Division and the Division of Environmental Quality, Bureau of Air Pollution pursuant to N.J.A.C. 7:27;

ii. A methane gas survey shall be performed on a quarterly basis and the results shall be submitted with the groundwater monitoring results to the Division. If gas is detected within the buffer zone the Department may require more detailed and frequent surveys to be performed;

iii. The methane gas survey shall be performed with a hand-held portable explosimeter or equivalent and the minimum sampling depth shall be three feet below the ground surface or above the water table, whichever is higher; and

iv. The sampling for the methane gas survey shall be performed on a quarterly basis around the perimeters of the buffer zone of active landfill areas and annually around the entire perimeter of the buffer zone of the sanitary landfill. The maximum interval between sampling points shall be 300 feet. Sampling shall be performed around the perimeter of all on-site structures. The maximum interval between sampling points for structures shall be 50 feet; however, there shall be at least one sampling point along each side of the structure;

10. The daily precipitation data from the meteorologic monitoring system shall be compiled and submitted on a quarterly basis with the groundwater monitoring results to the Division; and

11. The settlement and slope data shall be compiled and submitted on a quarterly basis with the groundwater monitoring results to the Division.

(i) All sanitary landfills shall submit an annual topographic survey of all areas of the sanitary landfill. The topographic survey shall be made and submitted, initially, within 90 days of the effective date of this subchapter, and, thereafter, made between January 20 and March 31 of each year and submitted on or before May 1 of each year in accordance with the following:

1. The topographic survey shall be prepared in accordance with the Map Filing Law, N.J.S.A. 46:23-9.9 et seq., and shall be depicted at the same scale and contour intervals as the approved engineering site plan design;

2. All vertical and horizontal points shall be located utilizing Third Order, Class I for property survey and Third Order, Class II for remaining points in accordance with the "Classification, Standards of Accuracy and General Specifications of Geodetic Control Survey" published by the U.S. Department of Commerce, 1980. Contour elevations and vertical and horizontal locations shall be based on the National Geodetic Vertical Coordinate Datum 1929 (Mean Sea Level Datum 1929) and keyed into the New Jersey Plane Coordinate Datum 1927;

3. The topographic survey shall delineate, at a minimum, the following:

i. The vertical and horizontal control monuments and secondary control points installed in accordance with N.J.A.C. 7:26-2A.7(a)2 or N.J.A.C. 7:26-2A.8(a)1xxxiii, delineating X (east) and Y (north) coordinates and elevations;

ii. All groundwater monitoring wells and piezometers installed in accordance with N.J.A.C. 7:26-2A.5(i)4 and 5 and NJPDES regulations N.J.A.C. 7:14A-6.7 and 10.12, delineating X (east) and Y (north) coordinates and elevations;

iii. The property lines of the sanitary landfill properties;

iv. The boundary lines of the approved landfill areas;

v. The boundary of areas currently being landfilled and which have been landfilled since the last topographic survey was submitted;

vi. The boundary of the areas which have not been landfilled within the approved landfill area;



vii. The boundary of the areas where final cover has been placed; and  
viii. The topographic survey shall be prepared by a licensed New Jersey Land Surveyor and the topographic survey report shall be certified by a licensed New Jersey Professional Engineer.

4. A report shall be submitted with the topographic survey which shall describe, with sufficient calculations clearly notated, the following:

i. The solid waste disposed of at the landfill since the last topographic survey. This quantity shall be reported in tons for landfills with scales and in cubic yards for landfills exempted from installing scales.

ii. The number of trucks which disposed of waste since the last topographic survey;

iii. The solid waste disposed of at the landfill since commencement of landfilling operations. This quantity shall be reported in cubic yards;

iv. The volume of daily and intermediate cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

v. The volume of final cover applied since the last topographic survey. This quantity shall be reported in cubic yards;

vi. The in-place compaction achieved since the last topographic survey. This quantity shall be reported in pounds per cubic yard; and

vii. The remaining capacity of the landfill excluding final cover volume. This quantity shall be reported in cubic yards.

(j) Approval of and standards for disruption of landfills shall be in accordance with the following:

1. Written approval shall be obtained from the Department prior to any excavation, disruption, or removal of any deposited material from either an active, terminated, or closed sanitary landfill;

2. All requests for approval shall include an operational plan stating the area involved, the depth of the excavation with final grades, estimated cubic yards of material to be excavated, the site where excavated material is to be redeposited, and the estimated time required for completion of excavation procedures;

3. All excavation shall be confined to an area consistent with the number of pieces of digging equipment or trucks used for haulage. The area of excavation shall be kept to the smallest practical area;

4. Adequate measures shall be taken during excavation to control dust, odors, fires, rodents, insects, blowing litter, surface water run-on and erosion; and

5. The disposal of all solid waste resulting from the excavation shall be in conformance with the requirements of N.J.A.C. 7:26-2.11.

(k) Control of smoking, smoldering or burning landfills shall be in accordance with the following:

1. In case of a fire on an active sanitary landfill, the responsibility for fire control shall lie with the SWF permit holder. In case of a fire on a terminated, closed or unpermitted landfill, the responsibility for fire control shall lie with the person having the title to the premise upon which the fire is located;

2. The owner or operator of any landfill wherein smoldering, smoking or burning is occurring shall immediately notify the local police and fire department having jurisdiction and the Department hot-line (609) 292-7172;

3. The owner or operator of any active landfill shall be responsible for initiating and continuing fire-fighting actions until all smoldering, smoking and burning ceases;

4. The owner or operator of any landfill shall seek and obtain fire-fighting assistance if smoldering, smoking or burning persists for longer than 24 hours;

5. The owner or operator of any landfill shall not conduct disposal activities within the burning area. Precautions shall be taken to prevent disposal activities from interfering with fire-fighting activities; and

6. Any disruption of the finished grade or covered surface shall be repaired and recovered upon completion of fire-fighting activities.

(l) Rules concerning the disposal of asbestos and asbestos-containing waste in sanitary landfills follow:

NOTE: The text of this subsection is presently found at N.J.A.C. 7:26-2.6(e). Upon adoption of this proposal the Department intends to recodify the asbestos rule to this subsection.

#### 7:26-2A.9 Closure and post-closure of sanitary landfills.

The text of this section may now be found at N.J.A.C. 7:26-2.9. It is being recodified without change to N.J.A.C. 7:26-2A.9

### APPENDIX A

#### GUIDELINES FOR A GROUND WATER MODELING EFFORT

1. The model of use must have a history that documents its ability to represent real world situations. In addition it should also be demonstrated that the model of choice has the ability for proposed management of ground water resources.

2. The set of equations, that govern ground water flow and pollutant, and the derivations of these equations must be presented.

3. The numerical methods used to solve the set of ground water flow and pollutant transport equations must be presented.

4. The Boundary Conditions and Initial Conditions used in solving the ground water flow and pollutant transport equation sets should be presented both mathematically and in narrative form.

5. A technical narrative describing the model to be used and a justification for the application of this to the specific problem should be presented. This should include whether the model is finite element, finite difference or some other scheme. The objective of the model should be stated up front.

6. The unknown quantities that the model is solving for should be described and explained. In addition those parameters derived from the initial unknown quantities should also be described and explained.

7. Appropriate analytical methods should be used to verify the validity of the numerical technique used to solve the flow equations in the model.

8. A sensitivity study of the error tolerance used and modal spacing needs to be conducted. The results should be presented and explained.

9. Perform mass balance calculations on selected elements in the model to verify physical validity.

10. The model must be calibrated against field data. It is important to note that if there is insufficient field data available for calibration then the model will extrapolate values of unknown accuracies. This is particularly important since there is no one unique solution to a model and the most accurate solution (that closest to the real world situation) is a result of sufficient field data collection and model calibration with that data. It often takes more than 25 runs with the same data to properly calibrate a model to the real world situation. The level of field data considered to be sufficient should be agreed to before the modeling effort is initiated.

11. Limits and confidence on model predictions should be established and stated in the beginning of the modeling report.

12. All inputs and outputs to the computer program should be listed and explained in technical narrative.

### SUBCHAPTER 2B. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR THERMAL DESTRUCTION FACILITIES, TRANSFER STATIONS, MATERIALS RECOVERY FACILITIES, CO-COMPOSTING AND COMPOSTING FACILITIES.

#### 7:26-2B.1 Scope and applicability

(a) This subchapter shall constitute the rules of the Department governing the design, construction, operation and maintenance of the following types of disposal facilities:

1. Thermal destruction facilities which dispose of non-hazardous solid waste;

2. Thermal destruction facilities which dispose of non-hazardous solid waste and which incorporate energy recovery;

3. Solid waste transfer station facilities; and

4. Solid waste materials recovery facilities; and

5. Solid waste co-composting and composting facilities.

(b) The requirements of this subchapter are in addition to the general requirements found at N.J.A.C. 7:26-2.10 and 2.11.

(c) This subchapter shall apply to the following facilities:

1. All proposed solid waste facilities of the types identified in (a) above shall be designed, constructed, operated and maintained in accordance with the requirements of this subchapter; and

2. Any existing solid waste facilities of the types identified in (a) above determined to be operating in an environmentally unsound manner.

(b) This subchapter does not apply to hazardous waste facilities. See N.J.A.C. 7:26-7, 8, 9, 10, 11, and 12.

#### 7:26-2B.2 Construction

These rules shall be liberally construed to permit the Department to discharge its statutory functions.

#### 7:26-2B.3 Purpose

(a) This subchapter is promulgated for the following purpose:

1. To establish additional engineering design submission requirements for thermal destruction facilities, transfer stations, materials recovery facilities, and composting and co-composting facilities to ensure that adverse impacts are minimized and pollution of the environment is prevented; and

2. To establish operational requirements to ensure the proper operation of thermal destruction facilities to minimize adverse impacts and prevent pollution of the environment.

#### 7:26-2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26-2.5(a):

1. The rated capacity of the facility, in both tons per day and tons per hour, and the maximum gross heat release rating for each incinerator/boiler;

2. The expected short term and projected future long term daily loadings;

3. The designation of normal loading, unloading and storage areas, including capacities in cubic yards and tons. Describe the time such areas can be practically used, based on expected short term daily loadings;

4. The designation of emergency loading, unloading, storage or other disposal capabilities to be used when facility system down time exceeds 24 hours;

5. The designation of alternate disposal areas or plans for transfer of stored waste in the event facility system down time exceeds 72 hours;

6. The expected daily quantity of waste residue generation;

7. The proposed ultimate disposal location for all facility generated waste residues including, but not limited to, ash residues and by-pass materials, by-products resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

8. A descriptive statement of any materials recycling or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the outgoing residue;

9. A descriptive statement and detailed specification of all process equipment, pollution control systems, instrumentation and monitoring mechanisms. Schematic diagrams shall be provided, where applicable. Equipment specifications, including information pertaining to the make, model and manufacturer, if available, and to the related processing equipment capacity, reliability and efficiency shall be submitted. Information on individual unit synchronization with upstream and downstream equipment shall also be submitted;

10. Profile views of all structures and enclosures showing dimensions. Plan views showing building setbacks, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas and site boundaries;

11. A descriptive statement and detailed specification of the proposed onsite and offsite transportation system intended to service employee vehicles, vehicles hauling waste to the facility for processing, and vehicles removing reclaimed materials and/or process residues from the facility. The number, type, capacity and frequency of these vehicles shall be specified. Onsite parking, access and exit points, and the mechanisms or features which will be employed to provide for an even flow of traffic into, out of, and within the site, shall be identified;

12. Interior floor plans showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas as well as other functional areas such as office space and employee's facilities shall be submitted;

13. A plan identifying, locating and describing utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system and energy system. Profiles on utility lines including horizontal and vertical dimensions, as well as grades, shall be provided. Existing pipeline carrying capacity and percent of that capacity being currently used shall be identified. Interface of the proposed facility with the existing utility systems and the specifications on materials to be used for constructing new systems or extending existing systems shall be detailed;

14. A waste supply analysis program characterizing the quantity and composition of the solid waste in the service area shall be submitted. The waste characterization shall be performed by utilizing a statistically relevant plan which justifies the population sample. The sampling program shall provide for seasonal and locational fluctuations in the quantity and composition of the waste types to be handled at the facility. Anticipated changes in solid waste quantity and composition for each of the waste types to be serviced by the proposed facility shall be projected for that term reflecting anticipated facility life. Within this framework, the effect of existing or future source separation programs on the supply of solid waste within the service area shall be described and quantified. Quantity and composition analyses shall be carried out simultaneously where possible and shall provide information relating to anticipated maximum, minimum and average daily loading in accordance with the following:

i. The composition data for the non-combustible solid waste, indicating percent by weight and percent by volume, generated within the service area shall be defined within the following framework:

- (1) Aluminum;
- (2) Ferrous metals;
- (3) Other non-ferrous metals;

- (4) Glass;
- (5) Ceramics and fines, and
- (6) Oversize bulky items.

ii. The composition data for combustible solid waste, indicating percent by weight and percent by volume, generated within the service area shall be defined for the following:

- (1) Newspaper;
- (2) Corrugated paper;
- (3) Other paper products;
- (4) Plastics;
- (5) Wood;
- (6) Yard wastes;
- (7) Food wastes; and
- (8) Textiles, rubber, leather and other combustibles.

iii. The composition data for the proximate analysis of the solid waste, indicating percent by weight, generated within the service area shall be defined for the following:

- (1) Total Moisture;
- (2) Ash (include percent by volume);
- (3) Volatiles;
- (4) Fixed Carbon; and
- (5) Heating Value (Btu/lb. on an as received and moisture free basis).

iv. The composition data for the ultimate analysis of the solid waste, indicating percent by weight, generated within the service area shall be defined for the following:

- (1) Ash;
- (2) Carbon;
- (3) Chlorine;
- (4) Hydrogen;
- (5) Nitrogen;
- (6) Oxygen; and
- (7) Sulfur;

v. The quantity data for the solid waste generated within the service area shall be defined within the following framework:

- (1) Quantity of waste types by geographic points (that is, municipality of origin); and
- (2) Weight, volume and corresponding load density characteristics expressed in terms of daily, average, peak and minimum flow to the facility.

15. A comprehensive analysis of the materials and energy balance for the proposed facility shall be performed. The analysis shall account for every handling and processing step starting with waste delivery scheduling and ending with product and residue removal from the site. Quantification and qualification of sidestream pollutants shall be accounted for in the analysis. Indicate how the facility design will provide redundant features or contingencies in the process line that will allow for an uninterrupted flow of waste through the system in the case of overload or equipment malfunction. Indicate adjustments available within the system that allow for modifying recovery and processing rates based on the anticipated variability in the solid waste stream;

i. The materials balance for the proposed facility shall include, but not be limited to, the following:

- (1) A description of the maximum designed processing capacity for each piece of equipment on the processing line, including auxiliary equipment in tons per hour;
- (2) A description of the anticipated materials recovery rates, if applicable, in tons per hour for each individual equipment unit as well as the anticipated loadings to be made to that particular unit under anticipated peak and average loading conditions; and
- (3) A solid waste composition component, accounting for combustible and non combustible materials in tons per hour at each processing point along the system line, including materials intentionally recovered as well as entrained contaminants, balanced against values for those materials passing through the unit unaffected by the actions of that unit. Provide a unit recovery efficiency value based on incoming solid waste component concentrations.

ii. The energy balance for the proposed facility shall account for conversion efficiencies and losses that occur throughout the process, including losses incurred by transmission to markets, if applicable. Variations in energy production shall be enumerated in reference to fluctuations in the quality and quantity of incoming solid waste. The energy produced by the facility shall be balanced against the energy consumed by the facility in recovering products from the solid waste stream. Describe how the proposed energy production will meet market demands. Identify instances where energy production rates will exceed secured market demands and contingencies for energy use, if any, under these conditions.

16. An artist's rendition, showing the facility as it will appear when construction is completed;

17. An occupational health and safety plan prepared in conformance with the Safety and Health Standards, 29 CFR 1910 and 1926, of the Federal Department of Labor, Occupational Safety and Health Administration, shall be submitted as part of the preliminary O&M manual;

18. A facility staffing plan submitted as part of the final O&M manual containing the following:

i. The job title for each position at the facility;

ii. A written job description for each position, including duties and performance standards. The description shall include the requisite skills, education, and other qualifications deemed necessary for employees assigned to each position;

iii. An explanation of the criteria and reasons used in selecting the required number and types of positions, as well as the qualifications for each position; and

iv. A statement of the staffing provided for each operating shift, including the job titles and number of employees for each title, and for each shift.

19. A written training plan which includes the type and amount of both the initial and annual followup training to be provided to facility personnel shall be submitted as part of the final O&M manual;

20. An emergency contingency plan which delineates procedures for responding to fire, explosions or any unplanned sudden or non-sudden releases of harmful constituents to the air, soil, or surface or ground water shall be submitted to the Department as part of the preliminary O&M manual, to the local police and fire departments, and to the local and county health departments or other offices of emergency management. The contingency plan shall contain:

i. A description of the actions facility personnel shall take in the event of various emergency situations;

ii. A description of arrangements made with the Department and local police and fire departments which allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of response personnel responding to an emergency situation; and

iii. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as an emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates.

21. A community relations plan for facilities with a design capacity of 500 tons per day or greater identifying the steps that the owner or operator will take to transfer information and solicit input from the community in which the facility is located shall be submitted to the Department as a part of the preliminary O&M manual. The community relations plan shall contain the following:

i. A minimum of two open meetings with local officials, or their representatives, and the general public of the district affected by the proposed facility prior to and during facility construction. The purpose of such meetings will be to inform the community of the operations of such of facility, including the progress of construction and projected initial tipping fees;

ii. Annual open meetings with the local officials, or their representatives, and the general public of the district where the facility is located subsequent to the initial startup of operations. The purpose of these meetings is to allow public input and to provide a forum for exchanging ideas; and

iii. A notification procedure, whereby the public is provided a report of findings in the case of an emergency incident at the facility.

(b) Thermal destruction facility engineering design requirements are as follows:

1. Facilities shall be designed in such a way as to allow for the control of both the rate of air feed and temperature of burn in the combustion chambers;

2. The combustion chambers and ancillary support equipment shall be designed with the capability of handling and effectively disposing of those wastes authorized for receipt at the proposed facility, notwithstanding the expected normal fluctuations in quantity, moisture content, heat release value, and chemical makeup of those wastes;

3. The waste loading system servicing the combustion chambers shall be designed and equipped in such a manner as to prevent the occurrence of backfire into the feed hopper. To this end, automated waste loading systems shall be gas tight when operating the forward ram stroke portion of the charging cycle;

4. Combustion chamber design shall provide for the minimum operating temperature, combustion gas residence time and excess air requirements specified in the "Air Pollution Control Guidelines for Resource Recovery Facilities" (implemented under the authority of N.J.S.A. 26:2C-9.2) and specified in the air pollution permit obtained pursuant to N.J.A.C. 7:27-8;

5. All combustion systems shall be equipped with state-of-the-art air emission technology designed to control the emission of hydrocarbons, par-

ticulates, dioxins, sulfur oxides, nitrogen oxides, carbon monoxide, heavy metals, hydrochloric acid, acid gases, trace metals and other pollutants as may be specified in the air pollution permits and certificates obtained pursuant to N.J.A.C. 7:27-8;

6. Combustion chamber interior walls shall be designed to withstand excess corrosion and wear generated by high temperatures and the oxidative-reductive atmosphere;

7. To the maximum extent practicable, except where batch feed or fluidized bed systems are utilized, the primary combustion chamber shall be designed to provide for a positive means of transporting waste into the chamber, through the chamber and to an eventual ash discharge point down line. A conventional ram loading device is not considered an internal transfer mechanism in itself;

8. A vessel shall be designed to quench or cool all siftings and bottom ash that remain after the completion of the primary chamber combustion process. The vessel shall be designed to handle the maximum potential ash volumes that could be generated when the combustion unit is operating at a maximum design throughput capacity. The quench vessel shall be designed to maintain a water level of sufficient height to effectively prevent the infiltration of exterior air into the combustion chamber, while maintaining suitable freeboard to prevent spillage. Quenched ash shall be dewatered prior to storage for ultimate disposal;

9. The stacks servicing the combustion units shall be designed and constructed in conformance with the requirements of the Department's Bureau of Air Pollution Control, the New Jersey Uniform Construction Code, N.J.A.C. 5:23, and the Federal Aviation Administration's limitations relating to infringing on navigable airspace;

10. The boilers employed for the purpose of recovering heat energy shall be equipped with a boiler tube-boiler wall cleaning system designed to periodically remove excess accumulations of surface deposits;

11. The boilers servicing the facility shall be designed, manufactured and installed in such a manner as to be capable of operating in conformance with the requirements of N.J.A.C. 12:90, "Boilers, Pressure Vessels and Refrigeration;"

12. The steam condenser system servicing a boiler shall be designed with the capability to condense the maximum design output of the boiler without any energy extraction from the process, for the most critical weather conditions of the summer season affecting the ability of the system to reject heat energy to the atmosphere (facilities utilizing the indirect air cooled condensing technology); or in the case where an adjacent water body is to be used the highest annual water temperature and lowest flow conditions anticipated. The Department will consider reasonable alternatives to this 100 percent steam condensing capability requirement, uninterrupted facility availability;

13. The feedwater system servicing a boiler shall be designed with the capability of delivering 100 percent of the feed water requirement of the boiler. The Department will consider reasonable alternatives to this requirement, provided such alternatives are environmentally sound and will maximize uninterrupted facility availability;

14. Facilities shall be designed and constructed in such a manner as to promote an aesthetically pleasing facade in keeping with the architectural character of the area surrounding the site. Facility equipment, including, but not limited to, fans, emission control devices, tanks, storage containers, conveyors' piping and similar equipment shall be housed within the confines of a building structure or shall be buffered in such a manner as to reduce potential negative visual impacts offsite;

15. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste, facility process waste residues and effluents, and recovered materials, if applicable. The design shall account for maximum anticipated loading rates;

16. Facilities shall be designed and equipped with appropriate control mechanisms to minimize and contain the accidental spillage of reagents, lubricants or other liquids used in the operation or maintenance of the facility as well as any waste generated by such operation;

17. Facility waste storage areas shall be designed with the capability of maintaining interior pressure below that of the exterior atmosphere, and shall employ the use of electronically activated self opening and closing delivery doors or other similarly effective method approved by the Department, to prevent the migration of odors and dust outside the confines of the waste receiving and storage building. Air drawn off as a result of maintaining negative pressure shall be directed to the combustion chamber. Such control mechanisms shall be designed to effectively operate during all periods when wastes are being received or are in storage at the facility;

18. All facilities, their related subsystems and appurtenances shall be designed, positioned and buffered in such a manner that the sound levels



generated by their operation shall not exceed those limits established pursuant to the Noise Control regulations, N.J.A.C. 7:29;

19. All waste size reduction equipment, which due to the nature of its operation may have the potential for explosion, shall be designed and equipped with an effective explosion detection and suppression system which shall be situated within the facility in such a manner so as to directionalize the force of any explosion in order to effectively minimize damage to the building and the chances of injury to employees and the public;

20. All facilities shall be designed in a manner that affords fluid vehicular movement onsite and prevents traffic backups and related traffic hazards on access roads servicing the facility site. The onsite roadway design configuration and layout shall provide sufficient roadway for unobstructed vehicular passage, with parking areas, maneuvering space in the loading and unloading areas, and traffic control measures (i.e. lane delineations, signals, signs and barriers), in order to achieve this goal. All onsite roadways used by refuse vehicles shall be constructed and surfaced in accordance with standards for heavy truck usage;

21. Offsite truck routes for the conveyance of solid waste to, and residues from the facility shall be defined and delineated in a manner which will minimize impacts on surrounding residential development or similar sensitive receptors. The truck traffic to and from the proposed facility shall not result in a decrease in the existing level of service, as defined by the New Jersey Department of Transportation, of a major intersection;

22. Facilities shall be designed with perimeter security fencing and gate controls to prevent unauthorized access to the site and to control the offsite escape of litter. Metallic chain link fencing, or its equivalent, extending to a height of seven feet shall be the minimum design standard;

23. Facility layout design shall conform to the configuration of the site. A buffer and setback area shall be provided to allow for adequate planning for and installation of pollution control equipment that may be required due to future advances in the state-of-the-art. All main building enclosures shall be designed with a minimum setback of 100 feet from the facility's property line. The Department may allow a reduction in the setback limit if the applicant satisfactorily demonstrates that such a reduction will not pose an adverse impact on the adjacent land use activities;

24. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling and extinguishing any and all fires that may occur as a result of facility operation;

25. The interior layout design for all facilities shall provide for system installations that maximize accessibility for repairs, maintenance and ease of cleaning, while affording employee safety;

26. All facilities shall be designed and constructed in full conformance with the specifications and requirements of the Uniform Construction Code, N.J.A.C. 5:23;

27. All tipping floors, sorting pads, waste storage areas, bunkers and pits shall be constructed of concrete or other similar quality material that will withstand heavy vehicle usage. Floor drains shall be provided in all such areas and surfaces shall be appropriately graded to facilitate washdown operations. Floor drains shall be designed to discharge wastewater into a collection and treatment system approved by the Department. In those cases where waste or residue storage pits are to be utilized the base and sidewalks shall be sufficiently waterproofed to prevent ground water intrusion. Tipping floors shall be designed with suitable wheel stops to prevent delivery vehicles overdriving the pit edge;

28. Redundant features or other aspects of system layout shall be incorporated into the facility design to maximize online availability for the receipt and processing of that quantity of waste directed to the facility. Mechanical components shall be constructed of materials that will withstand the rigors of facility operation and shall have a rated handling capacity that prevents backups and blockages within the related system. Replacement equipment and parts for equipment which is subject to excess wear or frequent breakdown due to the nature of operation, shall be stored onsite in order to provide expedient repair. In addition, a properly sized storage area shall be incorporated into the design;

29. Where feasible, the facility subsystems shall be equipped with automatic process controls which contain the necessary instrumentation and related feedback mechanisms to ensure that process operational parameters are being met. Automated systems shall be equipped with manual override capabilities. Instrumentation displays and related control mechanisms shall be positioned within the facility in such a manner as to be readily accessible and highly visible for monitoring purposes;

30. A remote telemetry system shall be installed within the facility's central control station as a component of the remote computer monitoring system of the automated systems. The remote telemetry system shall be capable of transferring monitoring data required by the Department, by telephone lines directly to the Department's computer;

31. The design of the facility shall not place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, potable and non-potable water supplies, waste water and stormwater collection and treatment, energy supply and transmission, transportation systems, or any other site related infrastructure subsystems, except in those cases where plans have been developed or are being implemented to provide for the expansion of existing utility systems or establishment of new utility systems which will meet the additional demand generated by the construction and operation of the facility. Copies of existing utility expansion plans and implementation time frames shall be submitted in those cases where such expansions are needed to meet the additional demand described above; and

32. All thermal destruction facilities shall be equipped with an independent, auxiliary power system capable of supplying energy at normal levels in the case of a power supply failure.

**7:26-2B.5 Additional engineering design submission requirements and design requirements for transfer stations and materials recovery facilities**

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10;

(b) All solid waste transfer stations and materials recovery facilities, except for those regulated pursuant to N.J.A.C. 7:26-2.4(c)4, shall be designed in accordance with the following:

1. Facilities shall be designed with a system capable of collecting, storing, treating and disposing of wastewater generated during normal operations, including the wash-out and cleaning of equipment, trucks and floors;

2. Facility processing, tipping, sorting, storage and compaction areas shall be located within the confines of a totally enclosed building;

3. Facilities shall be designed with concrete tipping floors or ramps to ensure the proper containment and channeling of wastewater to sanitary sewer connections or corrosion resistant holding tanks;

4. Facilities shall be designed with concrete or asphalt paving in those areas subject to vehicle loading and unloading activities;

5. Facilities shall be designed with sufficient internal storage areas for unprocessed incoming solid waste;

6. Facilities and all appurtenances shall be designed, positioned and buffered in such a manner that the sound levels generated by the operation shall not exceed limits established pursuant to the Noise Control Regulations, N.J.A.C. 7:29;

7. Facilities shall be designed in such a manner so as to afford fluid vehicular movement onsite and prevent traffic backups and related traffic hazards on access roads servicing the facility;

8. Offsite truck routes for the conveyance of solid waste shall be defined and delineated in such a manner as to minimize impacts on surrounding residential development or similar sensitive receptor and shall not exceed the existing level of service, as defined by the New Jersey Department of Transportation of any major intersection;

9. Facility layout design shall conform to the configuration of the site. A setback area shall be provided to allow for adequate buffering of the site. All main building enclosures shall be designed with a minimum setback of 50 feet from the facility property line;

10. Facilities shall be designed with alarm and fire protection systems capable of detecting, controlling and extinguishing any and all fires that may occur;

11. The interior layout shall provide for system installations that maximize accessibility for repairs, maintenance, and cleaning, while affording employee safety;

12. Facilities shall be designed and constructed in full conformance with the specifications and requirements of the Uniform Construction Code, N.J.A.C. 5:23;

13. The facility shall be designed so as not to place a demand exceeding the remaining use capability of existing physical utilities including, but not limited to, water supply, wastewater and stormwater collection and treatment systems, energy supply and transportation systems; and

14. The proposed ultimate disposal facility and location for all waste processed by the facility shall be identified.

(c) The site plan map shall include the following:

1. A layout of all facility buildings and structures which shall indicate the type of construction materials;

2. Profile views of all structures and enclosures showing dimensions. Plan views showing building setback, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas, and site boundaries;

3. Interior floor plan showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas;

4. A description with detailed specifications of the proposed onsite and offsite transportation system which shall indicate the type of construction materials; and

5. A utilities plan identifying, locating and describing all utilities which will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system and water supply system. A descriptive statement of the carrying capacities of the existing systems and the remaining availability within the system for the facility's utility needs.

(d) The engineering report shall include:

1. Descriptive and detailed specifications of all process equipment to be used, including the equipment's rated and designed capacity. Schematic diagrams shall be provided;

2. Equipment specifications including information pertaining to the make, model and manufacturer, if available, and the related processing equipment, reliability and efficiency shall be submitted;

3. A discussion of the maximum length of time that waste and, where applicable, recyclable materials will be stored at the facility; and

4. A description of any materials recycling or reclamation activities to be operated in conjunction with the facility.

(e) If the facility is to handle liquid or liquid-solid waste mixtures, the proposed methods to protect and monitor the quality of groundwater and nearby surface waters shall be indicated.

(f) If the materials recovery facility is designed with mechanical size reduction equipment, an explosion suppression system shall be included in the engineering design.

#### 7:26-2B.6 Additional engineering requirements for composting and co-composting facilities

(a) The requirements of this section are in addition to the requirements of N.J.A.C. 7:26-2.10;

(b) Co-composting facilities require, in addition to a SWF permit, a NJPDES permit obtained from the Division of Water Resources.

(c) The engineering report for these facilities shall include the following:

1. A discussion of the quantity and composition of the waste streams entering the proposed facility in terms of:

i. Municipality of origin; and

ii. Weight, volume and corresponding load density characteristics.

2. If sewage sludge is to be co-composted with solid waste, identify the quantity and physical/chemical characteristics of each source of sewage sludge. Sludge characteristics will be reviewed by the Division of Water Resources for a determination of their suitability for acceptance and processing at the proposed solid waste composting facility. The following information shall be submitted for each individual source of sludge:

i. Identify the type of processing carried out at the sewage treatment plant source prior to dewatering (e.g. lime stabilization, digestion, long term storage, other);

ii. Identify the dewatering processes instituted, including a description of the equipment or technique used, the chemical reagents employed and a determination of the percent solids achieved;

iii. Express quantities on a dry weight basis and volume of the percent solids delivered to the facility. Identify the maximum, minimum and average delivery rates anticipated; and

iv. Provide a physical/chemical analysis for the sludge from each source, in accordance with the Sludge Quality Assurance regulations, N.J.A.C. 7:14-4. The Department may require additional testing where conditions dictate.

3. A description of the number, type, capacity and delivery or removal frequency (indicate both average and peak periods) of all transport vehicles. Describe on-site parking capabilities, loading and unloading facilities, access and exit points and mechanisms and features employed to provide for an even flow of traffic onto, on and away from the site. Describe the related material construction specifications and details;

4. Identify, locate and describe the utilities intended to service the proposed facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system, electrical or other energy system;

5. Process management should be based on specific and objective processing goals. Processing goals should be identified including, but not limited to, rapid processing, drying method, materials handling, nitrogen retention, etc. Describe the underlying conceptual basis or strategy upon which the process management will be based. A rationale should be given for the management strategy chosen in reference to others;

6. Describe all process steps including, but not limited to, waste delivery, storage, mixing, composting methods, curing, screening, finishing, packaging and related process equipment and pollution control systems, instrumentation and monitoring mechanisms, if applicable. Within the context of the process description, identify the mix ratio of solid waste to sludge

as well as the bulk weight and porosity of the mix. Provide an indication of the period of time during which active composting is to take place and the temperatures to be reached and maintained within that period. Identify the rate of aeration afforded and the time frame established for compost curing. Submit equipment specifications relating to make, model, manufacturer, processing capacity, reliability, efficiency and the relevant design and operating criteria that directly relates to the equipment's intended performance, plus the number of equipment units which will be available at the facility. Information on individual unit synchronization with upstream and downstream equipment, if applicable, shall also be provided;

7. A comprehensive materials balance for the proposed facility shall be submitted. The materials balance shall account for every handling and processing step starting with waste delivery scheduling to the facility and ending with final product and waste/residue removal from the site. Final compost product distribution requirements will be governed by the guidelines or regulations established by the Division of Water Resources. Quantification and qualification of sidestream process pollutants, if any, shall also be provided for in the materials balance. If any materials recovery is anticipated, document the anticipated materials recovery rates in tons per hour for each recovered component; and

8. A discussion of the contingency disposal options to be utilized if the composted end product cannot be marketed. These disposal options shall be in accordance with the approved district solid waste management plan and any other Departmental requirements established for the distribution of sewage sludge compost.

(d) If a natural ground surface is to be used for storage, composting or curing, or any surface impoundments, lagoons, or other structures for storage or conveyance of leachate, runoff or condensate are proposed, soil borings of the property shall be provided in accordance with the following:

Acreage	Minimum Number of Borings
1-10	4
10-50	8
50-100	14
100-200	20
over 200	24

(e) The site plan map shall depict the facility layout on the property and include profile views of all structures, utilities and enclosures showing height, breadth and bulk dimensions. Dimensions for loading, unloading, storage (for example, incoming waste, outgoing product), processing, composting and curing areas shall be provided. Identify the type of drainage system, run-off and leachate control systems. Building setbacks and the distances of any onsite proposed or existing structure, processing area or treatment area, and streets from the site boundaries shall be indicated. The site plan map shall include interior floor plans showing the layout, profile view and dimensions of the interior unloading, sorting, storage, processing, and loading areas as well as auxiliary functional areas such as offices and employee's facilities.

#### 7:26-2B.7 (Reserved)

#### 7:26-2B.8 Additional operational requirements for thermal destruction facilities

(a) The requirements of this section are in addition to the general requirements of N.J.A.C. 7:26-2.11;

(b) Subsequent to completion of the facility construction phase and prior to the initiation of the testing phase, the New Jersey licensed professional engineer retained by the applicant to supervise the construction of the facility shall certify in writing to the Department that he or she has personally examined the facility during each major stage of construction and that the facility has been constructed in accordance with the documents, statements, designs and plans submitted to and approved by the Department.

(c) The facility shall not initiate full scale operations until a suitable testing period has demonstrated, to the satisfaction of the Department, that the facility, as constructed, will operate safely and in conformance with the SWF permit. In order to facilitate the testing:

1. The owner or operator shall notify the Department one month prior to the initiation of the facility start-up and shake-down testing period;

2. The Department reserves the right to have a representative present at the facility during the testing to observe the testing; and

3. The Department reserves the right to collect its own samples to verify the test results.

(d) Immediately following the initiation of full scale operations, facility personnel shall begin routine inspections for equipment malfunction or deterioration and operating effectiveness, in accordance with the following:

1. The owner or operator shall conduct inspections as indicated in the approved final O and M manual in order to identify and remedy any problems; and

2. The owner or operator shall record the results of the inspections in a bound log book which shall be available at the facility at all times for inspection by the Department. These records shall include the date and time of the inspection, the name of the inspector, a notation of observations and recommendations and the date and nature of any repairs or other remedial actions taken.

(e) A Departmental inspector may, at the option of the Department, be stationed at facilities operating at a capacity of 500 tons per day or greater, on a daily basis and during all facility operating hours. The owner or operator of such a facility shall allow entry to the inspector at any time during operating hours. The owner shall make available office space for departmental personnel to prepare inspection reports.

(f) The owner or operator shall implement waste receiving area control procedures that provide for the inspection of the incoming waste stream for the purpose of removing unprocessable or potentially explosive materials prior to the initiation of processing. In addition, the inspection shall effectively prevent the acceptance of unauthorized waste types. These procedures and necessary contingency plans shall be incorporated into the approved final O and M manual.

(g) Should situations arise where the facility experiences equipment or system malfunction to the extent that the waste received cannot be handled or processed in the normal manner, as specified in the facility's SWF permit, then the operator shall notify the Department of the existence of such a situation and the circumstances contributing to the situation within the working day of its occurrence. The operator shall immediately pursue corrective measures. The continued receipt of wastes at the facility shall be limited to that quantity and type that can be handled, stored and processed in conformance with that facility's remaining approved operational capacity.

(h) Arrangements for facility generated waste disposal shall be established and maintained throughout the life of the facility. These waste disposal arrangements shall be in conformance with the Solid Waste Management Plan of the District in which the facility is located and with the rules of the Department.

(i) Unprocessed incoming waste, facility process waste residues and effluents, and recovered materials shall be stored in bunkers, pits, bins, or similar containment vessels and shall be kept at all times at levels that prevent spillage or overflow.

(j) All facilities and their related sub-systems and appurtenances shall be operated, at all times, in full compliance with the sound level limitations established in the Department's Noise Control regulations, N.J.A.C. 7:29.

(k) The delivery of waste to the facility and the removal of residues and recovered products from the site shall be scheduled so as to eliminate traffic backups and allow for fluid vehicular movement on site. Delivery routes shall be clearly delineated and adhered to. Arteries that pass through non-residential areas shall be utilized wherever possible.

(l) Samples and measurements taken for the purpose of monitoring facility process and treatment operations shall be representative of the process or operation and shall be performed in accordance with the conditions of the facility's SWF permit, as well as the requirements of other regulatory agencies where applicable. Monitoring shall be conducted through the use of continuous monitoring instrumentation, where feasible.

(m) Prior to disposal, the operator shall perform a waste determination on all residual ash, in accordance with N.J.A.C. 7:26-8.5. Such determination shall be based on analyses of representative composite samples collected in the manner specified in the facility's SWF permit. At a minimum the sampling shall include analyses for E.P. toxicity and total 2,3,7,8 TCDD, and shall be performed at the frequency specified in the facility's SWF permit.

(n) The Department may require the operator to perform additional analyses on ash removed from exhaust gases and collected by emission control equipment, at a frequency established by the Department, based on the storage capability and ash disposal scheduling of the proposed facility.

(o) The analyses required by (m) and (n) above shall be performed in accordance with procedures outlined in the most recent edition of "Test Methods for Evaluating Solid Waste—Physical/Chemical Methods," U.S.E.P.A. publication SW-846.

(p) The analysis of the ash shall be submitted to the Division's Bureau of Hazardous Waste Planning and Waste Classification for classification. The operator shall dispose of the onsite generated residual ash at a facility authorized and permitted to receive the waste type I.D. number assigned to the residual ash by the Bureau.

(q) The operator shall retain original records of all waste analyses and operations' monitoring reports at the facility for a period of three years from the date of measurement.

(r) Records of operations' monitoring and waste analyses required by (q) above shall include:

1. The date, time and place of sampling, measurement or analysis;
2. The name of the individual who performed the sampling, measurement or analysis;
3. The sampling and analytical methods utilized;
4. The results of such sampling, measurement or analyses; and
5. The signature and certification of the report by an appropriate authorized agent for the facility.

(s) The owner or operator shall prevent accidental or unintentional entry and minimize the possibility for unauthorized entry into the facility. The facility shall have a 24-hour surveillance system which continuously monitors and controls entry to the facility or an artificial or natural barrier which completely surrounds the facility. In addition, the facility shall have a means to control entry at all times through the gates or other entrances to the facility.

(t) The owner or operator shall comply with the following requirements pertaining to facility staffing:

1. Facilities shall maintain sufficient personnel during each scheduled shift to assure the proper and orderly operation of all system components, along with the ability to handle all routine facility maintenance requirements. Such personnel shall have sufficient educational background, employment experience and/or training to enable them to perform their duties in such a manner as to ensure the facility's compliance with the requirements of the Act, this chapter, and the conditions of its SWF permit;

2. Each shift shall have a designated shift supervisor authorized by the owner or operator to direct and implement all operational decisions during that shift;

3. A facility utilizing a boiler to generate steam, power or heat shall employ individuals licensed in accordance with the Rules and Regulations of the New Jersey Department of Labor, "Boilers, Pressure Vessels and Refrigeration," N.J.A.C. 12:90; and

4. Any facility designed with a capacity to process 500 tons of solid waste or greater per 24 hour operating period, shall have under contract a New Jersey licensed professional engineer as a consultant to oversee the general plant operations. This engineer shall possess experience in the design and operation of the major system components or equipment that constitute the facility.

(u) The owner or operator shall comply with the following requirements pertaining to facility personnel training:

1. All personnel who are directly involved in facility waste management activities or who operate, service, or monitor any facility equipment, machinery or systems shall successfully complete an initial program of classroom instruction and on-the-job training that includes instruction in the operation and maintenance of the equipment, machinery and systems which they must operate, service or monitor in the course of their daily job duties, and which teaches them to perform their duties in a manner that ensures the facility's compliance with the requirements of the Act, this chapter and the conditions of its SWF permit;

2. The training program shall be directed by a person thoroughly familiar with the technology being utilized at the facility and the conditions of the facility's permits;

3. The training program shall ensure that facility personnel are able to effectively respond to any equipment malfunction or emergency situation that may arise. The training program shall provide instruction in the use of personal safety equipment, procedures for inspecting and repairing facility equipment, the use of communications or alarm systems, the procedures to be followed in response to fires, explosions or other emergencies, and the procedures to be followed during planned or unplanned shutdown of operations;

4. Facility personnel shall successfully complete the initial training program required herein within six months after the effective date of this subchapter or six months after the date of their employment or assignment to the facility, whichever is later. Employees hired after the effective date of this subchapter shall not work in unsupervised positions until they have completed the training program required herein;

5. Facility personnel shall take part in a planned annual review of the initial training program; and

6. Training records that document the type and amount of training received by current facility personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least one year from the date the employee last worked at the facility.

(v) The following actions shall be implemented in the case of an emergency:



1. The plant operator or emergency coordinator shall immediately identify the character, exact source, amount and extent of any discharged materials and notify appropriate State or local agencies with designated response roles if their help is needed;

2. Concurrently, the plant operator or emergency coordinator shall assess possible hazards to public health or the environment that may result from the discharge, fire or explosion. This assessment shall consider both direct and indirect effects;

3. If the plant operator or emergency coordinator determines that the facility has had an uncontrolled discharge, a discharge above standard levels permitted by the Department, or a fire or explosion, he or she shall:

i. Immediately notify appropriate local authorities if an assessment indicates that evacuation of local areas may be advisable;

ii. Immediately notify the Department at (609) 292-7172; and

iii. When notifying the Department, report the type of substance and the estimated quantity discharged, if known, the location of the discharge, actions the person reporting the discharge is currently taking or proposing to take in order to mitigate and discharge and any other information concerning the incident which the Department may request at the time of notification.

4. The plant operator shall take all reasonable measures to ensure that fires, explosions and discharges do not recur or spread to other areas of the facility. These measures shall include, where applicable, the cessation of process operations and the collection and containment of released waste;

5. Immediately after an emergency, the plant operator or emergency coordinator shall provide for treating, storing or disposing of waste, contaminated soil or water or any other material contaminated as a result of the discharge, fire or explosion;

6. The plant operator or emergency coordinator shall insure that no waste is processed until cleanup procedures are completed and all emergency equipment listed in the contingency plan is again fit for its intended use;

7. The plant operator or emergency coordinator shall notify the Department and appropriate local authorities when operations in the affected areas of the facility have returned to normal; and

8. Within 15 days after the incident, the plant operator or emergency coordinator shall submit a written report on the incident to the Department. The report shall include, but not be limited to:

i. The name, address and telephone number of the facility;

ii. The date, time and description of the incident;

iii. The extent of injuries, if applicable, with names and responsibilities indicated;

iv. An assessment of actual damage to the environment, if applicable;

v. An assessment of the scope and magnitude of the incident;

vi. A description of the immediate actions that have been initiated to clean up the affected area and prevent a recurrence of a similar incident; and

vii. An implementation schedule for undertaking measures to effect cleanup and avoid recurrence of the incident, if applicable.

**SUBCHAPTER 5. [RULES OF PRACTICE AND PROCEDURE] (RESERVED)** This subchapter expired on October 7, 1985 pursuant to Executive Order No. 66(1978) and the Department does not intend to readopt its provisions

7:26-12.11 Decision-making process for completed applications

(a) Once an application is complete, the Department shall, **within six months of that date**, tentatively decide whether to prepare a draft permit or to deny the application.

1.-3. (No change.)

(b)-(c) (No change.)

7:26-12.12 Public participation in the permit process

(a)-(c) (No change.)

(d) Public notice of a public hearing shall be given at least 30 days before the hearing and may be combined with public notice of a draft permit. **The public hearing shall be held within 45 days of the date of issuance of the draft permit**

(e)-(j) (No change.)

(k) **The applicant for a permit shall appear at the public hearing and be available to answer questions regarding the proposed facility or facility expansion. Failure of the applicant to appear at the public hearing and answer questions may result in denial of the application. In the event that a response cannot be given at the hearing, a written response shall be prepared by the Department or the applicant after the hearing.**

[(k)](l) (No change in text.)

[(l)](m) (No change in text.)

[(m)](n) (No change in text.)

(o) Hazardous waste facility applications which are within the jurisdiction of the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq. shall be subject to the public participation requirements of that law, in lieu of the requirements in this subchapter.

**7:14A-6.16 Special ground water monitoring requirements for new non-hazardous waste sanitary landfills**

(a) The ground water monitoring system shall be designed and constructed in accordance with the following:

1. A ground water flow model to predict the surface of the ground water level shall be utilized to locate and size the ground water monitoring well system. The ground water flow model shall be submitted for evaluation;

2. The location and number of detection wells or downgradient wells shall be sufficient to define and detect any potential migration;

3. The downgradient wells shall be capable of adequately monitoring the unsaturated zone and saturated zone below the landfill and should be located in accordance with the following guidelines:

i. The location of the unsaturated zone lysimeters shall be directly beneath the landfilled area; and

ii. The location of the saturated zone wells should be in a staggered, phased or expanding ring design with at least half the wells at a maximum distance no greater than 150 feet from the toe of the slope of the landfill.

4. The location and number of background wells or upgradient wells, not biased by possible contamination, shall be sufficient to adequately define the background ground water quality.

(a)

## **DIVISION OF WASTE MANAGEMENT**

### **Closure and Post-Closure of Sanitary Landfills**

#### **Proposed New Rule: N.J.A.C. 7:26-2.9**

Authority: N.J.S.A. 13:1E-114.

DEP Docket No. 001-86-01.

Proposal Number: PRN 1986-9.

Take notice that the public comment period will be reopened until June 4, 1986 for submission, in writing, of information or arguments relevant to the captioned rule proposed on February 3, 1986 at 18 N.J.R. 252(a).

Submissions should be addressed to:

Howard Geduldig

Department of Environmental Protection

Office of Regulatory Services, Room 803

Labor and Industry Building

CN 402

Trenton, New Jersey 08625

## **HEALTH**

(b)

## **NARCOTIC AND DRUG ABUSE CONTROL**

### **Controlled Dangerous Substances**

#### **Narcotic Treatment Programs**

#### **Proposed New Rules: N.J.A.C. 8:65-11**

Authorized By: N.J.S.A. 24:21-9.

Proposal Number: PRN 1986-155.

Submit comments by June 4, 1986 to:

Lucius A. Bowser, Chief

Drug Control Program

CN 362

Trenton, N.J. 08625

#### **Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:65-11 expired July 17, 1985. The Department of Health has reviewed the rules and has found them to continue to be necessary, adequate, reasonable, and proper for their originally intended purpose. The Department therefore proposes the rules as new with amendments to the expired text.

The rules outline operation of a narcotics treatment program. Additionally, there is a change in the rule regarding the use of dextropropoxyphene.

In the past, a small number of practitioners had been using dextropropoxyphene to treat drug dependent persons. However, the only

drug authorized to be used under the current FDA regulations. (21 CFR 291.505), is Methadone. Practitioners currently using dextropropoxyphene in treating drug dependent persons will now terminate such activity. Two possible alternatives to the use of dextropropoxyphene are for the patients involved to obtain treatment in an existing methadone program, or for the concerned practitioner to seek FDA authority to commence a methadone treatment program.

#### Social Impact

The proposed new rules would have an impact on the communities in which narcotic treatment programs operate in that the rules set forth the operating procedures for these programs and the criteria of using methadone treatment in the control of heroin addiction. The proposed new rules continue the confidentiality requirement, which affects the participants of the programs.

#### Economic Impact

The proposed new rules will have a great economic impact on the public because they will provide a means of treatment of narcotic substance abusers that will allow their ultimate return to society to lead productive human lives. The rules will have only a slight economic impact on the existing narcotic treatment programs, as they will formalize the registration regulation. The fees are now being changed, to conform with practice begun in 1983.

Full text of the expired rules proposed as new may be found in the New Jersey Administrative Code at N.J.A.C. 8:65-11.

Full text of the proposed amendments to the expired text follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

#### [PREAMBLE]

The regulations set forth in Subchapter 11 of Chapter 65, Title 8 with cogent revisions of certain other Subchapters of Title 8, New Jersey Administrative Code provide a comprehensive means whereby interested persons desiring to engage in a program of narcotic treatment to control dangerous substances abusers are provided authoritative legal information necessary for such endeavors.

In conformance with principles of uniformity in enforcement of the New Jersey Controlled Dangerous Substance Act (N.J.S.A. 24:21-1 et seq.) Subchapter 11 of Title 8 contains essentially the same information expressed in the Federal Register, Friday, October 25, 1974, 37983-86, pertaining to amendments to the Federal Controlled Substances Act made by the Federal Narcotic Treatment Act of 1974.]

#### 8:65-11.1 Definitions

"Detoxification treatment" means the **administration or** dispensing for a period not in excess of 21 days, of a narcotic drug or narcotic drugs in decreasing doses to an individual in order to alleviate adverse physiological or [psychological] **psychological** effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time.

#### 8:65-11.2 Registration; fees

(a) Every person who engages in a narcotic treatment program, including a compounder, shall obtain a registration within 30 days of the adoption of these regulations, and shall obtain a renewal of the registration [on or before July 1 of every] **each** year thereafter.

(b) (No change.)

(c) Each program site located away from the principal location and at which place narcotic drugs or stored or dispensed must be separately registered and obtain narcotic drugs by use of order forms pursuant to [Subchapter 6 of this Chapter] N.J.A.C. **8:65-6**.

(d) For each registration or reregistration to engage in a narcotic treatment program, including a compounder, the applicant shall pay an annual fee of [\$10.00] **\$20.00** at the time of application for registration or for renewal of registration.

(e) (No change.)

#### 8:65-11.7 Use of [dextropropoxyphene] **methadone**

**The only drug authorized to be used under the FDA regulations (21 CFR 291.505) is methadone.**

[(a) Narcotic Treatment Programs: under the provisions of the Narcotic Treatment Act of 1974 (Public Law 93-281, May 14, 1974) and the regulations of DEA and FDA, narcotic treatment programs are currently using methadone, a Schedule II narcotic drug, in detoxification and maintenance treatment. However, a smaller number of practitioners have also been using dextropropoxyphene to treat drug dependent persons.]

[(b) The classification of dextropropoxyphene as a narcotic drug in Schedule IV by this final order will result in practitioners currently treating persons for drug dependence with dextropropoxyphene no longer being able to do so since its status as a Schedule IV narcotic drug placed it under the provisions of the Narcotic regulations. Since the only drug authorized to be used under the FDA regulations (21 CFR 291) is methadone practitioners currently using dextropropoxyphene to treat drug dependent persons must terminate such activity with 120 days of the publication of this order.]

[(c) Two possible alternatives available within the 120 day period are for the patients involved to obtain treatment in an existing methadone program or for the concerned practitioner to seek FDA authority to commence a methadone treatment program.]

## HIGHER EDUCATION

### EDUCATIONAL OPPORTUNITY FUND BOARD

The following proposals are authorized by T. Edward Hollander, Chairman, Educational Opportunity Fund Board.

Submit comments by June 4, 1986 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
Trenton, New Jersey 08625

#### (a)

### Administrative Policies and Procedures Student Residency

#### Proposed Amendment: N.J.A.C. 9:11-1.2

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1986-160.

The agency proposal follows:

#### Summary

The Educational Opportunity Fund Board is statutorily charged with the establishment of policies and procedures governing the operation of the Educational Opportunity Fund Program, which provides academic support services and financial aid to educationally and economically disadvantaged students. Such aid may be utilized by students attending both public and private institutions of higher education in New Jersey in pursuit of a collegiate degree.

The proposed amendment expands the rights of resident dependent students whose parents move out of state during their collegiate attendance by allowing such students to remain eligible for the program.

#### Social Impact

Under current regulations, a student's domicile is governed by that of his or her supporting parents or guardians. If the student is attending college within New Jersey and his or her parents are domiciled in New Jersey, then the student will pay resident tuition and be eligible for an Educational Opportunity Fund grant and support services. If the parents relocate to another state while the student is attending college, then the student is no longer considered a domiciliary of New Jersey and loses eligibility for continued aid under the Educational Opportunity Fund Program.

The proposed amendment allows a student in this situation to maintain his or her Educational Opportunity Fund Program eligibility. This will enable students to continue receiving an Educational Opportunity Fund grant and support services, thus allowing these students to complete their collegiate education at an institution of higher education in New Jersey. It will also encourage these individuals to continue to live and work in this state following graduation.

#### Economic Impact

The proposed amendment has a significant positive impact upon students falling within this area. Failure to enact this amendment would result in such students losing financial aid granted under the Educational Opportunity Fund Program during the course of their collegiate education. Such a financial hardship could result in these students having to leave college. The proposed amendment should help to prevent such occurrences.

The economic impact upon the Educational Opportunity Fund Program itself will be slight as the number of program participants within this category each year is minimal.

Full text of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

#### 9:11-1.2 Student residency

(a) (No change.)

(b) A dependent student as defined in [section 4 of this subchapter] N.J.A.C. 9:11-1.4 is presumed to be a legal resident of the state which his or her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state for the temporary purpose of obtaining an education. **However, any dependent student who is eligible for New Jersey resident tuition status, regardless of the residency status of his or her parent(s) or guardian(s), is considered to be a New Jersey resident for state funded student aid programs.**

### (a)

#### Administrative Policies and Procedures Financial Eligibility for Undergraduate Grants

##### Proposed Amendment: N.J.A.C. 9:11-1.5

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1986-162.

The agency proposal follows:

#### Summary

The Educational Opportunity Fund Board is statutorily charged with the establishment of policies and procedures governing the operation of the Educational Opportunity Fund Program which provides academic support services and financial aid to educationally and economically disadvantaged students. Such aid may be utilized by students attending both public and private institutions of higher education in New Jersey in pursuit of a collegiate degree.

The proposed amendment increases the discretion of campus E.O.F. programs to admit students into the program who meet the spirit and intent of the program but whose incomes may exceed current eligibility limits. The proposal also sets forth criteria for allowing such admissions.

#### Social Impact

The proposal will expand participation in the E.O.F. Program to a student who does not meet the current financial eligibility requirements of the program but whose circumstances result in a disadvantaged background which meets the original intent of the program. Such exceptional circumstances shall be limited to no more than 20 percent of each campus' program population.

#### Economic Impact

The amendment will expand the population eligible for participation in the E.O.F. Program, thus making more students eligible for financial aid grants under the program. The Board anticipates that any enrollment increases due to this proposal can be met by the funding recommended by the Governor for the 1987 fiscal year, as previously several institutions did not meet full enrollment goals.

Full text of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

#### 9:11-1.5 Financial eligibility for undergraduate grants

(a)-(d) (No change.)

[(e) Where there is evidence of a background of historical poverty and strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the E.O.F. Program, the certifying officer designated by the president of the institution may authorize grants of no more than five percent under a waiver pursuant to the provisions of this section. Such a waiver can be issued when exceptional conditions exist which affect student eligibility and sufficient documentation is made available for verification. The conditions may include, but are not limited to:

1. Serious mismanagement of family income that prevents student support;
2. Separation and/or divorce proceedings which reduce available funds to the student;
3. Temporary unemployment of one or both wage earners;
4. Family illness which causes temporary reduction of family income;
5. Change of employment status of one or both wage earners which causes serious reduction in family income;
6. Extraordinary non-discretionary expenses due to permanent disability which reduces available funds to the student.]

(e) Where there is evidence that strict adherences to the maximum income eligibility cut-offs will not serve the purpose of the E.O.F. Program, the campus E.O.F. director may admit up to a maximum of 20 percent of the annual freshmen class under a waiver pursuant to the provisions of this section. Students admitted under this provision must meet one of the following criteria:

1. The student attends(ed) a District Factor Group A or B school district as certified by the New Jersey Department of Education;
2. The student resides in a municipality defined as a "high distress" area;
3. The student has a sibling who was, or is currently, enrolled in an E.O.F. Program;
4. The student (or family) is eligible for federal government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs; free and reduced breakfast/lunch programs, food stamps) and is a first-generation college student.
5. The student's record must contain sufficient documentation for verification of the above criteria. All efforts should be made to give priority to those students whose incomes are within the limits of these guidelines.

(f) (No change.)

### (b)

#### Administrative Policies and Procedures Grant Amounts

##### Proposed Amendment: N.J.A.C. 9:11-1.7

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1986-161.

The agency proposal follows:

#### Summary

The Educational Opportunity Fund Board is statutorily charged with the establishment of policies and procedures governing the operation of the Educational Opportunity Fund Program which provides academic support services and financial aid to educationally and economically disadvantaged students. Such aid may be utilized by students attending both public and private institutions of higher education in New Jersey in pursuit of a collegiate degree.

This proposal increases the maximum grant awards for undergraduate students in the E.O.F. Program for the 1986-87 academic year.

#### Social Impact

The proposal, by increasing award amounts, will serve to make a college education possible for a greater number of students from educationally and economically disadvantaged backgrounds.

#### Economic Impact

The proposal will provide more funding to E.O.F. Program students, thereby assisting students with the greatest financial need in starting and completing a collegiate education.

Full text of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

#### 9:11-1.7 Grant amount

(a)-(c) (No change.)

(d) The E.O.F. Board of Directors shall annually review the state grant amounts E.O.F. students and make adjustments if necessary. The minimum and maximum awards for Graduate and Undergraduate E.O.F. grants for each type of institution follows:

	Minimum	Maximum
Undergraduate		
2-Year Public Colleges	\$200	[\$450] <b>550</b>
4-Year Public Colleges		
Commuter	200	[450] <b>550</b>
Residential	200	[700] <b>800</b>
Rutgers, NJIT		
Commuter	200	[450] <b>550</b>
Residential	200	[700] <b>800</b>
Independent Colleges	200	[1,400] <b>1,700</b>
Graduate	Minimum	Maximum
4-Year Public Colleges	\$200	\$1,500
4-Year Independent Colleges	200	2,500
Rutgers, NJIT	200	2,500
UMDNJ/FDU Dental School	200	4,000

(e)-(f) (No change.)



## HUMAN SERVICES

The following proposals are authorized by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Manual for Physician's Services; Independent Clinic Services Manual

##### HCFA Common Procedure Coding System (HCPCS); Immunizations

##### Proposed Amendments: N.J.A.C. 10:54-4, 10:66-3.

Authority: N.J.S.A. 30:4D-6a(5), b(3), 7, a, b, c.

Proposal Number: PRN 1986-164.

Submit comments by June 4, 1986 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

##### Summary

This proposal contains revisions to the immunization fees that are contained in both the Manual for Physician's Services and the Independent Clinic Services Manual. The fees pertain to specific procedure codes within the HCFA Common Procedure Coding System, commonly known as HCPCS. (The full text of the amendments to the fee schedule appear in the proposal below.) **HCPCS codes are referenced, but not reproduced, in the New Jersey Administrative Code. They may be obtained from the Administrative Practice Officer, Division of Medical Assistance and Health Services, CN-712, Trenton, N.J. 08625.**

The Division of Medical Assistance and Health Services (the Division) has found it necessary to revise the fee schedule for certain procedure codes associated with immunizations. There has been a rapid and dramatic increase in the cost of certain vaccines. In addition, there are a limited number of pharmaceutical manufacturers producing the serums which are used primarily for the immunization of children. The majority of procedure codes and corresponding fee schedules contained in this proposal will be increased. However, there are some procedure codes that will be decreased slightly. These codes, which appear in the text below, are J2790, 90702, 90719, and 09703.

The method of computing the Medicaid dollar values for immunization procedure codes is based on the average wholesale price of the vaccine plus a 15 percent mark-up plus \$2.00 (overhead).

##### Social Impact

The revised fee schedule is designed to insure that all Medicaid patients, including children, will be able to continue receiving necessary immunizations that are essential for their continued health and well being.

The proposal also impacts on physicians who are providing immunizations to Medicaid patients.

##### Economic Impact

The estimated cost of the proposed fee revisions to the Division of Medical Assistance and Health Services will be approximately \$450,000 (federal-state share combined) per year.

The economic impact on physicians will vary, depending on the number of Medicaid patients being treated. The objective of the rule is to reimburse providers for immunizations based on the new fee schedule.

There is no cost to the Medicaid patient for this service.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: The following Dollar Values, which are found throughout the Manual for Physician's Services (N.J.A.C. 10:54-4) and the Independent Clinic Services Manual (N.J.A.C. 10:66-3) are being amended as follows:

HCPCS CODE	DESCRIPTION	MEDICAID DOLLAR VALUE
90701	Immunization—Diphtheria, Pertussis, Tetanus combined vaccine	[ 5.86] <b>10.79</b>
90702	Immunization—Diphtheria, Tetanus Toxoid combined vaccine	[ 4.65] <b>3.98</b>
90703	Immunization—Tetanus Toxoid	[ 3.90] <b>3.85</b>
90704	Immunization—Mumps	[11.55] <b>13.99</b>
90705	Immunization—Measles	[10.25] <b>12.35</b>
90706	Immunization—Rubella	[10.65] <b>12.86</b>
90707	Immunization—Measles, Mumps, Rubella combined vaccine	[22.15] <b>27.24</b>
90708	Immunization—Measles and Rubella combined vaccine	[15.35] <b>18.73</b>
90709	Immunization—Rubella, Mumps combined vaccine	[16.50] <b>20.23</b>
90712	Immunization—Oral polio vaccine	[ 7.10] <b>13.85</b>
90719	Immunization—Diphtheria Toxoid	[ 4.90] <b>4.88</b>
90724	Immunization—Influenza	[ 4.70] <b>5.32</b>
90732	Immunization—Pneumococcal vaccine polyvalent	[ 9.25] <b>11.32</b>
J2790	RHO (D) Immune Globulin (Human) (Microdose for Abortions and Miscarriages)	[42.40] <b>42.37</b>
W9090	Immunization—Hemophilus	[ 9.90] <b>11.45</b>
W9095	Immunization—Tetanus Antitoxin	[ 5.45] <b>5.97</b>

#### DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1986-150, 151 and 154, submit comments by June 4, 1986 to:

Audrey Harris, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

### (b)

#### Public Assistance Manual Transportation for Client to Fair Hearing Proposed Amendment: N.J.A.C. 10:81-6.3

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1986-150.

The agency proposal follows:

##### Summary

It is the right of every applicant or recipient of public assistance, adversely affected by a decision by a county welfare agency (CWA), to be afforded a fair hearing. This proposed amendment would eliminate any ambiguity which might exist with respect to the duties of CWAs in arranging travel at agency expense, when necessary, for those individuals who appeal an agency decision and are to attend a hearing.

##### Social Impact

Because the CWAs are, in fact, assuring that transportation is available, this amendment takes on the nature of a preventive or even a "house-keeping" change. It will not influence the behavior of any known person or group at this time, but will result in the avoidance of considerable inconvenience in the event regulations are interpreted less liberally than intended.

##### Economic Impact

The amendment will prevent an adverse economic impact on those clients who need transportation to hearings and might have been denied it on a restrictive interpretation of regulation.

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

10:81-6.3 Responsibilities of the CWA in processing hearing requests  
(a) To assure orderly and expeditious processing of complaints and hearing requests, each CWA will designate a liaison between the county and State Division whose duties shall include but not be limited to:

1.-4. (No change.)

5. Contacting the applicant/recipient or his or her legal or authorized representative not less than two days prior to a hearing to confirm attendance, and arranging for transportation [when required by program regulations] **by agency staff and vehicles or otherwise at agency expense when no other reasonable means of transportation is available;**

6.-8. (No change.)

(b) (No change.)

(a)

**Assistance Standards Handbook  
Income From Eligible and Noneligible Individuals in  
the Household, Penalty of Ineligibility, Earned  
Income from Self-employment**

**Proposed Amendments: N.J.A.C. 10:82-2.3, 2.4, and  
4.3**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 233.20(a)(3)(vi).  
Proposal Number: PRN 1986-154.

The agency proposal follows:

**Summary**

The amendments contained herein are being proposed as a result of a review conducted by the United States Department of Health and Human Services (USDHHS), Office of Family Assistance, to evaluate the conformity of State rules at N.J.A.C. 10:82 to current Federal regulations in the Aid to Families with Dependent Children (AFDC) program.

Language has been added at N.J.A.C. 10:82-2.3 to clarify the treatment of income from eligible and noneligible individuals in the household. The amendment provides that for family groups living together, the income of the spouse is to be considered available for the other spouse and income of a parent is considered available for children under age 21, regardless of whether the parent or spouse is noneligible or sanctioned. However, where a spouse or parent is receiving Supplemental Security Income (SSI) benefits, such income and resources shall not be counted as available to the eligible unit for the period that SSI benefits are received (45 CFR 233.20(a)(3)(vi)). Income of stepparents who are living in the household continues to be treated in accordance with current policy at N.J.A.C. 10:82-2.9.

For an individual sanctioned for failure or refusal to comply with an AFDC eligibility requirement, all income of the sanctioned individual in excess of an amount equal to that individual's per capita share of the allowance standard for the eligible unit with the individual included, will be considered available to the remaining unit members.

The proposed amendment at N.J.A.C. 10:82-2.4 provides that, when a member of the eligible unit has incurred a penalty of ineligibility, such individual's income shall still be available to the eligible unit, in accordance with N.J.A.C. 10:82-2.3(c).

The amendments at N.J.A.C. 10:82-2.3 and 4.3 adjust from \$96.00 to \$125.00 the cost standard for a noneligible individual's share of household expenses. Under current rules, income in excess of this amount is considered available to the eligible unit.

**Social Impact**

The proposed amendments will provide a positive social impact because they will ensure that all financial resources available to AFDC recipients from household members, including those members penalized for failure to comply with an AFDC program requirement, are considered in determining whether a family in fact needs public assistance. In this regard, the proposed amendments are consistent with the Federal objectives of the AFDC program.

**Economic Impact**

The proposed amendment increasing the cost standard allowed for a noneligible individual's share of household expenses will have a positive economic impact on the AFDC family because it will result in counting less income from noneligible household members in the AFDC grant, and yield a slightly higher monthly grant. This will be offset by counting more income of sanctioned eligible unit members, resulting in a lower monthly grant. However, the number of cases affected by either policy is expected to be small. Therefore, the economic impact of the amendments in terms of savings in assistance costs will be negligible.

**Full text** of the proposal follows (additions shown in boldface thus; deletions shown in brackets [thus]).

10:82-2.3 [Non-eligible persons] **Income from eligible and noneligible individuals in the household**

(a) For purposes of AFDC, in family groups living together, income of the spouse is considered available for the other spouse and income of a parent (natural or adoptive) is considered available for children under 21. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State

supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible unit.

1. If the spouse is also a stepparent of eligible AFDC-C children and is in fact a member of the household, income will be considered available in accordance with N.J.A.C. 10:82-2.9.

2. For earned income, the net amount to be considered available to the eligible unit shall be determined by deducting only the first \$75.00 of such income and the actual expenses of child care or care for an incapacitated individual that does not exceed \$160.00 (\$110.00 for part-time employment) per child or individual.

[(a)](b) **A noneligible individual does not meet the eligibility criteria for AFDC for reasons other than a sanction.** When a noneligible individual is living in the household of an eligible unit, an amount of [\$96.00] **\$125.00** per month shall be recognized as the cost standard for that individual's share of household expenses. Only the cash amount which is over and above [\$96.00] **\$125.00** shall be considered as income to the eligible unit[, except for the income of a natural or adoptive parent who is living with his/her eligible children but is not a member of the eligible unit].

[(b)](c) **A sanctioned individual is not included in the eligible unit because of the imposition of a sanction for failure or refusal to comply with an AFDC eligibility requirement.** When [the natural or adoptive parent] **an individual** is not included in the eligible unit **because of a sanction** and has earned or unearned income of his or her own, such income, less the [parent's] **individual's** per capita share of the allowance standard for the eligible unit with the [parent] **individual** included, shall be applied to the needs of the [eligible children, except when such parent is an SSI recipient] **remaining members of the eligible unit.**

1. For earned income, the net amount to be considered available to the eligible unit shall be determined [by deducting only the first \$75.00 of such income and the actual expenses of child care or care for an incapacitated individual that does not exceed \$160.00 (\$110.00 for part-time employment) per child or individual] **without application of earned income disregards set forth in N.J.A.C. 10:82-2.8.**

**10:82-2.4 Penalty of ineligibility**

When a member of an eligible unit has incurred a penalty of ineligibility for [money payment,] **AFDC due to the imposition of a sanction**, such individual cannot be included in the eligible unit and [his/her] **his or her** needs shall not be taken into account in determining the family's need for assistance. **However, his or her income in excess of amounts set forth in N.J.A.C. 10:82-2.3(c) shall still be considered available to the remaining members of the eligible unit (also see [See N.J.A.C. 10:82-2.3(b) regarding income of a noneligible parent and] N.J.A.C. 10:81-8.13(a)2).**

**10:82-4.3 Earned income from self-employment**

(a)-(b) (No change.)

(c) An individual who is providing extensive personal services along with room and board accommodation to an adult other than a relative shall be considered self-employed. Any income from this arrangement in excess of [\$96.00] **\$125.00** shall be recognized as earned income.

(b)

**General Assistance  
Assistance Allowance Standards  
Proposed Amendment: N.J.A.C. 10:85-3.3**

Authority: N.J.S.A. 44:8-11(d).  
Proposal Number: PRN 1986-151.

The agency proposal follows:

**Summary**

The proposed amendment is intended to streamline and clarify rules pertaining to General Assistance allowance schedules. The amendment eliminates redundant language concerning the definitions of household size and eligible unit which appear elsewhere at N.J.A.C. 10:85. Included is a new subparagraph which stipulates that countable income must be deducted from the monthly allowance standard to determine grant entitlement.

**Social Impact**

The proposed amendment will simplify the use of N.J.A.C. 10:85 and therefore will have a positive social impact upon General Assistance recipients and municipal welfare agency employees.

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

**Economic Impact**

Streamlining of the administration of the General Assistance program, which this amendment promotes, may result in a small savings due to potential reduction in payment errors.

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

**10:85-3.3 Financial eligibility**

(a)-(e) (No change.)

(f) Assistance allowance standards are as follows.

1. (No change.)

2. Allowance schedules: Schedules I and II[,] at [the end of this chapter,] **N.J.A.C. 10:85-4.1** have been established under the authority of N.J.S.A. Title 44 and give the standards, in monthly amounts, to be used as a basis for granting assistance [to specified eligible units, based on the number of persons in the household].

i. The eligible unit [represents the person(s) applying for and eligible to receive General Assistance [(see) is defined at N.J.A.C. 10:85-3.1(b)1)].

ii. The household size [represents the number of persons living together as a family unit, regardless of relationship or eligibility for other public assistance programs (see) is defined at N.J.A.C. 10:85-3.1(b)2)].

iii.-vi. (No change.)

viii. The payment granted for any period shall be determined from the applicable monthly allowance standard less any countable income (see **N.J.A.C. 10:85-4.2**).

3.-5. (No change.)

(g) (No change.)

**CORRECTIONS****(a)****STATE PAROLE BOARD****Parole Board Rules****Proposed Amendments: N.J.A.C. 10A:71-2.2, 3.3, 3.4, 3.22, 3.27, 3.28, 3.31, 4.2, 4.3**

Authorized By: Christopher Dietz, Chairman, New Jersey State Parole Board.

Authority: N.J.S.A. 30:4-123.48(d), 30:4-123.51(g), 30:4-123.54(d).

Proposal Number: PRN 1986-156.

Submit comments by June 4, 1986 to:

James E. McGreevey, Esq.  
Executive Director  
New Jersey State Parole Board  
P.O. Box 7387  
Whittlesey Road  
Trenton, New Jersey 08628

The agency proposal follows:

**Summary**

The following summarizes the proposed amendments to the rules listed:

1. The proposed amendment to N.J.A.C. 10A:71-2.2 provides for the date a decision is rendered as being the controlling date, unless an appeal is filed, on which the one year retention period of sound recordings of hearings commences.

2. The proposed amendment to N.J.A.C. 10A:71-3.3 codifies the practice of applying jail credit awarded by the sentencing court in the computation of the presumptive primary eligibility date in the cases of young adult inmates.

3. The proposed amendment to N.J.A.C. 10A:71-3.4 classifies the institutional infraction of .004, Fighting with another person as a Category E infraction for the purpose of determining whether to increase an inmate's parole eligibility date as a result of the commission of such infraction.

4. The proposed amendment to N.J.A.C. 10A:71-3.22 permits the juvenile Board panel or a juvenile Board panel member to reduce a parole release date outside of the schedule without the necessity of a recommendation from a hearing officer.

5. The proposed amendments to N.J.A.C. 10A:71-3.27 permits a juvenile Board panel member who conducts a quarterly review to render a decision, including a decision to certify parole release, in the case of a juvenile inmate. The present language of the section only permits a

juvenile Board panel member to make a recommendation which is subject to review by an assigned member of the juvenile Board panel member. The statutory language authorizes a juvenile Board panel member to render a decision to certify parole release and the amendments to this section are in accordance with the statutory language.

6. The proposed amendment to N.J.A.C. 10A:71-3.28 clarifies that an assigned member of the juvenile Board panel will only review the recommendation of a hearing officer.

7. The proposed amendments to N.J.A.C. 10A:71-3.31 specify the statutory citations on which the awarding of commutation, work and minimum custody credits are based and clarify that jail credit is awarded by the sentencing court pursuant to the court rule.

8. A proposed amendment to N.J.A.C. 10A:71-4.2 clarifies that a decision to deny parole by the special county panel in the case of any inmate committed to a term of incarceration in excess of 60 days in a county jail facility shall be appealable to the Board.

9. A proposed amendment to N.J.A.C. 10A:71-4.2 establishes that a computation of an inmate's parole eligibility date shall be appealable to the Chairperson and establishes the criteria for the basis of such an administrative appeal.

10. The proposed amendments to N.J.A.C. 10A:71-4.3 include reference to the Chairperson. Such reference is necessary since a proposed amendment to N.J.A.C. 10A:71-4.2 establishes the Chairperson as the body authorized to receive an inmate's administrative appeal of the computation of his parole eligibility date.

**Social Impact**

The amendments represent revisions of administrative procedures and clarifications of present practices of the State Parole Board and the establishment of an administrative appeal process in regards to the computation of parole eligibility dates. Certain inmates may serve increased periods of incarceration prior to parole eligibility as a result of committing the specified institutional infraction. The amendments to the specified juvenile sections of the code will impact on the juvenile Board panel member(s) processing of juvenile inmates.

**Economic Impact**

It is anticipated that the economic impact of this proposal will be negligible. Certain inmates may be required to serve increase periods of incarceration for the commission of the specified institutional infraction in the proposed amendment to N.J.A.C. 10A:71-3.4. The economic impact is contingent on the number of incidents of the commission of said infraction and whether a Board panel imposes upon the offenders an increased period of incarceration prior to parole eligibility.

Though a formal administrative appeal process is established, no economic impact is anticipated since the State Parole Board presently routinely processes informal appeal letters from inmates regarding the computation of parole eligibility dates. No other economic impact is anticipated since the remainder of the amendments are merely revisions and clarifications of procedures and practices of the State Parole Board.

Full text of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

**10A:71-2.2 Records retention**

(a) Electronic recordings of parole hearings and revocation hearings shall be retained by the Board for at least one year [after the hearing] **from the date a decision is rendered in an inmate's case** provided, however, that if an appeal is filed within one year [after the hearing] **from the date of the decision being appealed**, such recordings shall be retained until final determination of the appeal.

(b)-(c) (No change.)

**10A:71-3.3 Parole eligibility for young adult inmates**

(a)-(e) (No change.)

(f) **Credit awarded by the sentencing court pursuant to R.3:21-8 for time served in a county jail prior to the date of sentence shall reduce the presumptive primary eligibility date established pursuant to (a), (b), (c) or (e) above.**

Redesignate existing (f)-(i) as (g)-(j) (No change in text.)

**10A:71-3.4 Institutional infractions: adult inmates**

(a)-(c) (No change.)

(d) Institutional infractions specified and defined by the Department shall be assigned to categories on the following basis:

1.-4. (No change.)

5. Infraction Category E shall consist of .004, **Fighting with another person**; .005, Threatening another with bodily harm or with any offense against his person or his property; .153, Stealing (Theft); .257, Violating a condition of any community release program; .258, Refusing to submit



to urine analysis; .325, Counterfeiting, forging or unauthorized reproduction or unauthorized use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document; .704, Perpetrating frauds, deceptions, confidence games, riots or escape plots through mail; and .708, Refusal to submit to a search.

6.-7. (No change.)

(e)-(o) (No change.)

10A:71-3.22 Alteration of parole release dates: juvenile inmates

(a)-(b) (No change.)

(c) The juvenile Board panel or a juvenile Board panel member [upon the recommendation by a hearing officer] may reduce a parole release date outside of the schedule contained in the provisions of this subsection when deemed appropriate in view of the juvenile inmate's participation in institutional programs or the juvenile inmate's institutional adjustment.

(d) (No change.)

10A:71-3.27 Quarterly review notice of decision: juvenile inmates

(a) At the conclusion of the quarterly review **conducted by a hearing officer**, the hearing officer [or juvenile Board panel member] shall:

1.-3. (No change.)

4. Recommend [an increase or] a decrease in the parole release date in accordance with N.J.A.C. 10A:71-3.22(a), (b) or (c); or

5.-6. (No change.)

(b) The hearing officer [or juvenile Board panel member], at the conclusion of the quarterly review, shall immediately advise the juvenile inmate in writing of the determination and submit the written determination to the assigned member(s) of the juvenile Board panel.

(c) If the hearing officer [or a juvenile Board panel member] defers a decision, the juvenile inmate and the assigned member(s) of the juvenile Board panel shall be advised in writing of the decision upon being rendered by the hearing officer [or a juvenile Board panel member].

(d) If the hearing officer [or a juvenile Board panel member] recommends the juvenile inmate's release on parole, the juvenile inmate shall be advised of any special conditions recommended.

(e) **At the conclusion of the quarterly review conducted by a juvenile Board panel member, the juvenile Board panel member shall render a determination(s) as provided in N.J.A.C. 10A:71-3.28(a).**

**(f) The provisions of N.J.A.C. 10A:71-3.28 (b), (c) and (d) shall apply to those cases in which the quarterly review is conducted by a juvenile Board panel member.**

10A:71-3.28 Board member review: juvenile inmates

(a) Upon review of the recommendation of the hearing officer [or juvenile Board panel member], the assigned member of the juvenile panel shall render the following determination(s):

1.-5. (No change.)

(b)-(d) (No change.)

10A:71-3.31 Calculation of parole eligibility: county inmates

(a) (No change.)

(b) If the parole eligibility date is based on a judicial or statutory mandatory minimum term or 60 days of the aggregate term, the parole eligibility date shall include credit **awarded by the sentencing court** pursuant to R.3:21-8 for time served in the county jail prior to the date of sentence.

(c) If the parole eligibility date is based on one-third of the sentence imposed, the parole eligibility date shall include commutation credits **pursuant to N.J.S.A. 2A:164-24, credit awarded by the sentencing court pursuant to R.3:21-8** for time served in the county jail prior to the date of sentence, and earned work and earned minimum custody credits **pursuant to N.J.S.A. 30:8-28.4.**

(d) In no case shall a county inmate be eligible for parole prior to the service of 60 days of his aggregate term, less credit **awarded by the sentencing court** pursuant to R.3:21-8 for time served in the county jail prior to the date of sentence.

10A:71-4.2 Appeals by inmates

(a) Any denial of parole by the **special county**, young adult or adult Board panel shall be appealable to the Board provided one of the following criteria is met:

1.-3. (No change.)

(b)-(h) (No change.)

**(i) The computation of a parole eligibility date by the Board's staff shall be appealable to the Chairperson provided one of the following criteria is met:**

**1. The computation of the parole eligibility date is contrary to Board practice or procedure.**

**2. The computation of the parole eligibility date does not correctly reflect credits awarded by the sentencing court or earned work and/or minimum**

**custody credits awarded by the Department.**

**3. The computation of the parole eligibility date is based upon inaccurate sentencing information.**

10A:71-4.3 Appellate procedure

(a) (No change.)

(b) Appeals filed by inmates shall be considered by the Board panel [or], **Board or Chairperson**, as appropriate, within 45 days of the date the appeal was received.

(c) The Chairperson or Board panel member shall notify the inmate in writing of the [Board's] decision within 14 days of such decision.

(d) The Board panel [or], **Board or Chairperson, as appropriate**, may affirm, modify or reverse the decision being appealed, or may remand the case to the **Board's staff**, hearing officer, Board member or Board panel for further consideration.

## LAW AND PUBLIC SAFETY

### (a)

#### STATE ATHLETIC CONTROL BOARD

#### Compensation of Boxing Referees and Judges, and of Boxing of Wrestling Timekeepers

#### Proposed New Rule: 13:46-11.10

#### Proposed Amendment: 13:46-8.25

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1986-163.

Submit Comments by June 4, 1986 to:

Larry Hazzard, Commissioner

State Athletic Control Board

CN 180, Justice Complex

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposal will establish new compensation schedules for boxing referees and boxing judges and for timekeepers, who officiate at both boxing and wrestling shows.

The proposal amends N.J.A.C. 13:46-8.25. The proposal amends the compensation schedule for boxing referees and judges and also increases the amounts to be paid to these officials.

The proposal also adds a new provision whereby a referee who must referee an entire, or the remaining portions of a, boxing show because of the incapacity of unforeseen unavailability of the second referee, may receive additional compensation at the discretion of the Commissioner. For example, if the gross gate receipts for a boxing show were less than \$25,000, the promoter would be required to pay \$250.00 to each of the two referees assigned to the show for a total of \$500.00. If one of these referees became incapacitated at the start of the first bout of the show and the other referee then refereed that bout and the remaining bouts on the program, that referee could be paid up to twice the amount of the fee established under N.J.A.C. 13:46-8.25(a). Thus for example, the referee who was incapacitated may receive \$20.00 and the referee who worked the entire show would receive \$480.00. This provision is proposed based upon the Board's belief that a referee who performs more than this normal share of the referee duties at a boxing show, due to unforeseen circumstances, should be compensated accordingly for his efforts.

The proposal would further provide that compensation fees for boxing referees and judges officiating at sanctioned championship bouts would be set by the Commissioner rather than pursuant to the compensation schedule set forth in N.J.A.C. 13:46-8.25(a). In making this determination, the Commissioner could consider the determinations, standards or recommendations made by a nationally recognized boxing association. However, the proposal makes clear that the Commissioner retains full authority to set the compensation for referees and judges assigned to officiate at such bouts.

The proposal would add a new rule, N.J.A.C. 13:46-11.10, to establish a compensation schedule for timekeepers. Timekeepers officiate at both boxing and wrestling shows. The proposal would also give the Commissioner the authority to set the timekeeper's compensation in regard to sanctioned championship boxing bouts.

#### Social Impact

The proposal would have a positive social impact. The proposal would bring the compensation schedules for boxing referees and judges and for timekeepers into line with that paid in other jurisdictions.

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**Economic Impact**

The proposal would affect the promoters of boxing shows who are required to pay the fees for compensation of boxing referees and judges and of timekeepers. The compensation schedules set forth in the proposal for these officials have been increased but are similar in range to those paid to such officials in other jurisdictions. The proposal will help to ensure that New Jersey continues to attract qualified officials to preside at boxing shows held in this State.

Full text of the proposal follows (additions indicated by boldface thus; deletions indicated in brackets [thus]).

**13:46-8.25 Compensation for boxing referees and judges**

(a) The compensation [and expenses] to boxing referees and judges shall be paid by the promoter conducting the show and shall be on the following basis:

1. [if] **When the gross gate receipts of the show do not exceed \$[15,000] \$25,000**, the fee for each of the two referees shall be [150.00] **\$250.00** and the fee for each of the three judges shall be [125.00] **\$200.00**.

2. When the gross **gate receipts of the show** are between [15,000 and 30,000] **\$25,000 and \$50,000**, the fee for each of the two referees shall be [175.00] **\$300.00** and the fee for each of the three judges shall be [150.00] **\$250.00**.

3. When the gross **gate receipts of the show** are between [30,000 and 50,000] **\$50,000 and \$100,000**, the fee for each of the two referees shall be [200.00] **\$350.00** and the fee for each of the three judges shall be [175.00] **\$300.00**.

4. When the gross **gate receipts of the show** are between [50,000 and 75,000] **\$100,000 and \$200,000**, the fee for each of the two referees shall be [250.00] **\$400.00** and the fee for each of the three judges shall be [200.00] **\$350.00**.

5. When the gross **gate receipts of the show** are between [75,000 and 150,000] **\$200,000 and \$300,000**, the fee for each of the two referees shall be [300.00] **\$500.00** and the fee for each of the three judges shall be [225.00] **\$400.00**.

[6. When the gross receipts are between \$150,000 and \$200,000 the fee for each of the referees shall be \$400.00 and the fee for each of the three judges shall be \$250.00.]

7. When the gross receipts are between \$200,000 and \$300,000 the fee for each of the referees shall be \$500.00 and the fee for each of the three judges shall be \$275.00.]

[8.] **6. When the gross gate receipts of the show are in excess of \$300,000, the fee for the referees and judges shall be set by the Commissioner.**

(b) **In the event one of the two referees assigned to a boxing show becomes incapacitated, or in an emergency situation where only one of the two referees is available, the remaining referee shall referee the remaining contests on the program and, at the discretion of the Commissioner, may be compensated in an amount up to twice the amount of the fee established under (a) above. In such a situation, the compensation to be paid to the incapacitated or unavailable referee shall be reduced accordingly.**

(c) **The compensation schedule set forth in (a) above shall not apply in a sanctioned championship bout. The Commissioner shall set the compensation to be paid to boxing referees and judges officiating at sanctioned championship bouts. In making this determination, the Commission may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for boxing referees and judges in championship bouts respective of a determination or a recommendation by such an association.**

**13:46-11.10 Compensation for timekeepers**

(a) The compensation to timekeepers shall be paid by the promoter conducting the show and shall be on the following basis:

1. When the gross gate receipts of the show do not exceed \$25,000, the fee for the timekeeper shall be \$200.00.

2. When the gross gate receipts of the show are between \$25,000 and \$50,000, the fee for the timekeeper shall be \$250.00.

3. When the gross gate receipts of the show are between \$50,000 and \$100,000, the fee for the timekeeper shall be \$300.00.

4. When the gross gate receipts of the show are between \$100,000 and \$200,000, the fee for the timekeeper shall be \$350.00.

5. When the gross gate receipts of the show are between \$200,000 and \$300,000, the fee for the timekeeper shall be \$400.00.

**6. When the gross gate receipts of the show are in excess of \$300,000, the fee for the timekeeper shall be set by the Commissioner.**

(b) **The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The Commissioner shall set the compensation to be paid to timekeepers officiating at sanctioned championship boxing bouts. In making this determination, the Commissioner may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Association, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the Commissioner shall retain full authority to set the compensation schedule for timekeepers in championship boxing bouts irrespective of a determination or a recommendation by such an association.**

**PUBLIC UTILITIES****(a)****BOARD OF PUBLIC UTILITIES****Office of Cable Television****Senior Citizen Cable TV Rates****Proposed New Rule: N.J.A.C. 14:18-7.11**

Authorized By: Bernard Morris, Director, Office of Cable Television.

Authority: L.1985, c.356.

Proposal Number: PRN 1986-157.

A **public hearing** concerning this proposal will be held on Tuesday, May 20, 1986 in Hearing Room 1 at 10:00 a.m. at the address below.

Submit comments by June 4, 1986 to:

Bernard Morris, Director  
Office of Cable Television  
Board of Public Utilities  
1100 Raymond Blvd.  
Newark, N.J. 07102

The agency proposal follows:

**Summary**

The proposed new rule requires a cable company to give 30 days notice to affected parties before implementing, changing or ending a senior citizen discount program. A tariff reflecting such a program must be filed with the Office of Cable TV 45 days in advance. Companies with such a program must inform new subscribers in writing. Subscribers must establish eligibility by presenting a State Pharmaceutical Assistance card or an affidavit stating that the specific statutory requirements for the discount are met. Participation in the plan cannot disqualify a subscriber from other discount offerings the company may make.

**Social Impact**

The proposed new rule affects all cable television companies and all cable television subscribers over the age of 62. The new rule will govern any cable company electing to implement a senior citizen discount, regardless of whether the rates themselves are regulated. Under the rule, procedures for obtaining a senior citizens discount will be uniform among all companies offering them.

**Economic Impact**

The proposed new rule will establish procedures for cable subscribers who are at least 62 years old and meet certain income and residency requirements to obtain a discount in basic cable TV rates if such a discount is offered by the subscriber's system.

Full text of the proposed new rule follows:

**14:18-7.11 Senior citizens' discounts**

(a) Prior to offering, altering, or discontinuing a senior citizen discount, a cable company shall specify the rates, terms, and conditions for the discount, and which services are included; and,

1. Provide at least 30 days advance notice to each subscriber and municipality served; and,

2. Provide at least 45 days advance notice to the Office of Cable Television along with revised tariff sheets showing any such changes.

(b) New subscribers shall be informed in writing when a senior citizens discount program is available and the eligibility requirements for participation.

(c) Subscribers must establish eligibility by either:

1. Presenting a Pharmaceutical Assistance card and certifying that the subscriber is at least 62 years of age and that no more than one other person under the age of 62 resides in the same dwelling unit; or

2. Executing and notarizing a standard form of affidavit stating:

i. The subscriber's name and that he or she is at least 62 years of age;

ii. The subscriber's address and that he or she has been a permanent resident of this state for at least 30 days;

iii. That no more than one other person under the age of 62 resides in the same dwelling unit.

iv. That the subscriber is:

(1) Single with an income less than \$13,250 per year, including social security income benefits; or

(2) Married, with a combined income of less than \$16,250 per year including social security income benefits; or

(3) Such other limits as subsequently may be established for Pharmaceutical Assistance to the Aged and Disabled under N.J.S.A. 30:4D-21, as amended.

(d) Participation in a senior citizens discount plan shall not affect a subscriber's eligibility for other generally offered discounts and marketing promotions.

## TRANSPORTATION

The following proposals are authorized by Roger A. Bodman, Commissioner, Department of Transportation.

Submit comments by June 4, 1986 to:

Charles L. Meyers

Administrative Practice Officer

Department of Transportation

1035 Parkway Avenue

CN 600

Trenton, New Jersey 08625

## TRANSPORTATION OPERATIONS

(a)

### Speed Limits

#### Route 48 in Salem County

#### Proposed Amendment: N.J.A.C. 16:28-1.107

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1986-144.

The agency proposal follows:

#### Summary

The proposed amendment will establish a school speed zone within the Penns Grove High School along Route 48 in Carney's Point Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children while going to or leaving school, during opening or closing hours and during recess.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a school speed zone limit was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.107 based upon the request from local officials and the traffic investigation.

#### Social Impact

The proposed amendment will establish a school speed zone along Route 48 in Carney's Point Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children while going to or leaving school during opening or closing hours and during recess. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "school speed" zone signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.107 Route 48

(a) The rate of speed designated for State highway Route 48 described [herein below] in **this section** shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

1.-2. (No change.)

3. In Carney's Point Township, Salem County:

i. **35 miles per hour School Speed Zone within the Penns Grove High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.**

(b)

### Miscellaneous Traffic Rules

#### Route I-295 Rest Areas in Salem County and Burlington County

#### Proposed Amendment: N.J.A.C. 16:30-11.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-208.

Proposal Number: PRN 1986-146.

The agency proposal follows:

#### Summary

The proposed amendment will establish regulations for the control of traffic and parking in rest areas under the jurisdiction of the New Jersey Department of Transportation along Route I-295 in Carney's Point Township, Salem County and Springfield Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of regulations controlling traffic and parking in the Rest Areas were warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-11.1 based upon the requests from local officials and the traffic investigations.

#### Social Impact

The proposed amendment will establish regulations for the control of traffic and parking in rest areas under the jurisdiction of the New Jersey Department of Transportation along Route I-295 in Carney's Point Township, Salem County and Springfield Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

#### Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking", "yield intersection", "one-way streets" and "handicapped parking" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

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

#### SUBCHAPTER 11. REGULATIONS [FROM] FOR THE CONTROL OF TRAFFIC AND PARKING IN REST AREAS UNDER THE JURISDICTION OF THE NEW JERSEY DEPARTMENT OF TRANSPORTATION

16:30-11.1 Route I-295 Rest Area

(a) Under the provisions of N.J.S.A. 39:4-208 the following regulations for the control of traffic upon the roadways of the Route I-295 Rest Area are hereby adopted:

[1. No stopping or standing in Carney's Point Township, Salem County:

i. No person shall stop or stand a vehicle at any time upon the roadways of the Route I-295 Rest Area except in designated areas, between the painted lines, and all vehicles so parked shall be properly identified as shown on Site Plan 295 (MP 2.1 to 4.0) attached to, and made a part of, these regulations.

2. Yield Intersection in Carney's Point Township, Salem County:

i. The intersection of Ramp A and Ramp B-1, of the Route I-295 Rest Area is designated as a Yield Intersection. A YIELD sign shall be in-



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alled on Ramp B-1 as shown on Site Plan 295 (MP 2.1 to 4.0) attached  
i, and made a part of, these regulations.

3. One-Way Streets in Carney's Point Townships, Salem County:

i. All ramps and roadways within the Route I-295 Rest Area, are  
esignated as One-Way Streets in the direction indicated on Site Plan  
295 (MP 2.1 to 4.0), attached to and made a part of these regulations.

4. Speed Limits in Carney's Point Township, Salem County:

i. Speed Limits for traffic along the ramps and roadway within the  
oute I-295 Rest Area, are established as indicated on Site Plan 295 (MP  
1 to 4.0), attached to and made a part of these regulations.]

1. In Carney's Point Township, Salem County:

i. No stopping or standing:

(1) No person shall stop or stand a vehicle at any time upon the roadways  
the Route I-295 Rest Area except in designated areas, between the painted  
es.

ii. Yield Intersection:

(1) The intersection of Ramp A and Ramp B-1, of the I-295 Rest Area  
hereby designated as a Yield Intersection. A YIELD sign shall be installed  
Ramp B-1 as shown on Site Plan 295 (MP 2.1 to 4.0) which is part  
these regulations.

iii. One-Way Streets:

(1) All ramps and roadways within the Route I-295 Rest Area are hereby  
esignated as One-way Streets, in the direction indicated on Site Plan 295  
4P 2.1 to 4.0), which is part of these regulations.

iv. Handicapped Parking:

(1) Locations as indicated on Site Plan 295 (MP 2.1 to 4.0) which is  
rt of this regulation, shall be for Handicapped Parking. All vehicles shall  
properly identified.

2. In Springfield Township, Burlington County:

i. No stopping or standing:

(1) No person shall stop or stand a vehicle at any time upon the roadways  
the Route I-295 Rest Areas, except in designated areas between the  
inted lines.

ii. One-Way Streets:

(1) All ramps and roadways within the Route I-295 Rest Areas are hereby  
esignated as One-way Streets, in the direction indicated on Site Plan 295  
4P 49.5 to 50), which is part of these regulations.

iii. Handicapped Parking:

(1) Location as indicated on Site Plan 295 (MP 49.5 to 50) attached  
and made a part of this regulation, shall be for Handicapped Parking.  
ll vehicles shall be properly identified.

(a)

## TRANSPORTATION SERVICES AND PLANNING

### FREIGHT SERVICES

#### Transportation of Hazardous Materials

#### General Requirements

#### Proposed Amendment: N.J.A.C. 16:49-1.3

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-25 et seq., (P.L.  
1983, Chapter 401).

Proposal Number: PRN 1986-137.

The agency proposal follows:

#### Summary

On November 5, 1984 the Department proposed new rules (N.J.A.C.  
16:49 "Transportation of Hazardous Materials"), at 16 N.J.R. 2979(a).  
The Department adopted these rules on March 18, 1985, at 17 N.J.R.  
2(a). These rules comply substantially with the requirements established  
within the Code of Federal Regulations, Parts 171, 172, 173, 174, 177,  
178 and 179. The enforcement of these rules will protect the general  
public, their lives and their property in a manner consistent with those  
regulations promulgated by the United States Department of Transpor-  
tation (USDOT).

Under provisions of these regulations, hazardous materials in transit  
must comply with all provisions of N.J.A.C. 16:49. To assure proper  
packaging, labeling, loading and bracing, it may be necessary to remove  
cargo seals allowing inspection of the vehicle's contents. In addition, in  
the event of packaging failure within a vehicle protected by a cargo seal,  
a seal may be removed to allow enforcement personnel inspection of  
any leakage or damage and determination whether or not the vehicle may  
continue or should be placed "out-of-service" and/or emergency response  
assistance summoned.

The proposed amendment of N.J.A.C. 16:49-1.3 will define the Depart-  
ment's policy concerning the removal and replacement of cargo seals  
during the course of an enforcement activity.

#### Social Impact

The impact of these amendments on the general public will be positive  
in that the safe transportation of hazardous materials will be insured on  
New Jersey highways.

#### Economic Impact

The Department and the Division of State Police will incur adminis-  
trative and operational costs for implementation and enforcement ac-  
tivities related to the proposed amendment.

Full text of the proposal follows (additions shown in boldface  
text):

16:49-1.3 General requirements

(a) (No change.)

(b) Vehicles, railroad cars, containers, shipping records, carrier re-  
cords, and places of origin in the State involved in the transportation  
of hazardous materials, substances, or wastes are subject to inspection  
by duly authorized representatives of the Division of the State Police as  
may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq.,  
and the regulations adopted supplementary thereto.

1. Division of State Police or authorized representatives, may break seals  
on vehicles during the course of an inspection of the carrier's equipment  
under N.J.A.C. 16:49. Under no circumstances will the U.S. Postal Service  
or the U.S. Department of Defense seals or locks be broken for the purpose  
of inspecting cargo within any vehicle. If cargo is protected with a seal from  
any other U.S. Government Agency prior permission must be obtained from  
the agency before removal of the seal.

2. Self-locking seals, identified as "New Jersey" or "State of New Jer-  
sey" together with a serial number shall be affixed by the enforcement  
personnel to replace any cargo seal removed for inspection purposes. These  
seals shall not be affixed to vehicles having no seals thereon, nor to vehicles  
found with seals already broken. In all cases where the seal is affixed to  
be a sealed vehicle, a notation shall be made on the inspection report, "State  
Seal No. \_\_\_\_\_ affixed to replace Seal No. \_\_\_\_\_" The signature of a  
witness, preferably that of a New Jersey State Police officer, or officer of  
the Port Authority of New York and New Jersey will be obtained when  
affixing the State seal on the vehicle. All access doors to the vehicle will  
be inspected to insure that all seals not removed during the inspection activity  
remain intact. A copy of the inspection report will be furnished to the vehicle  
operator or to the yardmaster in the case of a rail inspection.

3. Seals on tank vehicles should not be broken except in an emergency  
situation which poses an immediate hazard to the general public.

4. A separate report describing the circumstances under which any seal  
was broken should be prepared and may be attached to the inspection form.  
Such reports should contain a description of any unusual circumstances  
relating to the vehicle, cargo, and/or the vehicle operator.

5. Under no circumstances will the unsealed cargo door or vehicle be left  
unattended by enforcement personnel until after the State seal has been  
affixed.

(c)-(1) (No change.)

(b)

## AERONAUTICS

### Airport Safety Improvement Aid

#### Classification of State Aid

#### Proposed Amendment: N.J.A.C. 16:56-4.1

Authority: N.J.S.A. 27:1A-5, 27A1A-6, 6:1-44 and "Airport  
Safety Act of 1983" P.L. 1983, c. 264.

Proposal Number: PRN 1986-145.

The agency proposal number follows:

#### Summary

The proposed amendment will increase the annual ceiling on "Airport  
Safety Improvement Grants" from \$15,000 to \$50,000, while maintaining  
a maximum loan ceiling of \$90,000 for "Airport Safety Improvement  
Loans" to any one local sponsor.

Under the "Airport Safety Act of 1983" P.L. 1983 c. 264, approved  
July 11, 1983, the Legislature mandated the creation of an Airport Safety  
Fund, created by revenues derived from aviation fuel taxes and fees,  
which are disbursed back to the aviation industry for the improvement  
of air safety and the air transportation infrastructure.

The increased ceiling of Airport Safety Improvement Grants will encourage more rapid improvements in airport and air travel safety for the benefit of all citizens. The requirement for applicable environmental permits is not changed by these amendments. The increase in the grant ceiling, however, permits the local sponsors to apply for larger grants which may be used to fund environmental studies.

Economically, the increase in the grant ceiling will specifically promote more rapid investment in the State's transportation infrastructure, which directly contributes to the improvement of economic activities and mobility necessary for the common public benefit.

Placing a limit on the growth of loan balances and increasing opportunity for direct grants serves to control the growth at the local level of undesired long-term debt associated with necessary capital plant improvement.

The proposed amendment will permit more effective disbursement of State resources to local sponsors and promote greater local initiative to the privately-owned, public-use airports in the State of New Jersey.

#### Social Impact

The proposed amendment will increase the ceiling of Airport Safety Improvement Grants and encourage more rapid improvements in airport and air travel safety for the benefit of all citizens. Additionally, this increase permits the local sponsors to apply for larger grants which may be used to fund environmental studies.

#### Economic Impact

The proposed amendment will increase the ceiling from \$15,000 to \$50,000 for "Airport Safety Improvement Grants," while maintaining a maximum loan of \$90,000 for "Airport Safety Improvement Loans" to any one local sponsor, and will specifically promote continued investment in the State's transportation infrastructure, which directly contributes to the improvement of economic activities and mobility necessary for the common public benefit. The increase in the grant ceiling, permits the local sponsors to apply for larger grants and permit more effective disbursement of State resources to local sponsors and promote greater local initiative to the privately-owned, public-use airports in the State of New Jersey. However, with a limit on the growth of loan balances and increasing the opportunity for direct grants serves to control the growth at the local level of undesired long-term debt associated with necessary capital plant improvement.

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

#### 16:54-4.1 Classification of State aid

(a)-(d) (No change.)

(e) State airport safety improvement grants are grants given or offered to an eligible recipient or local sponsor for the purpose of assisting in the funding of the improvement of the air transportation infrastructure or for the purpose of promoting air or flight safety. Grants for this purpose may be given or offered subject to the following parameters:

1. (No change.)

2. Airport safety improvement grants are limited to an annual **[\$15,000] \$50,000** maximum disbursement to any eligible recipient.

3. (No change.)

(f) (No change.)

(g) These shall be absolute upper limits to the aid disbursed under this chapter. The purpose of these limits is to help ensure that there are sufficient resources available for State aid to the greatest number of eligible airports and that State resources for any one year are not expended on a limited few airport projects. The absolute upper limit to aid disbursed in any one calendar year to an airport are as follows:

1. The limit of State Airport Safety Improvement Grants is **[\$15,000] \$50,000**.

2. The limit on State Airport Safety Improvement Loans is \$90,000.

3. (No change.)

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Corporation Business Tax

#### Indebtedness and Interest on Indebtedness; Offsets

#### Proposed Amendments: N.J.A.C. 18:7-4.5 and 4.6

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1986-166.

Submit comments by June 4, 1986 to:

Nicholas Catalano

Assistant Chief Tax Counselor

Division of Taxation

50 Barrack Street, CN 269

Trenton, NJ 08646

The agency proposal follows:

#### Summary

The proposed amendments relate to the Corporate Business Tax Act, N.J.S.A. 54:10A-1 et seq., particularly sections 4(d), 4(e) and 4(k)(2)(E) and the rules set forth in N.J.A.C. 18:7-4.5 and 4.6. The Act and the rules involve the entire net income and entire net worth bases of the tax and deal with indebtedness, interest on indebtedness, and when receivables and interest may be offset. This is in an area of law that needed further clarification as a result of *Fedders Financial Corp. v. Director, Division of Taxation*, 96 N.J. 376 (1984) and *Mobay Chemical Corp. v. Director, Division of Taxation*, 96 N.J. 407 (1984). The proposed amendments are consistent with the practice, policy and administration consistently applied by the Division of Taxation which have not been limited by the facts in the *Fedders* and *Mobay* cases cited above.

#### Social Impact

Adoption of the amendments would clarify perplexing problems the Division has with taxpayers, their attorneys, accountants and the public itself, that have resulted in litigation, past and present. The two problems are: (a) the interest on indebtedness, and (b) indebtedness itself, that are being spelled out in rule form, by way of amendments, to demonstrate what has been and are the rules, practice, policy and administration of the Division of Taxation. The related amendment on set-offs of receivables against includible indebtedness, etc., including interest on said indebtedness, is to settle what seems to be a litigious area.

#### Economic Impact

There is minimal economic impact caused by these amended rules. Due to current statute, the rules and case law relating to indebtedness and interest on indebtedness, state revenue is not impacted substantially by this proposal which is intended to ameliorate confusion in the current rules. Costs of administration on the Division's side and cost of preparation of corporation business tax returns on the taxpayers' side should lessen somewhat.

**Full text** of the proposal follows (additions shown in boldface **thus**).

#### 18:7-4.5 Indebtedness owing directly or indirectly

(a)-(f) (No change.)

(g) **Taxpayer's indebtedness to a stockholder or shareholder includes both the direct ownership or the beneficial ownership of 10 percent or more of the aggregate outstanding shares of taxpayer's capital stock of all classes.**

**Example: P Corporation owns 100 percent of the stock of S Corporation, which in turn owns 100 percent of Z Corporation. P Corporation made loans or otherwise provided funds directly to Z Corporation. The indebtedness from Z Corporation to P Corporation is properly includible in the determination of Z Corporation's net worth since P Corporation beneficially owns Z Corporation by being the 100 percent stockholder of S Corporation.**

#### 18:7-4.6 Receivables offset against includible indebtedness

(a) The taxpayer may offset against includible indebtedness owed to any creditor the amount of any receivable due from that creditor.

(b) **The taxpayer may not offset includible indebtedness with receivables from a debtor, unless the receivable which if otherwise classified as a payable would be considered as includible indebtedness on the taxpayer's return.**

(c) **The provisions in (a) and (b) above also apply to interest on indebtedness which is taxable in determining the entire net income base as set forth in N.J.A.C. 18:7-5.5 as well as the inclusion of the interest in the net worth base.**

## OTHER AGENCIES

### (a)

#### NEW JERSEY TURNPIKE AUTHORITY

##### Limitations on Use of Turnpike

##### Proposed Amendments: N.J.A.C. 19:9-1.9

Authorized By: New Jersey Turnpike Authority, William J. Flanagan, Executive Director.

Authority: N.J.S.A. 27:23-29.

Proposal Number: PRN 1986-141.

Submit comments by June 4, 1986 to:

William J. Flanagan, Executive Director  
New Jersey Turnpike Authority  
New Brunswick, New Jersey 08903

The agency proposal follows:

##### Summary

The proposed amendment is required in order to bring N.J.A.C. 19:9-1.9(a)12.v. into compliance with new Federal and State regulations. On January 3, 1985, the New Jersey Division of Motor Vehicles adopted a regulation, N.J.A.C. 13:20-38.2, amending the dimensional standards for automobile transporters. This was done to bring the State of New Jersey into compliance with the Federal standards for automobile carriers, which is found at 23 C.F.R. §658.13(d). This new Federal regulation prohibits any state from imposing any restriction on automobile transporters of an overall length of less than 65 feet; or imposing a front overhang limitation of less than three feet, nor a rearmost overhang of less than four feet.

##### Social Impact

The proposed amendment will insure uniformity of regulation of car carriers so that a commercial vehicle will be able to travel through all of the states without having to change its shape for each state's regulations.

##### Economic Impact

Since the proposed amendment simply conforms State rules with Federal regulations no economic impact on the citizens of the State of New Jersey is expected.

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

##### 19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-11. (No change.)

12. Vehicles or combinations of vehicles, including any load thereon, exceeding the following extreme overall dimensions or weights;

i.-iv. (No change.)

v. Notwithstanding the above limitations, a combination of vehicles designed, built and used to transport other motor vehicles may carry a load which exceeds 65 feet overall length, including load overhang. [The total load overhang shall be limited to five feet and may not exceed three feet at either the front or rear.] **The overhang shall be limited to seven feet and may not exceed three feet at the front and four feet at the rear** and that the overhang shall be above the height of the average passenger car;

13.-26. (No change.)

(b) (No change.)

### (b)

#### CASINO CONTROL COMMISSION

##### Accounting and Internal Controls Patron Credit

##### Proposed Amendments: N.J.A.C. 19:45-1.27

Authorized By: Casino Control Commission, Theron G.

Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (l) and 5:12-101.

Proposal Number: PRN 1986-153.

Submit comments by June 4, 1986 to:

Thomas N. Auriemma, Deputy Director  
Legal Division  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN 208  
Trenton, N.J. 08625

The agency proposal follows:

##### Summary

This proposal is being published by the Casino Control Commission (Commission) as a result of a petition for rulemaking submitted by the Atlantic City Casino Association (Association) pursuant to N.J.S.A. 5:12-69(c). See 18 N.J.R. 114(b). The Commission has not taken any position concerning the merits of the Association's proposed amendments by agreeing to publish this proposal. Upon the receipt and review of comments from interested persons, the Commission may take further action on the proposed amendments, including possible formal adoption.

The proposed amendments would effect three changes to subsections (d) and (e) of N.J.A.C. 19:45-1.27. This section generally governs the manner in which casino licensees are required to approve, record and verify credit transactions with casino patrons.

Under the present version of N.J.A.C. 19:45-1.27(d)3, a casino licensee is required to verify a patron's outstanding indebtedness by contacting a consumer credit bureau and a casino credit bureau prior to approving the patron's credit limit. No alternative means of verifying this information is currently available if such contact should prove immediately impossible (for example, a consumer credit bureau may not be open on weekends). The proposed amendment to N.J.A.C. 19:45-1.27(d)3 would permit a casino licensee which is unable to make contact with the credit bureaus directly to use an alternative source of verification if the alternative source has made the required contact.

The second proposed amendment concerns paragraph 4 of N.J.A.C. 19:45-1.27(d). This provision presently requires a casino licensee to verify a patron's personal checking account information by directly contacting the patron's bank. The proposed amendment would authorize a casino licensee to utilize a bank verification service to verify this information. If utilized as an option, the bank verification service would be required to contact the patron's bank directly, and to provide a written report to the casino licensee on all information required by N.J.A.C. 19:45-1.27(c)4. If neither the casino licensee nor the bank verification service was able to contact the patron's bank, the casino licensee would still be permitted to use an alternative source of verification.

Finally, the proposal would amend N.J.A.C. 19:45-1.27(e) to require a casino licensee, upon receipt of a proper request by another casino licensee, to furnish the requesting casino licensee with any information in its possession concerning a patron as required by N.J.A.C. 19:45-1.27(c)1 through 4. This amendment would conform this subsection to the proposed amendment to N.J.A.C. 19:45-1.27(d)3 summarized above.

##### Social Impact

The proposed amendments to N.J.A.C. 19:45-1.27 should have not significant social impact since they merely provide alternative means of compliance with credit verification requirements which are already contained in the Commission's regulations. To the extent that the proposed amendments will permit a casino licensee to more readily obtain complete and accurate information concerning a credit patron's background, they may promote more informed credit decisions by casino licensees. The amendments may also permit the earlier extension of credit to new credit patrons whose outstanding indebtedness cannot now be verified during certain periods when credit bureaus are not open for business.



#### Economic Impact

The proposed amendments to N.J.A.C. 19:45-1.27(d)3 and (e) should have a positive economic benefit for casino licensees since they should be able to more readily extend credit to certain patrons whose outstanding indebtedness could not otherwise be verified. The proposed amendment to N.J.A.C. 19:45-1.27(d)4 is also anticipated to benefit casino licensees by lowering the cost of verifying patrons' personal checking account information. The proposed amendments should not have significant economic impact on the gaming public or the state regulatory and enforcement agencies, although the state agencies may incur some additional expense due to the need to license and monitor bank verification services.

**Full text** of the proposal follows (additions shown in boldface **thus**; deletions shown in brackets [thus]).

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a)-(c) (No change.)

(d) All verifications performed by the credit department in (c) above together with accurate and verifiable information received from the security and surveillance departments pursuant to N.J.A.C. 19:45-1.11(c) shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications or filed the relevant information. The date and time of the signature of the credit department representative shall be recorded either mechanically or manually contemporaneously with the transaction. The casino licensee's credit department shall fulfill the requirements of (c) above as follows:

1.-2. (No change.)

3. Verification of the patron's outstanding indebtedness, as required by (c)3 above, shall be performed by contacting a consumer credit bureau which is reasonably likely to possess information concerning the patron, to the extent such consumer credit bureau is available, and a casino credit bureau to determine whether the applicant has any liabilities or if there is any derogatory information concerning the applicant's credit history. Such contact shall be considered a verification of the outstanding indebtedness provided by the patron. **If such contact is not immediately possible, the casino licensee may use an alternative source which has made the required contact.** The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If either one or both of these [sources] **credit bureaus** do not have information relating to a patron's outstanding indebtedness this shall be recorded in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee requests written documentation of all information obtained as soon as possible and includes such written documentation in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained.

4. Verification of the patron's personal checking account information, as required by (c)4 above, shall be performed **by the casino licensee or a bank verification service directly** with the patron's bank. If such information is not immediately available, the casino licensee may use an alternative source. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee **or bank verification service** requests written documentation of all information obtained as soon as possible and [includes] such written documentation **is included** in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained. **No bank verification service may be used by a casino licensee to perform the verifications required by this section unless the bank verification service has filed a completed application for an appropriate casino service industry license under N.J.S.A. 5:12-92 and N.J.A.C. 19:43. If a bank verification service is used as a primary source of verification, the licensee shall, in addition to complying with any other requirement imposed by this section, record the date that the patron's personal checking account information was obtained from the bank by the service.**

(e) Any New Jersey casino licensee requesting information from another New Jersey casino licensee concerning a credit patron shall represent to the requested casino licensee that the patron has a credit line or has applied for credit and shall provide the patron's name, address of the patron's residence and the name and location of the patron's bank. Upon receipt of this information, the requested New Jersey casino licensee shall be required to furnish to the requesting New Jersey casino any information in its possession concerning a patron as required by (c)1, (c)2 and (c)4 above.

(f)-(p) (No change.)

(a)

## EXECUTIVE COMMISSION ON ETHICAL STANDARDS

### Positions in State Government with Responsibility for Matters Affecting Casino Activity

#### Proposed New Rule: N.J.A.C. 19:61-5.5

Authorized By: John G. Donnelly, Executive Director, Executive Commission on Ethical Standards.

Authority: N.J.S.A. 52:13D-12 et seq., specifically 52:13D-17.2(d).

Proposal Number: PRN 1986-142.

Submit comments by June 4, 1986 to:

John G. Donnelly, Executive Director  
Executive Commission on Ethical Standards  
28 West State Street, Room 1407  
CN 082  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed new rule is based on the Executive Commission's legislatively mandated responsibility to determine, publish and periodically update a list of those positions in State government with responsibility for matters affecting casino activity. The purpose of this list is to allow the Executive Commission on Ethical Standards and other appropriate enforcement bodies to apply and enforce the restrictions imposed by the Casino Ethics Amendment, L. 1981, c. 142, (N.J.S.A. 52:13D-17.2) on certain persons, including those holding positions in State government with responsibility for matters affecting casino activity. Such persons are subject to both the concurrent and post employment restrictions of that amendment with respect to various dealings with the casino industry.

The proposed new rule reflects the determination of the Executive Commission as to which positions carry such responsibility so as to be subject to the restrictions of the Amendment. The provisions and restrictions of the Casino Ethics Amendment apply with equal force to those persons specifically identified in the Amendment without any requirement for determination that they occupy positions with casino responsibility. These include all members and non-secretarial or clerical employees of the Casino Control Commission and Division of Gaming Enforcement as well as all persons subject to Financial Disclosure by Executive Order.

#### Social Impact

The proposed new rule is intended to enable the Executive Commission and other appropriate bodies to enforce the Casino Ethics Amendment by identifying those positions in State government having responsibility for matters affecting casino activity. The rule will thus extend coverage of the Act beyond the persons specifically identified to include any persons occupied in such positions or responsibility.

#### Economic Impact

There is no economic impact on the State as a result of the promulgation of this rule in that it results in no increased revenue and requires no increased expenditure to carry out its provisions. The Casino Ethics Amendment, L. 1981, c. 142, (N.J.S.A. 52:13D-17.2) does substantially enlarge the jurisdiction of the Executive Commission, but this particular rule serves only to identify those positions in State government to which the restrictions of that Amendment apply.

**Full text** of the proposed new rule follows.

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Executive Commission on Ethical Standards has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection; Division of Coastal Resources:

i. Bureau of Coastal Project Review (1 Chief and 3 Regional Supervisors classified as Supervising Environmental Specialists);

ii. Tidelands Resource Council (Members of the Council);

2. Department of Community Affairs (Division of Housing):

i. Bureau of Construction Code Enforcement (Chief; Assistant Chief; Supervisor, plans approval);

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ii. Bureau of Housing Inspection (Chief; Supervisor, Housing Code Compliance Assistant Regional Supervisor, Housing Code Enforcement);  
3. State Athletic Control Board (Commissioner; 3 Members).

(b) The list in (a) above is exclusive of the following persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment:

1. As used in N.J.S.A. 52:13D-17.2(a) "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full-time

professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW

##### Rules for Agency Rulemaking

##### Notice of Correction: Readoption with Amendments and New Rules, N.J.A.C. 1:30

Take notice that the adoption notice concerning Rules for Agency Rulemaking which appeared in the March 3, 1986 issue of the New Jersey Register at 18 N.J.R. 469(a) has been corrected. The effective dates and the expiration date for N.J.A.C. 1:30, Rules for Agency Rulemaking, should have appeared as follows: Effective date for readoption, **February 14, 1986**; effective date for amendments, **March 3, 1986**; expiration date pursuant to Executive Order No. 66 (1978), **February 14, 1991**.

## AGRICULTURE

### (b)

#### DIVISION OF ANIMAL HEALTH

##### Avian Influenza

##### Readoption: N.J.A.C. 2:5-3

Proposed: March 3, 1986 at 18 N.J.R. 488(a).

Adopted: April 3, 1986 by Arthur R. Brown, Jr., Secretary,  
Department of Agriculture.

Filed: April 7, 1986 as R.1986 d.148, **without change**.

Authority: N.J.S.A. 4:5-1, 4:5-9 and 4:5-94 to 106.

Effective Date: April 7, 1986.

Expiration Date: June 18, 1989.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### SUBCHAPTER 3. AVIAN INFLUENZA

##### 2:5-3.1 Poultry importation

(a) No live poultry originating from those designated areas or counties with confirmed cases of Avian Influenza, so designated by the New Jersey Department of Agriculture, United States Department of Agriculture, or other State Departments of Agriculture shall be allowed into New Jersey for any purpose unless inspected by or under a prior permit of the Department of Agriculture.

(b) No hatching eggs, chicks or poults shall be allowed into New Jersey from a designated area or county with confirmed cases of Avian Influenza unless inspected by or under a prior permit of the Department of Agriculture.

(c) The New Jersey Department of Agriculture may enter into agreements with the United States Department of Agriculture or the Departments of Agriculture of other states to allow the entrance of those items enumerated in (a) and (b) above, if originating from a designated county or area of Avian Influenza and from a flock operating under the National Poultry Improvement Plan which permit shall include, but not necessarily be limited to the following:

1. Certification of veterinary inspection;
2. Certification of origin;
3. Certification of transportation; and
4. Agreement to follow the rules and orders of the Department of Agriculture.

(d) Permits may be obtained from the Director of the Division of Animal Health, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625, (609) 292-3965.

##### 2:5-3.2 Vehicles

No vehicle shall be used in the transport of poultry, poultry products, feed, litter or manure in New Jersey unless the vehicle is cleaned, outside and in, so as to prevent the transport of the disease prior to every entrance

to a market, auction, farm, slaughterhouse, receiving point or station. The driver shall make an affirmative showing that the vehicle has been so treated and has made no intermediate stops prior to entrance.

##### 2:5-3.3 Equipment

The reuse of crates, flats or containers of any kind capable of transporting poultry or poultry products shall not be permitted except when properly cleaned and disinfected.

##### 2:5-3.4 Routes: Interstate shipment through New Jersey of live poultry

(a) All trucks carrying live poultry through New Jersey for out-of-state markets must confine themselves to interstate highway system roads. All trucks carrying birds for slaughter in New Jersey must follow these routes:

1. All trucks entering New Jersey from Pennsylvania and Delaware for the Vineland vicinity must adhere to the following routes: either across the Delaware Memorial Bridge north on I-295, or the New Jersey Turnpike to Route 322, east on Route 322 to Route 555 south, or Route 40 east to United Poultry on Route 555, south to Park Avenue west and Almond Road. West to B & B Poultry on Route 555, south to Chestnut Avenue, west to South Mill Road to Vineland Kosher Poultry, or across the Commodore Barry Bridge to Route 322 to Route 555.

2. All trucks entering New Jersey from New York must travel on the New Jersey Turnpike to Route 322 east, and follow the above route.

### (c)

#### DIVISION OF REGULATORY SERVICES

##### Grades and Standards

##### Fruit and Vegetable Fees and Charges

##### Adopted Amendments: N.J.A.C. 2:71-2.28, 2.29 and 2.31

Proposed: March 3, 1986 at 18 N.J.R. 448(a)

Adopted: April 3, 1986 by Arthur R. Brown, Jr., Secretary,  
Department of Agriculture

Filed: April 7, 1986 as R.1986 d.147, **without change**.

Authority: N.J.S.A. 4:10-6 and 4:10-13.

Effective Date: May 5, 1986.

Expiration Date: September 1, 1988.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

##### 2:71-2.28 Charges for inspection or grading and certification services: written agreements

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requestor of the services, shall be made according to the following schedule:

##### 1. Basic schedule for all products:

i. A charge of \$340.00 per five day week (Monday through Friday) of 40 hours or less for each inspector;

ii. A charge of \$12.75 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. An additional charge of \$12.75 per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday;

iv. A charge of \$12.75 per hour, or portion thereof, for each inspector working on Saturday and/or Sunday. There will be a four hour minimum charge for each inspector working on Saturday and/or Sunday;

v. Official mileage will be charged at the prevailing State rate per mile starting and ending where the inspector officially reports for duty.

##### 2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:

i. A charge of \$0.02 will be made for all packages inspected or graded and certified in excess of 3,778 packages during the seven day week (Saturday through Friday.)

3. Charges for inspection or grading and certification of potatoes for the fresh market:



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i. A charge of \$0.03 per hundredweight for all hundredweights inspected or graded and certified in excess of 3,400 hundredweights during the seven day week (Saturday through Friday.)

§:71-2.29 Charges; oral agreements; trailer, car, warehouse and storage lots

(a) Charges for inspection or grading and certification services performed to an oral agreement between the New Jersey Department of Agriculture and the requestor, for all trailer, car, warehouse and storage lots, shall be made according to the schedule detailed below. A minimum of \$15.00 for inspection or grading and certification services shall be charged. However, if the conditions listed in N.J.A.C. 2:71-2.30 are met, the charges shall be calculated according to the hourly rate schedule set out in N.J.A.C. 2:71-2.31.

1. Basic charge schedule for products other than potatoes:

i. A charge of \$0.09 per container for all containers;

2. Basic charge schedule for potatoes:

i. A charge of \$0.10 per hundredweight;

ii. All other size containers and bulk loads shall be converted to hundredweight equivalents. Charges for these equivalents shall be at the rate of \$0.10 per hundredweight.

3. Phytosanitary certificates:

i. No charge will be made for such certificates;

ii. The Chief, Bureau of Commodity Inspection and Grading, Division of Regulatory Services, may be contacted for information on countries requiring additional declaration statements.

4. Delayed inspections: Delayed inspections are those inspections requiring more than two hours to complete (exclusive of travel time) due to delays of any kind not attributable to the inspector. Additional charges for delayed inspections shall be assessed according to the following schedule:

i. \$10.00 per hour in half hour increments.

§:71-2.31 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of \$15.00 per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;

2. A charge of \$22.50 per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday;

3. A charge of \$22.50 per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requestor.

## CIVIL SERVICE

### (a)

#### OVERTIME COMMITTEE

#### Overtime Committee Rules

#### Adopted Repeal and New Rules: N.J.A.C. 4:6

Proposed: March 17, 1986, at 18 N.J.R. 515(a).

Adopted: April 16, 1986 by the Overtime Committee, Eugene J. McCaffrey, Sr., President.

Filed: April 16, 1986 as R.1986 d.170, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14-17.13 and 52:14-17.14; 29 U.S.C. 201 et seq.

Effective Date: May 5, 1986.

Expiration Date: May 5, 1991.

#### Summary of Public Comments and Agency Responses:

Four persons testified at the hearing: Christine Danilo, Department of Civil Service; Kathleen King, CWA; Robert Pursell, CWA; and Don Philippi, IFPTE, Local 195.

MS. DANILO explained that the Overtime Committee rules contained in N.J.A.C. 4:6 are being repealed in their entirety and new rules are being proposed to bring the State overtime policies in accord with the federal Fair Labor Standards Act (FLSA), which was mandated by the decision of the United States Supreme Court in *Garcia v. San Antonio Metro. Transit Authority*, \_\_\_\_ U.S. \_\_\_\_, 105 S.Ct., 1005, 83 L.Ed. 2d 1016,

1985. Where possible, the existing policies and practices have been kept intact. Therefore, State appointing authorities continue to have the option of paying cash or compensatory time off for overtime work in excess of 35, but not more than 40 hours per workweek and for certain exempt employees. However, basic to the FLSA application is the requirement of cash payment for all hours worked over 40 in a given workweek for non-exempt employees who have accrued 240 hours of compensatory time off, or in the case of employees engaged in a public safety activity, an emergency response activity, or a seasonal activity, 480 hours of compensatory time off. The new rules reflect this federal requirement, yet preserve the existing system for exempt employees and those non-exempt employees who work under 40 hours in a workweek.

Subchapter 1—"Authority and Purpose," remains basically intact as it existed before with additional reference to the federal Fair Labor Standards Act (FLSA).

Subchapter 2—"Definitions," is the same as it was before with a few notable additions. Exempt position and non-exempt position have been defined. Several other additional definitions were required as a result of FLSA such as Cash Overtime Compensation, Compensatory Time Off, Pay Period and Regular Rate.

Subchapter 3—"State Overtime Regulations Applicable to 40 Hours or Less in a Workweek," preserves the essence of the previous overtime regulations to deal with overtime situations of 40 or less hours in a workweek. Although the format and arrangement have been changed to parallel that of the FLSA application, the essence remains the same.

Subchapter 4—"Federal Fair Labor Standards Applicable to More Than 40 Hours in a Workweek," deals with the major changes required by conversion to FLSA coverage. Primary to this subchapter is the division of all employees into two eligibility groups, those who are exempt from FLSA coverage on the basis of meeting specific outlined criteria as prescribed by FLSA and those who are non-exempt and thereby entitled to cash overtime compensation at the rate of 1-1/2 times their regular rate when they work in excess of 40 hours in a workweek and have accrued 240 hours of compensatory time off, or 480 hours for employees engaged in a public safety activity an emergency response activity or a Seasonal Activity. Exceptions and allowable modifications are also noted in this subsection, such as alternate work period designations for law enforcement, fire and hospital or residential care facility employees. The concept of overtime compensation based on the weighted average of the different rates paid during a workweek is also introduced. Compensation based on the indicated eligibility status (exempt or non-exempt) is outlined.

Subchapter 5—"Special Circumstances," is a reiteration of the previous subchapter on Special Circumstances with modifications to provide for exempt employees who are not covered by the Fair Labor Standards Act and non-exempt employees who are covered by the Fair Labor Standards Act. The subsection on overlap shift security time has been eliminated. A new sub-section on Occasional or Sporadic Employment has been added.

Subchapter 6—"Holiday Pay," remains the same as in the repealed rules with the exception of a proviso referencing the Fair Labor Standards Act section of the rules, and a provision for the payment of overtime compensation for casual employees pursuant to a negotiated labor contract.

Subchapter 7—"Appointing Authority Responsibilities," remains the same except for a few minor word changes and an expansion of the records section to bring it in accord with FLSA record-keeping requirements.

Subchapter 8—"Appeals Procedures," is a new subchapter which gives the employee the right to appeal the status of a particular position designation for exemption or non-exemption under the Fair Labor Standards Act, first to the appointing authority, and then to the Division of Classification and Compensation before bringing it to the Overtime Committee. Additionally, both employees and appointing authorities have the right to appeal title designations for exemption and non-exemption under the FLSA to the Division of Classification and Compensation before appealing to the Overtime Committee. Other issues relating to overtime payments may be reviewed through the grievance process.

MS. KING criticized the special services category in which she claims employees perform classified work without benefits. She claimed most special services workers are not casual workers which are characterized as occasional workers with inconsequential work hours. She felt that a 1983 Salary Adjustment Memorandum codified the improper use of special services (hourly) workers by limiting their employment to 6 months of full-time employment. She opined that a resolution to the problem would be to eliminate the special services category, to create Civil

Service titles for regularly recurring seasonal fluctuations in the Departments where the bulk of hourlies are utilized and to "grandfather" such special services workers who have already been performing the work for years.

She asserted that the Overtime Committee had no authorization to define casual employees (who do not have the right to organize) because Public Employment Relations Commission (PERC) case law recognizes that some casual employees do have the right to organize. Regarding overtime, she stated her union's position is that all workers employed full-time (including casuals) are entitled to overtime pay. She further indicated that casual employees cannot be protected by a labor contract.

**MR. PURSELL** stated that the Overtime Committee's proposed promulgation of overtime regulations governing employees covered by a collective bargaining agreement preempts the provisions of the Federal Fair Labor Standards Act (FLSA) as amended by S-1570 for hours worked in excess of 40. He maintained that S-1570 mandates that a public agency may provide compensatory time only pursuant to the applicable provisions of a collective bargaining agreement if one exists. See 29 U.S.C. 207, Sec. 2(a)(2)(A). Further, he indicated that such overtime regulations differ from negotiated agreements and past practices which FLSA is purported to protect.

Moreover, he objected to the exclusion of special services employees from overtime compensation. He felt that such employees are, in reality, classified employees and should be offered the appropriate entitlements, including overtime pay. He opined that N.J.A.C. 4:6-3.1(b) does not consider the possibility of a negotiated alternative to a "regular" workweek. Regarding N.J.A.C. 4:6-3.1(b)3, he objected to the requirement that overtime work be covered by a job specification for the employee's title. He also proposed that employees in non-limited titles be entitled to premium payment for overtime work. See N.J.A.C. 4:6-3.2(b).

Mr. Pursell proposed that N.J.A.C. 4:6-4.2(a)4 should reflect the 60 hour cap of compensatory time as per negotiated agreement. He wanted clarification of "exceptional emergencies" (N.J.A.C. 4:6-5.4) and "part-time occasional or sporadic" (N.J.A.C. 4:6-5.5).

Regarding holiday pay, he urged that non-limited titles be entitled to time and one-half compensation. He also objected to N.J.A.C. 4:6-6.4 which provides that personal preference days may be granted with mutual consent of the employer and employee; he maintained that the subject should be addressed through collective bargaining.

In N.J.A.C. 4:6-7.3(b), he asked that appointing authorities make available to union representatives appropriate overtime records and accounts.

He supported N.J.A.C. 4:6-8.1 and 8.2 which provide an appeal mechanism for position designation as exempt or non-exempt. However, he felt that the final administrative appeal be before an independent classification reviewer.

**MR. PHILIPPI** asserted that the Overtime Committee had no authority to preclude a negotiated item, such as overtime payment. In Subchapter 2, he requested the definition of "casual employee" be deleted because such employees should be entitled to FLSA benefits. He also wanted the workweek changed from Saturday to Friday to Monday to Friday. In addition, he objected to housing allowances included in the definition of "base salary."

In N.J.A.C. 4:6-3.1(a)3, he noted that the State Police received special treatment and wanted such treatment for all employees. In N.J.A.C. 4:6-3.1(b), he sought overtime payment for one minute past the regular workweek and not one hour as currently required and as proposed when an employee worked overtime beyond 35 but not more than 40 hours.

In N.J.A.C. 4:6-4.1, he objected to leaving discretion to the appointing authority in granting of cash or compensatory time overtime payment. He also alleged that N.J.A.C. 4:6-4.1(d) was illegal when it called for a 14 consecutive day period in computing overtime for hospital employees nor did he support the 3 year averaging of overtime, when an employee retired. (N.J.A.C. 4:6-4.2(a)4.)

In N.J.A.C. 4:6-5.1, he sought to include the concept that, if an employee is on call, then that person should be paid at an overtime rate. In N.J.A.C. 4:6-5.2, he sought overtime payment for travel from portal to portal.

In N.J.A.C. 4:6-6.4, he felt that the Overtime Committee interfered with the present contract regarding the granting of personal preference days in return for holiday work. In N.J.A.C. 4:6-6.5, he requested deletion of reference to casual employees.

In N.J.A.C. 4:6-7.1, he sought the appointing authority's approval prior to working overtime. He did not want a situation where his members worked overtime, but the appointing authority did not approve of such overtime because it was never requested by a supervisor until after the work was completed. In addition, in N.J.A.C. 4:6-8.1, he petitioned that

mention of a CS-44 form be deleted since he considered job content could be changed to the detriment of his members.

#### Agency Responses:

An important issue was raised as to whether or not, in the absence of a provision in a collective negotiations agreement allowing for compensatory time off, cash overtime compensation is mandatory for work performed over 40 hours in a workweek. The Overtime Committee has requested an interpretive statement from the federal Department of Labor on this issue. However, since current contracts between the State and employee representatives provide for compensatory time, it is not necessary to amend the proposed rules at this time. If the Department of Labor's advice requires it, an appropriate modification will be made subsequently. The proposed rules have been provided to the Department of Labor, which has indicated that a provision should be included regarding an agreement between the employer and a new employee for compensatory time or cash overtime compensation. Accordingly, the Committee ordered that such a provision be added in N.J.A.C. 4:6-4.1(a)1.

The Overtime Committee did not intend to address the broad issue of special services as a job category. However, the Overtime Committee by statute (N.J.S.A. 52:14-17.14) is given the authority to determine eligibility for overtime compensation and has provided overtime procedures relative to casual employees. These provisions recognize the general nature of the casual employee category and are in accord with FLSA requirements.

The concerns that alternate workweeks were not adequately addressed by the proposed overtime rules has been reviewed. Since subchapter 4 addresses this issue in detail in regards to FLSA requirements and N.J.A.C. 4:2-18.6 serves as the guide for all other situations, reiteration of this information in Chapter 6 was considered not necessary.

An issue was raised concerning overtime in out-of-title work situations. There are administrative procedures for addressing out-of-title work complaints. An employee should utilize such mechanisms and overtime computations would be based on the designated title the employee is holding.

The maximum banking of compensatory time in the regulations does not preclude a negotiated agreement for a lower cap. Thus, we concur with the comments that the regulatory maximum should not be construed to preclude negotiations on a lower amount.

The proposal that NL exempt employees be paid premium compensation is not required by the FLSA and would be in conflict with existing State policies and practices. Such employees receive fixed salaries for fluctuating hours. Since the compensation range level of the NL titles is higher than equivalent titles assigned to a 35 hour workweek, employees in these titles are, in effect, being compensated for this condition of employment.

Record keeping requirements are in accord with FLSA provisions. These regulations are not intended to address the access to these or other personnel records which are controlled by Executive Order and other matters.

A clear cut definition of "part-time occasional" and "sporadic" was requested. Since the use of the terms "part-time occasional" and "sporadic" come directly from FLSA, a clearer interpretation should evolve through application of the legislation.

The concern that N.J.A.C. 4:6-3.1(g)2 is not in accord with FLSA since it requires employees to work one hour before qualifying for overtime compensation has been considered. This matter will be contained only in subchapter 3, which deals with employees who work 40 or less hours, and is not subject to FLSA requirements. This is a continuation of longstanding procedures.

The suggestion that the final administrative appeal regarding exemption status should be before an independent classification reviewer is noted. In that the rules allow the Overtime Committee to set procedures in rendering their decisions, this suggestion can be implemented in appropriate cases.

Issues regarding holiday pay and personal preference days are within the authority of the Overtime Committee and should be addressed. The travel and on-call provisions were questioned and there was a request for portal to portal compensation. However, the eligibility for such coverage was developed in accord with the FLSA and provide a balanced program and criteria for such benefits. Moreover, in general, the proposed rules represent current procedures and are more beneficial to employees than the FLSA requirement by counting paid time instead of worked time.

The proposed rules indicated compensation on an hour for hour basis in several contexts. The longstanding practice has been to compensate to a maximum of hour for hour in these situations, and it was the intent to continue this procedure. Accordingly, the Committee ordered the

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addition of "to a maximum" in N.J.A.C. 4:6-3.2, 4:6-4.2, 4:6-5.2, and 4:6-5.3. In addition, minor grammatical changes for the purpose of clarity were made.

In conclusion, the Committee ordered adoption of the proposed rules as published with the changes as indicated above.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

## SUBCHAPTER 1. AUTHORITY AND PURPOSE

### 4:6-1.1 Authority

The Overtime Committee is composed of the State Treasurer, the President of the Civil Service Commission and the Director of the Division of Budget and Accounting in the Department of the Treasury. The Committee shall adopt rules regulating overtime compensation for State employees. See N.J.S.A. 52:14-17.13, 17.14; see also federal Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq.

### 4:6-1.2 Purpose

The purpose of the Overtime Committee is to establish eligibility for overtime compensation and insure the equitable application of the statutory overtime provisions.

## SUBCHAPTER 2. DEFINITIONS

### 4:6-2.1 Words and phrases defined

"Base salary" means the employee's rate of pay exclusive of any additional payments or allowances.

"Cash overtime compensation" means payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

"Casual employee" means an employee, including special services employees, appointed pursuant to a personnel action request for special projects, peak workloads or other operational necessities where the work period is intermittent, irregular or of short duration.

"Compensatory time off" means the granting of time off in lieu of cash payment where permitted for excess or unusual work time.

"Exempt position" means a position which is excluded from the provisions of the Fair Labor Standards Act (29 U.S.C. 201 et seq.). Such positions may be in titles designated as exempt 35 hour (3E), exempt 40 hour (4E), exempt non-limited (NL), and exempt non-limited which involve direct and continuous supervision of employees in 40 hour workweek titles (N4).

"Fixed workweek title" means a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. Such titles have regular work hours.

"Holiday" means a legal holiday or a special holiday declared by the Governor.

"Non-exempt position" means a position which is subject to the provisions of the Fair Labor Standards Act. Such positions may be in titles designated as non-exempt 35 hour (35), non-exempt 40 hour (40), or non-exempt non-limited (NE).

"Non-limited title" means a title having irregular or variable work hours. Such titles may be designated as exempt non-limited (NL, N4), or non-exempt non-limited (NE).

"Overtime compensation" means cash overtime compensation or compensatory time off as permitted.

"Part-time employee" means an employee who works a portion of the time specified for a fixed workweek title and is paid at the hourly rate of the annual base salary for the title.

"Pay period" means the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following. Note: A schedule of pay periods is published annually by the Department of the Treasury.

"Regular rate" means the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees in non-exempt non-limited titles (NE) shall be deemed to have a 40 hour workweek for determining the hourly proration. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

"Seven day coverage position" means a position assigned to an area where work coverage is required on a seven day basis throughout the year.

"Workweek" means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Overtime Committee or its representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

## SUBCHAPTER 3. STATE OVERTIME REGULATIONS APPLICABLE TO 40 HOURS OR LESS IN A WORKWEEK

### 4:6-3.1 Eligibility

(a) Employees in the following groups may qualify for overtime compensation under this subchapter for work performed beyond their regular work hours, but not more than 40 hours, as specified.

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be eligible for overtime compensation for time worked in excess of the regular workweek as provided in N.J.A.C. 4:6-3.2(a).

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated as provided in N.J.A.C. 4:6-3.2(b).

3. The Overtime Committee or its representative may, upon the request of the Office of Employee Relations, authorize overtime payments for State Police law enforcement officers.

4. Part-time employees shall be eligible for overtime compensation only when they work beyond the regular workweek established for full-time employees in their titles.

5. Casual employees shall not be eligible for such overtime compensation.

(b) An employee shall be eligible for overtime compensation under this subchapter only when:

1. She or he is in pay status for the full number of hours in his or her regular workweek; and

2. She or he works at least one hour beyond the regular workweek; and

3. The work is covered by the job specification for the employee's title except as provided in N.J.A.C. 4:6-5.4.

### 4:6-3.2 Compensation

(a) Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime Committee or its representative for time worked in excess of the regular workweek but not more than 40 hours.

1. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

2. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

(b) Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off \*[on an hour for hour basis]\* **\*to a maximum of one hour for each hour of unusual work time.\*** They shall have no claim or entitlement to cash overtime compensation.

(c) Once an employee is eligible for overtime compensation in a workweek, work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular workday.

## SUBCHAPTER 4. FEDERAL FAIR LABOR STANDARDS APPLICABLE TO MORE THAN 40 HOURS IN A WORKWEEK

### 4:6-4.1 Eligibility

(a) **\*[Non-exempt position eligibility requirements]\* \*Eligibility for non-exempt positions\*** shall be as follows:

1. Employees in non-exempt fixed workweek titles (35, 40) and non-exempt non-limited titles (NE), whose positions do not meet the criteria for exemption in N.J.A.C. 4:6-4.3, shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime or Committee or its representative for time worked in excess of 40 hours per week. See N.J.A.C. 4:6-4.2(a). **\*However, notice should be provided to employees upon hiring that compensatory time off may be provided in lieu of cash overtime compensation. It is preferable that a signed agreement be obtained from the employee.\***

(b) **\*[Exempt position eligibility requirements]\* \*Eligibility for exempt positions\*** shall be as follows:

1. Employees in exempt fixed workweek titles (3E, 4E), whose positions meet the criteria for exemption in N.J.A.C. 4:6-4.3, shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime Committee or its representative for time worked in excess of 40 hours per week. See N.J.A.C. 4:6-4.2(b).



2. Employees in exempt non-limited titles (NL, N4), whose positions meet the criteria for exemption in N.J.A.C. 4:6-4.3, shall not be eligible for cash overtime compensation **\*except as provided in N.J.A.C. 4:6-5.4.\*** See N.J.A.C. 4:6-4.2(c).

(c) The Overtime Committee or its representative may approve an alternate work period and corresponding maximum hour designation for non-exempt law enforcement and fire protection employees as set forth below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours.

Maximum Hours in Work Period		
Work Period (days)	Firefighters	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

(d) A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Overtime Committee or its representative, use a work period of 14 consecutive days for computing overtime compensation for non-exempt employees.

(e) Casual employees shall be entitled to overtime compensation where their work duties do not meet the criteria for exempt status. See N.J.A.C. 4:6-4.3

#### 4:6-4.2 Compensation

(a) Non-exempt employees (35, 40, NE) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime Committee or its representative for time worked in excess of 40 hours per week. However, if an alternate work period is adopted pursuant to N.J.A.C. 4:6-4.1(c), overtime compensation shall be paid in accordance with that schedule.

1. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate. An overtime rate conversion table shall be published with the State Compensation Plan.

2. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

3. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

4. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee receives such payment. However, an employee who has accrued compensatory time off shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than the average regular rate received by such employee during the last three years of the employee's employment, or the final regular rate received by such employee, whichever is higher.

(b) Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime Committee or its representative for time worked in excess of the regular workweek.

1. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

2. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

(c) Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off **\*[on an hour for hour basis]\* \*to a maximum of one hour for each hour of unusual worktime.\***

(d) Overtime compensation for work in excess of 40 hours for non-exempt employees who work at different pay rates during the same workweek shall be paid as follows:

1. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

2. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

(e) If a 14 day work period is elected for hospital employees under N.J.A.C. 4:6-4.1(d), non-exempt employees shall receive overtime compensation for work in excess of 8 hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate **\*[of pay]\***. The extra compensation at the premium rate paid for hours worked in excess of 8 in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

#### 4:6-4.3 Criteria for exemption

(a) Elected officials shall be exempt as follows:

1. An individual is exempt who is not subject to the State's civil service laws and:

- Holds a public elective office of the State;
- Is a member of the personal staff of an elected office holder;
- Is appointed by such an office holder to serve on a policy making level; or
- Is an immediate advisor to such an office holder with respect to the constitutional or legal powers of the office.

(b) Executives shall be exempt as follows:

1. An executive paid at least \$250.00 a week on a salary basis exclusive of board, lodging, and other facilities is exempt if the employee regularly directs the work of at least two or more other employees and the employee's primary duty is management of the enterprise or a recognized department or subdivision thereof.

2. An employee who is paid on a salary basis between \$155.00 and \$250.00 a week and meets all of the following tests will be exempt. The employee must:

- Have as his or her primary duty the management of the enterprise, or of a customarily recognized department or subdivision; and
- Customarily and regularly direct the work of at least two or more other employees; and
- Have the authority to hire and fire, or recommend hiring or firing; or his or her recommendation on these and other actions affecting employees is given particular weight; and
- Customarily and regularly exercise discretionary powers; and
- Devote no more than 20 percent of his or her time to activities not directly and closely related to managerial duties.

(c) Administrative employees shall be exempt as follows:

1. An administrative employee, who is paid on a salary or fee basis of at least \$250.00 a week exclusive of board, lodging or other facilities, will be exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsible work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

2. An employee who is paid on a salary basis between \$155.00 and \$250.00 a week and meets all of the following tests is exempt. The employee must:

- Have as his or her primary duty responsible office or non-manual work directly related to the management policies or general business operations of his or her employer or employer's customers, or responsible work that is directly related to academic instruction or training carried on in the administration of a school system or education establishment; and
- Customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and have the authority to make important decisions; and

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iii. Regularly assist a bona fide executive or administrative employee, or perform work under only general supervision along specialized or technical lines requiring special training, experience, or knowledge, or execute under only general supervision special assignments; and

iv. Spend no more than 20 percent of his or her time in the workweek on non-exempt work that is not directly and closely related to the employee's administrative duties.

(d) Professional employees shall be exempt as follows:

1. A professional employee, who is paid at least \$250.00 per week, is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion or judgment. Similarly, the employee is exempt as a professional if he or she is paid at least \$250.00 per week and his or her primary duty involves artistic work in a recognized field of artistic endeavor.

2. An employee who meets all of the following tests will be exempt. The employee must:

i. Have as his or her primary duty work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study, or work that is original and creative in character in a recognized field of artistic endeavor, the result of which depends primarily on the employee's invention, imagination or talent; and

ii. Consistently exercise discretion and judgment; and

iii. Do work that is predominantly intellectual and varied, as distinguished from routine and mechanical duties; and

iv. Spend no more than 20 percent of his or her time in the workweek on activities not essentially a part of, and necessarily incident to, his or her professional duties; and

v. Be paid on a salary or fee basis at the rate of not less than \$170.00 a week exclusive of board, lodging, or other facilities. However, no salary level is applied to doctors, lawyers and teachers.

(e) Other exemptions are as follows:

1. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

## SUBCHAPTER 5. SPECIAL CIRCUMSTANCES

### 4:6-5.1 On call

(a) Employees in non-exempt positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively, shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

1. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

(b) Employees in exempt positions (3E, 4E, NL, N4) shall have no claim or entitlement to compensation for such time.

### 4:6-5.2 Training

(a) Employees in non-exempt positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

1. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, \*[hour for hour]\* compensation **\*to a maximum rate of hour for hour\*** may be granted in the form of cash or time off, at the discretion of the appointing authority.

(b) Employees in exempt fixed workweek positions (3E, 4E) may be granted \*[hour for hour]\* compensation **\*to a maximum rate of hour for hour\*** in the form of cash or time off, at the discretion of the appointing authority.

(c) Employees in exempt non-limited positions (NL, N4) shall have no claim or entitlement to compensation for such time.

### 4:6-5.3 Travel

(a) Employees in non-exempt positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commuta-

tion time shall have such hours included in the total hours worked.

1. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, \*[hour for hour]\* compensation **\*to a maximum rate of hour for hour\*** may be granted in the form of cash or time off, at the discretion of the appointing authority.

(b) Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

(c) Employees in exempt non-limited positions (NL, N4) shall have no claim or entitlement to compensation for such time.

### 4:6-5.4 Exceptional emergencies

(a) When an agency head declares that she or he is faced with an exceptional emergency involving a critical service disruption that poses a danger to health or safety, she or he may authorize:

1. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 35 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

2. Exceptions to N.J.A.C. 4:6-3.1(b)3.

(b) An agency head shall file with the Overtime Committee (c/o President, Civil Service Commission) two reports concerning an exceptional emergency as follows:

1. A fully detailed justification for the declaration within seven calendar days of the declaration of the exceptional emergency. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

2. Within 30 calendar days of the conclusion of the exceptional emergency, a list of the names, titles and hours of work designations of employees who performed emergency related work on an overtime basis. The report shall include the number of hours of emergency related overtime work performed by each employee.

(c) These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Civil Service Commission shall establish special project rates for these circumstances.

### 4:6-5.5 Occasional or sporadic employment

If an employee works, on a part time occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation.

## SUBCHAPTER 6. HOLIDAY PAY

### 4:6-6.1 Work on a holiday

Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all work performed on a holiday except as provided in N.J.A.C. 4:6-6.4, even if they are not in pay status for a full workweek.

### 4:6-6.2 Non-limited titles

Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in **\*[4:6-4]\* 4:6-4.1 et seq.\*** However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable **\*amounts of\*** time off to a maximum of **\*one\*** hour for **\*each\*** hour **\*[for such work]\* \*worked\*** in addition to their regular rate of compensation.

### 4:6-6.3 Seven day coverage positions

(a) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee and she or he works, the employee is entitled to overtime compensation for all work performed on the holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as the result of an emergency, the employee is required to work on the additional day, she or he shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the

employee does not report for duty, she or he shall not be eligible for overtime compensation or an alternate day off.

#### 4:6-6.4 Personal preference days

A part-time or full-time employee in a fixed workweek title in conjunction with his or her appointing authority, may agree that the employee shall work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

#### 4:6-6.5 Casual employees

(a) Unless permitted by a negotiated labor contract, casual employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in \*[4:6-4]\* \*4:6-4.1 et seq.\*

(b) Unless permitted by a negotiated labor contract, casual employees shall not be entitled to any form of compensation for a holiday not worked.

### SUBCHAPTER 7. APPOINTING AUTHORITY RESPONSIBILITIES

#### 4:6-7.1 Development of procedures

(a) The appointing authority shall develop procedures for administering overtime that are consistent with this chapter and at a minimum provide for:

1. Written authorization and approval by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward devising methods to accomplish the work during regular work time; and

4. Written procedures for departmental directors, bureau chiefs and supervisors to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures and written interpretations and any subsequent changes are to be filed with the Overtime Committee (c/o President, Civil Service Commission) and approved prior to promulgation.

#### 4:6-7.2 Reporting requirements

For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State Agencies by the Division of Budget and Accounting in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Overtime Committee (c/o President, Civil Service Commission).

#### 4:6-7.3 Records

(a) The following records shall be kept:

1. Name of employee in full;

2. Home address, including zip code;

3. Date of birth, if under 19;

4. Sex and occupation;

5. Time of day and day of week on which the employee's workweek begins;

6. Regular hourly rate of pay in any workweek in which overtime premium is due: basis of wage payment (such as "\$5.00 hr.," "\$40.00 day," "\$200.00 wk");

7. Daily and weekly hours of work;

8. Total daily or weekly straight time earnings;

9. Total overtime compensation for the workweek;

10. Total additions to or deductions from wages paid;

11. Total wages paid each pay period;

12. Date of payment and the pay period covered by payment; and

13. Approved overtime requests and work accomplished.

(b) Upon demand, the appointing authority shall make available to the Overtime Committee or its representative all records and accounts of overtime work at the time(s) and location(s) specified.

#### 4:6-7.4 Payroll procedures

Procedures for payments of compensable overtime will be published as part of the payroll manual.

### SUBCHAPTER 8. APPEAL PROCEDURES

#### 4:6-8.1 Position designations

(a) An appeal by an employee of the status of a particular position for exemption or non-exemption under the Fair Labor Standards Act shall be submitted, in writing, to the appointing authority through the personnel office. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, CS-44, signed by the employee and the supervisor. If the appellant proposes a different status for the position, exempt or non-exempt, she or he must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4:6-4.3.

1. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

i. The position is properly classified as exempt or non-exempt; or

ii. The position is improperly designated in which case the appointing authority shall provide appropriate duties or designate the appropriate status.

2. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, she or he may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All appeals shall be sent to the:

Department of Civil Service

Director, Division of Classification

and Compensation

CN 313

Trenton, New Jersey 08625

3. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, CS-44, and the appointing authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

(b) The Director, Division of Classification and Compensation, shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Overtime Committee.

(c) All appeals to the Overtime Committee must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter to the:

Department of Civil Service

Division of Appellate Practices

and Labor Relations

CN 312

Trenton, New Jersey 08625

1. The Overtime Committee may render a decision based on the written record or such other procedure as it deems appropriate.

2. The decision of the Overtime Committee shall be the final administrative decision.

#### 4:6-8.2 Title designations

(a) An appeal of the status of a title for exemption or non-exemption under the Fair Labor Standards Act may be filed either by the appointing authority or an affected employee and shall be in writing. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4:6-4.3. Such appeals shall be filed with the:

Department of Civil Service

Director, Division of Classification

and Compensation

CN 313

Trenton, New Jersey 08625

(b) The Director of Classification and Compensation shall review the appeal under N.J.A.C. 4:6-8.1(b).

(c) An appeal of the decision of the Director of Classification and Compensation may be filed under N.J.A.C. 4:6-8.1(c).

#### 4:6-8.3 Grievances

Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. \*[4:2-23]\* \*4:2-23.1 et seq.\*



NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

## APPENDIX: OVERTIME ELIGIBILITY AND COMPENSATION CHART

ELIGIBILITY STATUS	COMPENSATION		
	Comp Plan Code	In excess of 35 but not more than 40 hours per workweek	In excess of 40 hours per workweek as prescribed by FLSA
35 (non-exempt)	35	Cash compensation at 1½ times the hourly proration of the base salary or CTO at 1½ times the hours worked.	Cash compensation at 1½ times the regular rate† or CTO at 1½ times the hours worked providing the employee has not accrued more than 240 hours of CTO.††
35 (exempt)	3E	Cash compensation at 1½ times the hourly proration of the base salary or CTO at 1½ times the hours worked.	Cash compensation at 1½ times the hourly proration of the base salary or CTO at 1½ times the hours worked.
40 (non-exempt)	40	Not applicable.	Cash compensation at 1½ times the regular rate† or CTO at 1½ times the hours worked providing the employee has not accrued more than 240 hours of CTO.††
40 (exempt)	4E	Not applicable.	Cash compensation at 1½ times the hourly proration of the base salary or CTO at 1½ times the hours worked.
NL (non-exempt)	NE	No cash compensation. CTO *for unusual work time to a maximum of* hour for hour (discretionary).	Cash compensation at 1½ times the regular rate† or CTO at 1½ times the hours worked providing the employee has not accrued more than 240 hours of CTO.††
NL (exempt)	NL	No cash compensation. CTO *for unusual work time to a maximum of* hour for hour (discretionary).	No cash compensation.††† CTO *for unusual work time to a maximum of* hour for hour (discretionary).
NL4 (exempt)	N4	Not applicable.	No cash compensation.††† CTO *for unusual work time to a maximum of * hour for hour (discretionary).

†Regular rate is the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

††Note: Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of CTO.

†††Except as provided in N.J.A.C. 4:6-5.4 Exceptional Emergencies.

## COMMUNITY AFFAIRS

## (a)

## DIVISION OF HOUSING AND DEVELOPMENT

## Uniform Construction Code

## Premanufactured Construction

**Adopted Amendments: N.J.A.C. 5:23-3.11, 4.22, 4.24, and 4.25**

**Recodification: N.J.A.C. 5:23-4.25(a) through (r) recodified as 5:23-4.25 through 4.38**

Proposed: May 20, 1985 at 17 N.J.R. 1169(a).

Adopted: April 2, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: April 2, 1986 as R.1986 d.142, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: May 5, 1986.

Expiration Date: April 1, 1988.

## Summary of Public Comments and Agency Responses:

Comments were received from the premanufactured construction industry expressing concern over the proposal to make the Department the sole plan review agency for all modular construction other than single-

family detached dwellings, manufactured home add-on units and components. The industry's fear was that this would result in delays which would be detrimental to one of the industry's main selling points, its ability to get buildings erected quickly. The Department has responded by excluding factory built portions of Use Group R-3 attached and certain smaller Use Group R-2 construction from Department plan review.

Industry representatives also protested the proposed requirement that premanufactured system documentation be sealed only by an engineer or architect licensed in New Jersey. The Department responds that the seal of an engineer or architect is necessary to comply with New Jersey law. However, the amended proposal allows sealing by an engineer or architect licensed in the state of manufacture as well as those licensed in New Jersey as an alternative for factory built portions of R-2 and R-3 construction classified in accordance with the building subcode. Plans for site construction portions of projects must be prepared by an architect or engineer licensed to practice in New Jersey. Also, the proposal has been amended to allow design and construction approval of building elements by engineers licensed in the state of manufacture as well as those licensed in New Jersey.

Manufacturers and inplant inspection agencies expressed opposition to a provision in the proposal requiring payment of fees to be made to the Department by the inplant inspection agencies using their own checks, thus passing on to the agency the burden of a dishonored check. The Department agreed that other checks would be acceptable provided they are cashier's or certified checks.

Objections were also received concerning insignia placement and data plate requirements. The Department has responded by reducing the data plate requirements to one per unit in residential construction.

The various sections relating to premanufactured construction, N.J.A.C. 5:23-4.25 (a) through (r) have been redesignated as N.J.A.C. 5:23-4.25 through 4.38 for clarification. Otherwise, the Department points out that the amendments do not substantially change existing requirements.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

5:23-3.11 Enforcement activities reserved to the State

(a) The Department shall be the sole review agency for the following structures:

1.-6. (No change.)

7. **\*[All modular construction except single family detached dwellings, manufactured (mobile) home add-on units and components.]\*** **\*All modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a) and (d).\***

Renumber existing 7. through 9. as 8. through 10. (No change in text.)

(b)-(d) (No change.)

5:23-4.22 Premanufactured construction insignia of certification fees

(a) Modular **\*unit\*** **\*[construction]\*** insignia of certification fee: An inplant inspection agency requesting the department to issue insignia(s) of certification for modular construction shall pay a fee of \$100.00 for each such insignia.

(b) Premanufactured component insignia of certification fee: An inplant inspection agency requesting the department to issue component insignia(s) of certification for premanufactured components shall pay a fee of \$50.00 for each such insignia.

(c) Manufactured (Mobile) Home add-on **\*unit\*** insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of \$50.00 for each such insignia.

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i.-ii. (No change.)

iii. Premanufactured construction: **\*Department\*** plan review **\*and re-lease\*** shall be required for all modular construction other than **\*[single family detached dwellings manufactured (mobile) home add-on units and components.]\*** **\*those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a) and (d).\***

(b) (No change.)

5:23-4.25 Premanufactured construction

(a) This chapter governs the design, manufacture, storage, transportation and installation of premanufactured construction which is sold, leased, or installed, or intended for sale, lease or installation, for use on a site in the State of New Jersey. This chapter applies to premanufactured construction manufactured in facilities within or outside the State; provided, however, that nothing herein shall conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and regulations promulgated thereunder. Whenever a provision of this subchapter shall conflict with any Federal standard or requirement under such act or regulations, Federal law shall govern.

**\*5:23-4.26\*** **\*[(b) Rules concerning]\*** Certification of premanufactured construction **\*[are:]\***

**\*[a]\*\*[1.]\*** Except as otherwise provided in this chapter, no person may sell, lease or install for use on any site in the State of New Jersey any premanufactured construction unless such premanufactured construction is certified in accordance with the following provisions:

**\*1.\*\*[i.]\*** Modular construction: **\*A\*** complete structure comprising **\*[on]\*** one or more modules (boxes) **\*and/or components\*** built **\*[to]\*** **\*in accordance with the\*** New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing modular unit insignia(s) of certification **\*as provided in N.J.A.C. 5:23-4.31(e) and (f).\***

**\*2.\*\*[ii.]\*** Manufactured Home (formerly called mobile home): Single family dwelling built **\*[to]\*** **\*in accordance with the\*** Federal Manufactured Home Construction and Safety Standards and bearing a Federal insignia of certification.

**\*3.\*\*[iii.]\*** Components:

**\*i.\*\*[(1)]\*** Building elements such as bathroom modules and kitchen modules built **\*[to]\*** **\*in accordance with the\*** New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing **\*premanufactured component\*** **\*[appropriate department]\*** in-

signia of certification **\*as provided in N.J.A.C. 5:23-4.31(f)4.\***

**\*ii.\*\*[(2)]\*** Building elements such as trusses, **\*fire walls, fire separation walls,\*** wall panels, pre-stressed/prefabricated floor or roof panels pre-engineered structural frames built **\*[to]\*** **\*in accordance with the\*** New Jersey Uniform Construction Code may be approved by any of the following options:

**\*[1]\*\*[(A)]\*** Approval for both design and construction by a nationally recognized laboratory. The local municipal subcode official has the authority to accept such approvals based on the evidence, test and/or documentation presented to him.

**\*[2]\*\*[(B)]\*** Approval for both design and construction by a **\*professional engineer licensed either in the State of New Jersey or in the State of manufacture\*** **\*[New Jersey licensed professional engineer]\***. The local municipal subcode official has the authority to accept such approvals based on the evidence **\*, of test\*** and/or documentation presented to him.

**\*[3]\*\*[(C)]\*** Approval for both design and construction by a New Jersey inplant inspection agency. The evidence of such approval shall be in the form of **\*premanufactured component\*** **\*[department]\*** insignia of certification attached to the component(s) **\*as provided in N.J.A.C. 5:23-4.31.\***

**\*4.\*\*[iv.]\*** Manufactured (Mobile) Home Add-on Units: Built **\*[to]\*** **\*in accordance with the\*** New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing mobile home add-on unit insignia of certification **\*as provided in N.J.A.C. 5:23-4.31(f)5.\***

**\*[b]\*\*[2.]\*** Premanufactured construction which has never been occupied and which serves for model or demonstration purposes for the manufacturer does not have to bear an insignia of certification under these regulations, until such time as such premanufactured construction is offered for sale, lease or occupancy.

**\*[c]\*\*[3.]\*** Premanufactured construction which is intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the department as a test facility may be installed without bearing insignia(s) of certification. Subsequent sale or lease of such premanufactured construction shall **\*[be required to be certified]\*** **\*require proper approval\*** and bear insignia(s) of certification in accordance with the appropriate provisions of this Chapter.

**\*5:23-4.27\*** **\*[(c) Rules concerning applicability of local enforcement agency]\*** Inspections **\*[are:]\*** **\*and approvals of premanufactured construction projects by the Department and/or local enforcement agency\***

**\*[a]\*\*[1.]\*** All premanufactured construction bearing appropriate **\*[department]\*** insignia(s) of certification shall be accepted in all municipalities of the State as meeting the requirements of the State Uniform Construction Code.

**\*[b]\*\*[2.]\*** All elements of the certified premanufactured construction which are not described or included in the approved premanufactured system documentation shall be subject to review, inspections and approval by the local enforcement agency.

**\*[c]\*\*[3.]\*** Premanufactured construction and assemblies in which components **\*[have been]\*** **\*are\*** installed **\*subsequent to their certification\*** shall comply with the requirements of the State Uniform Construction Code, except that construction of manufactured homes (mobile homes) **\*and manufactured (mobile) home add-on units\*** shall comply with all applicable provisions of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and the regulations promulgated pursuant thereto.

**\*[d]\*\*[4.]\*** **\*[A complete set of approved plans for the premanufactured construction shall be filed with]\*** The local **\*municipal\*** enforcement agency **\*shall require the following\*** for issuance of construction permit and necessary inspections **\*,\* [thereafter]**. The approval of these plans shall meet the applicable requirements provided elsewhere in this section.]\*

**\*1. Plans for certified premanufactured construction shall be approved either by the Department or by an inplant inspection agency in accordance with N.J.A.C. 5:23-3.11(a)7 and 5:23-4.29(a) and (d). The evidence of approvals of these plans shall meet the requirements of N.J.A.C. 5:23-2.15(e)3.i.(2) or 5:23-4.29(b).\***

**\*2.\*\*[5.]\*** The plans for all **\*on-site construction\*** **\*[the related site work which]\*** **\*required in connection with the proper setup and erection of the certified premanufactured construction\*** shall include **\*without limitation,\*** **\*[any]\*** foundation system, basement or crawl space, **\*external\*** utility systems **\*[etc.]\***, **\*hook-ups and connections of various modules (boxes) and/or components. The design, review and approval of such plans shall meet the following requirements:\*** **\*[shall be filed with the local enforcement agency for the issuance of a construction permit. These plans**

shall be signed and sealed by a New Jersey licensed professional engineer or registered architect. The local enforcement agency is responsible for the review and approval of these plans and conducting necessary inspections thereafter for approval of the site work. The local enforcement agency is also responsible for the necessary inspection and approval of setup and installation of the certified premanufactured construction.\*

**\*i.\* Structures which an inplant inspection agency is authorized to review and approve as provided in N.J.A.C. 5:23-4.29(a): Plans and specifications for all the on-site construction required in connection with the proper set up and erection of such structures shall comply with all applicable requirements of the regulations and shall be signed and sealed by a New Jersey licensed professional engineer or registered architect. The local enforcement agency is responsible for review and approval of such on-site construction plans and specifications if the agency is classified in accordance with N.J.A.C. 5:23-3.10 and its classification meets the level of the specific project.\***

**\*ii.\* All structures other than those addressed in i. above: Plans and specifications for all the on-site construction required in connection with the proper set up and erection of such structures shall be approved by the Department. These plans and specifications shall meet the applicable requirements of these regulations and shall be signed and sealed by a New Jersey licensed professional engineer or a New Jersey registered architect.\***

**\*5:23-4.28\* [(d) Rules concerning] General requirements for inspection and certification [are:] of premanufactured construction\***

**\*(a)\*\*[1.]\* Premanufactured construction shall be inspected and certified by an approved inplant inspection agency if such premanufactured construction has been manufactured pursuant to [an approved] premanufactured system documentation [and an] approved [in accordance with N.J.A.C. 5:23-4.29 and the] compliance assurance program [approved in accordance with N.J.A.C. 5:23-4.30].\*** The inplant inspection agency shall make necessary inspections during production of each such construction to insure compliance to the approved documents and the regulations. Approval of premanufactured construction shall be evidenced by insignia(s) of certification which conform to the requirements of these regulations. The number of insignias required for the certification of premanufactured construction shall be governed by the applicable provisions of the regulations **\*of\*** [provided in this subchapter]\* **\*N.J.A.C. 5:23-4.31.\*** Department insignia of certification shall not be required in case of components eligible to be approved by a nationally recognized laboratory or a **\*professional engineer licensed either in\* New Jersey [licensed professional engineer]\* or in the state of manufacture in accordance with the provisions of N.J.A.C. 5:23-4.26(a)3.ii.(1) and (2).\***

**\*5:23-4.29\* [(e) Rules concerning] Approval of premanufactured system documentation [are:]\***

**\*(a)\*\*[1.]\* [Single family detached dwellings, manufactured (mobile) home add-on units and components:] An inplant inspection agency is authorized to review and approve the premanufactured system documentation for the following types of structures:\***

**\*1. Factory built portions of one- and two-family detached dwellings of Use Group R-3 as defined in the building subcode or Use Group R-4 as defined in the one- and two-family dwelling subcode;**

**2. Factory built portions of buildings of Use Group R-3 of Types 5A or 5B construction meeting the requirements of Section 1409.1.2, 1984 Edition, 1985 Supplement of the building subcode, and not exceeding 4800 square feet per floor;**

**3. Factory built portions of buildings of Use Group R-2 of Types 5A or 5B construction as defined in the building subcode, and not exceeding 4800 square feet per floor;**

**4. Building components as defined in accordance with N.J.A.C. 5:23-4.26(a)3;**

**5. Structures like kiosks, parking lot attendant booths, toll and telephone booths not exceeding 25 square feet in area;**

**6. Manufactured (mobile) home add-on units.\***

**\*(b)\* The inplant inspection agency shall approve a set of premanufactured system documentation if the [inplant inspection] agency determines that such [premanufactured system] documentation conforms to all applicable requirements of the State Uniform Construction Code. The premanufactured system documentation shall include all of the drawings, design calculations, specifications,\* details, shop drawings [etc.]\* **\*required for code compliance review.\* [The premanufactured system]\*** **\*Such\* documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacture[r]\* or in New Jersey.\*****

**\*1.\*\*[i.]\* Approval of premanufactured system documentation shall be evidenced by the stamp of approval of the inplant inspection agency, affixed on each sheet of the premanufactured system documentation and signed by a designated employee of the agency. Each stamp shall show the date of approval of each sheet of the premanufactured system documentation to which it is affixed. Each sheet constituting the approved premanufactured system documentation shall have a separate identification number.**

**\*(c)\*\*[2.]\* [All modular units other than single family detached dwellings, manufactured (mobile) home add-on units and components described above shall require plan approval by the department(s) in accordance with the applicable regulations.]\* **\*Premanufactured system documentation for all premanufactured construction projects other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a)1. through 6. shall require approval by the Department or by such other agency of the State government as the Department shall designate in these regulations.\*** The plans, specifications, details **\*and\*** design calculations, [etc.,] shall meet the requirements of [subchapter 2 of these regulations]\* **\*N.J.A.C. 5:23-2.15(e)3.i.\*****

**\*(d) Approval for factory built portions of projects not addressed in N.J.A.C. 5:23-4.29(a) may be obtained in either of the following ways:\***

**\*1. By a qualified inplant inspection agency classified as Class I, II or III in accordance with N.J.A.C. 5:23-3 as required for the specific project. The evidence of such approvals shall be in accordance with N.J.A.C. 5:23-4.29(b)1. or\***

**\*2. By the Department.\***

**\*(e) Premanufactured system documentation may be approved as a prototype in accordance with N.J.A.C. 5:23-2.15(e)3.i.(4).\***

**(f) Premanufactured system documentation approved pursuant to these regulations may contain alternates or a range of alternates for one or more elements of the premanufactured construction described in the premanufactured system documentations, provided that the approved premanufactured system documentation conforms to all of the applicable requirements of the State Uniform Construction Code.**

**(g) [General requirements for approval of amendments to premanufactured system documentation are:]\***

**[1.]\* The inplant inspection agency shall approve amendments to the premanufactured system documentation submitted to it by the manufacturer if the premanufactured system documentation, as so amended, conforms to all of the applicable requirements of the State Uniform Construction Code **\*provided that such amendments shall be approved by an inplant inspection agency only if the agency was responsible for the initial approval of the premanufactured system documentation.\*****

**\*1.\*\*[2.]\* Approval of amendments to premanufactured system documentation shall be evidenced by the stamp of approval of the inplant inspection agency affixed on each sheet of the amendments and signed by a designated employee of the agency. Each stamp shall show the date of approval of each sheet of the amendments to which it is affixed. Each sheet constituting the amendments shall have a separate identification number.**

**\*2.\*\*[3.]\* Approvals of amendments to premanufactured system documentation may be by oral authorization of an officer or a designated employee of the agency, but in such event the approval shall be subsequently evidenced by the stamp of approval affixed on the amended sheets of the premanufactured system documentation and signed by the designated employee of the agency within ten days after the oral authorization.**

**\*5:23-4.30 Compliance assurance program for premanufactured construction**

**\*(a)\*\*[(h)]\* An inplant inspection agency shall approve the manufacturer's compliance assurance program for the facility which meets the requirements of this subchapter. This compliance assurance program will be monitored by the inplant inspection agency **\*to insure its effective functioning in the manufacturing facility.\*****

**\*(b)\*\*[(i)]\* Basic requirements for a compliance control program are:**  
**1. An inplant inspection agency shall approve a compliance control program if it determines that:**

**i. The implementation of the compliance control program will assure that the premanufactured construction, when installed at the site, will conform to the approved premanufactured system documentation.**

**ii. (No change.)**

**iii. (No change.)**

**2. The approval of a compliance control program under these regulations does not relieve the manufacturer and the inplant inspection agency of responsibility for assuring that the premanufactured construction manufactured for sale, lease or installation for use on sites in New**



Jersey conforms in every respect to the approved premanufactured system documentation and the regulations.

3. To facilitate review and approval, the manufacturer's compliance control program shall present an overview of its policies and procedures on the following:

- i. (No change.)
  - ii. The **\*station by station\*** manufacturing process within the manufacturing facilities;
  - iii. The storage and transportation of premanufactured construction to the site; and
  - iv. The installation of premanufactured construction at the site.
4. For approval, except as modified under this chapter, the compliance control program shall include requirements on the following items:
- i. Specific assignments of responsibility to designated divisions or employees of the manufacturer for every significant phase in the production, transportation and installation of the premanufactured construction;
  - ii. (No change.)
  - iii. (No change.)
  - iv. Procedures to assure that the fabrication or shop drawings for the premanufactured construction conform to the approved premanufactured system documentation;
  - v. Procedures to maintain, file and control all fabrication or shop drawings and all documents constituting the premanufactured construction.
  - vi. Procedures to maintain complete and reliable records of the manufacture, transportation and installation of the premanufactured construction each unit of which shall be assigned a manufacturer's serial number to facilitate identification;
  - vii. (No change.)
  - viii. Procedures for controlling the storage and transportation of premanufactured construction from the manufacturing facilities to the site, identifying specific functions and techniques that are of critical importance;
  - ix. Procedures for controlling the installation of premanufactured construction at the site, identifying specific functions and techniques that are of critical importance;
  - x. (No change.)

5. If a manufacturer transfers title to **\*[an] \* \***, and effective control over **\* \*** its premanufactured construction to other, unrelated persons at any point prior to its installation at the site, the manufacturer shall be responsible for furnishing to the persons responsible for transportation and installation adequate information and manuals relating to the transportation and installation of such premanufactured construction, including the relevant portions from its compliance control program referred to in these regulations, but the manufacturer shall not be responsible for implementation after the transfer of title and effective control.

**\*6.\*\*[(j)]\*** (No change.)

**\*5:23-4.31 Insignia of certification for premanufactured construction**

**\*(a)\*\*[(k)]\*** All modular construction, applicable premanufactured components and manufactured (mobile) home add-on units shall bear appropriate insignia(s) of certification meeting the requirements of these regulations. Such insignias of certification shall be furnished by the Department to the inplant inspection agency under the procedures outlined in this section. The inplant inspection agency shall request insignias for issuance on a form prescribed by the Department for such purpose. The agency shall enclose its check as a fee for the insignias requested. **\*A check from any person or entity other than an inplant inspection agency shall be a certified check or a cashier's check.\*** The fees for department insignias of certification shall be as per requirements **\*of N.J.A.C. 5:23-4.22\*** **\*[provided in these regulations]\***.

**\*(b)\*\*[1.]\*** (No change.)

**\*(c)\*\*[2.]\*** (No change.)

**\*(d)\*\*[3.]\*** (No change.)

**\*(e)\*\*[4.]\*** Only one **\*[department] \* modular unit\*** insignia **\*of certification\*** shall be required for **\*[single family] \* each\* dwelling \*unit in any residential\*** modular construction even if the construction is comprised of two or more modules (boxes) **\*and/or components.\*** However, each module (box) shall be properly identified by the manufacturer's serial number and the inplant inspection agency's insignia.

**\*(f)\*\*[5.]\*** All premanufactured construction other than **\*residential\*** **\*[single family dwelling]\*** modular construction shall require department insignia(s) of certification as follows:

**\*1.\*\*[1.]\*** Each module (box) shall require a separate **\*[department] \* modular unit\*** insignia of certification for modular construction.

**\*2.\*\*[ii.]\*** In case of a multimodule (multibox) project, the data plate on each module (box) shall identify the serial numbers of the department

insignia of certification of all other modules (boxes) which form part of the entire project.

**\*3.\*\*[iii.]\*** **\*[For premanufactured building elements, such as, but not limited to, wall panels, trusses, prestressed/prefabricated floor or roof panels, and pre-engineered structural frames.]\*** **\*If the premanufactured component is approved in accordance with N.J.A.C. 5:23-4.26(a)3.ii.(3), then\*** each **\*such\*** element shall require a premanufactured component insignia of certification. For elements inspected and grouped in one lot of not more than 25 elements, one premanufactured component insignia of certification shall be required for each lot.

**\*4.\*\*[iv.]\*** Components such as bathroom or kitchen modules shall each require a premanufactured component insignia of certification.

**\*5.\*\*[v.]\*** Manufactured (mobile) home add-on units shall each require **\*[an appropriate department] \* a mobile home add-on unit\*** insignia of certification.

**\*5:23-4.32 \*[(1) Rules concerning]\*** Insignia of inplant inspection agencies **\*[are:]\*** **\*for premanufactured construction\***

**\*(a)\*\*[1.]\*** The inplant inspection agency shall attach its insignia to each premanufactured construction **\*[, component and assembly]\*** which is transported to **\*the\*** construction site for assembly and installation.

**\*(b)\*\*[2.]\*** The insignia of the inplant inspection agency shall identify the name of the inspection agency and a serial number.

**\*(c)\*\*[3.]\*** Each insignia must be attached in **\*[and]\*** such a way that it cannot be removed without destroying it. Such insignia shall be located in a readily accessible and visible location identified in the premanufactured system documentation.

**\*5:23-4.33 \*[(m) Each certified premanufactured construction shall contain a]\*** Data plate **\*[.]\*** **\*for premanufactured construction\***

**\*(a)\*** **\*In residential construction, there shall be one data plate per dwelling unit; in all other construction, there shall be one data plate per building.\*** The data plate shall be furnished by the manufacturer and shall be permanently attached by the manufacturer in a visible location in the utility room or utility area, **\*or any other accessible location\*** **\*[if feasible, and otherwise in such other area]\*** identified in the premanufactured system documentation. The data plate shall contain the following information:

1. (No change.)

2. **\*Address of\*** **\*[principal office of manufacturer;]\*** **\*the manufacturing facility where the premanufactured construction was built.\***

3. **\*[Address of manufacturing facility or facilities where the premanufactured construction, principal elements, components and assemblies were produced;]\*** **\*Manufacturer's model designation for the premanufactured construction;\***

4. **\*[Manufacturer's model name;]\*** **\*Type of construction and use group classification in accordance with the provisions of the building subcode;\***

5. Manufacturer's serial number for the premanufactured construction;

6. Serial number of New Jersey insignia of certification for the premanufactured construction. Serial number(s) of New Jersey insignia(s) of certification of other modules (boxes), if applicable, forming part of the entire certified premanufactured project;

7. Serial number of insignia of **\*[inplant]\*** **\*inplant\*** inspection agency for the premanufactured construction. Serial numbers of insignias of inplant inspection agency for other modules (boxes) forming part of the entire certified premanufactured project;

8. Serial or other identifying numbers of each element, if any, of the premanufactured construction separately transported to the construction site for assembly and installation:

9. Snow loads maximum where applicable;

10. Wind loads maximum where applicable;

11. Other special environmental factors;

12. Applicable codes, including name of code, edition, year of publication and applicable supplement, if any;

13. Date of manufacture;

14. Date the data plate was attached to the premanufactured construction.

**\*5:25-4.34 Custody, attachment and record of department insignia of certification for premanufactured construction\***

**\*(a)\*\*[(n)]\*** The inplant inspection agency shall entrust the custody of the insignia of certification received from the department only to employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia to premanufactured construction only in the circumstances prescribed in the compliance control program and only

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with the prior specific authorization from the inplant inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the department. The inplant inspection agency shall promptly record the attachment of each insignia of certification in the insignia of certification monthly report. The monthly report with all columns filled in by the inplant inspection agency shall be sent to the department by the tenth day of each month.

**\*5:23-4.35\*** **\*[(o) Rules concerning]\*** Modification of premanufactured construction after certification **\*[are:]\***

**\*(a)\*\*[1.]\*** Approved premanufactured constructions bearing the insignia of certification shall not be modified in any way at any time after the insignia of certification has been attached, unless the modification is approved in advance by the inplant inspection agency or **\*[municipal enforcing agency]\*** **\*the Department\*** on the basis that the premanufactured construction as so modified, will still conform to the approved premanufactured system documentation. Approvals of any modifications which are consistent with the approved premanufactured system documentation may be by oral authorization by an officer or designated employee of the inplant inspection agency or **\*[municipal enforcing agency]\*** **\*the Department\***, but in such event each approval shall be subsequently evidenced by a letter from the inplant inspection agency or **\*[municipal enforcing agency]\*** **\*the Department\*** to the manufacturer within ten days after the oral authorization. Proposed modifications which are inconsistent with the approved premanufactured documentation shall be treated as proposed amendments to the premanufactured system documentation subject to the approval of the **\*inplant inspection agency or the\* Department**.

**\*(b)\*\*[2.]\*** Modifications of certified premanufactured construction are not prohibited under this chapter if such modifications are made after the issuance of a certificate of occupancy by the municipal enforcing agency. Such modifications shall be subject to the provisions of the State Uniform Construction Code.

**\*(c)\*\*[3.]\*** Nothing in this section shall prevent any manufacturer, on its own motion or at the order of the inplant inspection agency or of the department, from at any time repairing any damage to or remedying any defect found in any premanufactured construction.

**\*5:23-4.36** **Premanufactured construction for prototype, experimental or demonstration purposes\***

**\*(a)\*\*[(p)]\*** Premanufactured construction which is intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the department as a test facility may be approved by the department, and insignia of certification attached thereto to evidence such certification, upon a determination by the department, on the basis of such evaluations and inspections as may be appropriate, that the premanufactured system documentation for such premanufactured construction conforms to the applicable requirements of the State Uniform Construction Code, and the premanufactured construction as manufactured and installed, conforms to the approved premanufactured system documentation and the regulations. The department may designate any inplant inspection agency to make such determination, to certify such premanufactured construction and to authorize the attachment thereto of insignia of certification.

**\*5:23-4.37\*** **\*[(q) Rules concerning]\*** **\*Monitoring\*** inspections **\*of premanufactured construction\*** and right of entry **\*[are:]\***

**\*(a)\*\*[1.]\*** **\*For monitoring purposes,\*** the Department and inplant inspection agency are authorized to inspect during normal business hours without prior notice any manufacturing facilities of any manufacturer with approved premanufactured system documentation, the transportation systems utilized for the transport of certified premanufactured construction **\*,\* the construction sites on which premanufactured construction has or is intended to be installed, the books and records (wherever maintained) of any manufacturer with approved premanufactured system documentation which relates to the manufacture, sale, lease or installation of premanufactured construction for use on a site in the State, and the facilities and the books and records of any inplant inspection agency which relate to the discharge of its responsibilities under these regulations. Every manufacturer with approved premanufactured system documentation and every approved inplant inspection agency shall be deemed to grant to all authorized representatives of the department the right of entry on its property at any reasonable time (including without limitation, during all normal business hours) without prior notice, for the purpose of conducting such inspections and examinations as are authorized to the department under these regulations. Persons selling, acquiring or leasing such premanufactured construction and persons engaged in its transportation to and installation at the construction site,**

shall be deemed to grant to all authorized representatives of the Department the same right-of-entry on their property as the manufacturer is required to grant under this chapter.

**\*(b)\*\*[2.]\*** Every manufacturer with approved premanufactured system documentation shall be deemed to grant to all authorized representatives of the inplant inspection agency with which it has an implementing contract the right-of-entry on its property during normal business hours, without prior notice, for the purpose of conducting such inspections and examinations as such inspection agency deems necessary to discharge its responsibilities under these regulations and under its contract with the manufacturer. Persons selling, acquiring or leasing such premanufactured construction and persons engaged in its transportation to and installation on the construction site, shall be deemed to grant to the inplant inspection agency with an implementing contract with the manufacturer the same right-of-entry on their property as the manufacturer is required to grant under these regulations.

**\*5:23-4.38** **Applicability\***

**\*(a)\*\*[(r)]\*** No provision of the act and these regulations shall apply to premanufactured construction **\*[, components or assemblies]\*** installed for use on a site in the State prior to January 1, 1977.

Renumber 5:23-4.25A and -4.26 as **\*5:23-4.39\*** and **\*-4.40\***.

(No change in text.)

(a)

## Uniform Construction Code Asbestos Hazard Abatement Subcode

**Adopted Amendments: N.J.A.C. 5:23-8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.14, 8.15, 8.16**

**Adopted New Rules: N.J.A.C. 5:23-8.13, 8.17, 8.18, 8.20, 8.21**

Proposed: February 18, 1986 at 18 N.J.R. 378(a).

Adopted: April 2, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: April 2, 1986 as R.1986 d.143, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: May 5, 1986.

Expiration Date: April 1, 1988.

### Summary of Public Comments and Agency Responses:

The Department received five letters commenting on this proposal. Each commentor was concerned about different parts of the proposed regulations. One commentator, a contractor, was concerned that under the revised regulations the contractor would not receive a copy of the final report submitted to the building owner by the Asbestos Safety Control Monitor firm. He felt that since the report might contain statements detrimental to the contractor which could hurt him in the future such as at license renewal time he should have the opportunity to refute the allegations at the time they are made.

The Department recognizes the commentator's concern but is of the opinion that the final report is a part of a contract between the monitoring firm and the school board. If there are major allegations against the contractor he will be notified by the Department at which time he will be given the opportunity to review the report and comment on and/or refute these allegations.

A second concern was that the time allowed for the receipt of analytical results was 48 hours after the laboratory receives the samples. Since there was no time limit on the transport of the sample to the laboratory the analytical results were not available at the jobsite for 7 or 8 days in some cases. This negates their usefulness as a control mechanism on the asbestos abatement project. The commentator suggested that this be changed to two working days following the taking of the samples. The Department agrees with this concern and has incorporated it into the regulations.

A second commentator, a trade organization representative, questioned the requirement of an air sample after completion of asbestos removal utilizing the glove bag technique. He reasoned that no significant likelihood exists that there will be any significant exposures if the detailed requirements of the regulation are followed and that requiring air sampling will discourage the use of this valuable technique.

The Department might agree with this comment if the glove bag technique was restricted to minor projects. The department has been allowing this technique to be utilized for all sizes of projects as long as the requirements for the particular size project were met. The removal of the requirement for air sampling would cause the department to restrict the use of the glove bag technique to minor projects or at least to very small projects. The department does not wish to do this.

A further concern was that the regulations for demolition are not specifically restricted to a minimum quantity of "friable" materials. The commentator contends that only friable materials have a significant potential for demolition, and that it would be impractical to impose the demolition requirements, as currently proposed, on all such building with asbestos-containing materials such as sheet flooring, roof coating etc.

The Department is of the opinion that the demolition of these materials do pose a significant potential for releasing asbestos fibers into the environment and therefore should be under the proposed regulations. The department, however, will monitor the effectiveness and practicality of these regulations and modify them if the facts warrant it.

A third commentator, the Asbestos Safety Control Monitor, raised several points concerning the duties of the asbestos safety technician, particularly his performance of the various required inspections under the regulations. This commentator felt that the Asbestos Safety Control firm may want to assign a senior member of the firm, also an approved asbestos safety technician, to perform these inspections with a fresh eye.

The department did not intend to restrict the inspections to the on-site asbestos safety technician and therefore the wording of the regulations has been modified to allow this.

The commentator raised several technical points which will be evaluated by the department for inclusion in further amendments to these regulations.

A fourth commentator, also an Asbestos Safety Control Monitor firm, made several comments calling for the department to give consistent interpretations of the regulations. The department strives to be consistent in its interpretation of the regulations.

The commentator urges the immediate use of outside agencies authorized by the New Jersey Department of Health to perform health assessments of the various buildings. This is a matter to be determined by the Department of Health and is not relevant to these proposed regulations.

The commentator suggested that small jobs be required to meet the requirements for large jobs since small jobs can be a source of significant asbestos emission. The department shares this concern, however this is a mechanism to handle the jobs between insignificant removal (minor jobs) and large jobs and the department feels that since each job is evaluated on a case by case basis this potential problem is minimized.

The commentator questioned the reliability of analytical results and feels that analytical personnel should be certified and subscribe individually to the NIOSH Proficiency Analytical Testing Program. The department believes this would be too restrictive at the present time and would effectively stop the program. The department does agree that the analyst should sign off on his work.

A further comment was that the requirement that all technical personnel be certified before an Asbestos Safety Control Monitor firm can be authorized was unwarranted and too restrictive. This was not the intent of the department and therefore the wording of this section will be changed to reflect this and also to allow the addition of certified asbestos safety technicians in the future.

This commentator also felt that the conflict of interest statement was too restrictive in not allowing the Asbestos Safety Control Monitor to do work with a contractor on another project. The department does not agree.

A fifth commentator, an individual industrial hygienist, suggested that the penalty to a contractor for noncompliance with the subchapter be increased to \$5000 since it is sometimes cost effective for a contractor to ignore the regulations and pay the fine. The department is limited to a penalty of \$500.00 per violation by subchapter 2 of the Uniform Construction Code of the State of New Jersey. The penalty, however, can be assessed for each day that the violation exists and therefore can become a substantial amount.

This respondent also feels that the certification requirements for the asbestos safety technicians should be both the educational requirements and the experience requirements combined and not either/or as stated in the regulations. The department may agree that this is desirable but a sufficient number of people meeting these combined requirements are not available at present.

This respondent also recommends that laboratories accredited by the

American Industrial Hygiene Association should be included although some do not participate in the EPA Asbestos Bulk Samples Analysis QA Program. The department feels that laboratories in this category can meet the requirement for participation in the EPA Asbestos Bulk Samples Analysis QA Program without too much difficulty and therefore this will not be changed.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

#### 5:23-8.1 Title; scope; intent

(a)-(b) (No change.)

(c) This subchapter, which pertains to Educational Facilities as defined in N.J.A.C. 5:23-8.2, and all State-owned and State-managed buildings, shall control matters relating to: construction permits for asbestos abatement; fees; licenses; certification; work permits; reports required; documentation; inspections by the asbestos safety technician; air monitoring; enforcement responsibilities; and remedies and enforcement. Until further action is taken, this Subcode remains advisory for all other buildings and structures in the state.

(d) (No change.)

#### 5:23-8.2 Definitions

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

...

"Asbestos Safety Control Monitor" means a business entity authorized pursuant to N.J.A.C. 5:23-8 to ensure compliance with the Asbestos Hazard Abatement Subcode.

"Asbestos Safety Technician" means a person certified by the New Jersey Department of Community Affairs, hired by the asbestos safety control monitor who continuously monitors and inspects the asbestos abatement work pursuant to this subchapter. This person shall be required to be on the job site during the time the asbestos abatement work is taking place and perform all duties and responsibilities established by these regulations.

...

"Large asbestos hazard abatement job" means asbestos-containing materials which: involves the removal, enclosure, or encapsulation within one year of 160 square feet or more of asbestos-containing material used on an equipment, wall, or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of 260 linear feet or more of asbestos-containing material on covered piping.

"Minor asbestos hazard abatement job" means corrective action using recommended work practices to minimize the likelihood of fiber release from small damaged areas of asbestos ceilings, pipe and boiler insulation which involves the removal, repair, encapsulation or enclosure of 25 square feet or less of asbestos-containing material used on an equipment, wall or ceiling area; or involves the removal or encapsulation, using a liquid material applied by a pressurized spray, of 10 linear feet or less of asbestos-containing material on covered piping as delineated in N.J.A.C. 5:23-8.4. The repair, enclosure and encapsulation by methods other than pressurized spray of any amount of asbestos-containing material, used to cover piping, shall also be a minor asbestos hazard abatement job.

"Negative pressure" means air pressure lower than surrounding areas, generally caused by exhausting air from a sealed space (work area).

...

"Sealant" means a liquid or solution to be used as a binding agent, such as a diluted encapsulant or a water based paint, on dried exposed surfaces from which asbestos containing material has been removed. The color of the coat shall be separate and distinct from the underlying substrate.

"Separation barrier" means a constructed wall with no door that separates the clean area from the work area having a fire rating, if applicable, and does not interfere with the means of egress. Polyethylene sheeting (minimum 2 layers of 6 mil) shall be placed on the work side of the barrier so that it completely seals off the work area to prevent the distribution of fibers to the surrounding area.

"Small asbestos hazard abatement job" means asbestos-containing materials which: involves the removal, enclosure, or encapsulation within one year of more than 25 and less than 160 square feet of asbestos-containing material used on an equipment, wall or ceiling area; or in-



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volves the removal or encapsulation, using a liquid material applied by a pressurized spray, within one year of more than 10 and less than 260 linear feet of asbestos-containing material on covered piping.

"Wet cleaning" means the process of eliminating asbestos contamination from building surfaces and objects by using cloths, mops, or other cleaning utensils which have been dampened with amended water and afterwards thoroughly decontaminated or disposed of as asbestos contaminated waste.

"Work area" means the area where asbestos related work or removal operations are performed which is defined and/or isolated to prevent the spread of asbestos dust, fibers or debris, and entry by unauthorized personnel.

#### 5:23-8.3 Enforcement; licensing; special technical services

(a) Except as is otherwise provided in l. below, the provisions of this subchapter shall be enforced by municipal enforcing agencies utilizing Asbestos Safety Control Monitors (the New Jersey Department of Community Affairs, hereafter cited as the Department, if applicable) and shall be administered and enforced uniformly throughout the State. This subchapter shall be in addition to existing regulations already adopted pursuant to the Uniform Construction Code Act (P.L. 1975, c.217 as amended) and known as the Regulations for the Uniform Construction Code (N.J.A.C. 5:23). This subchapter contains administrative procedure for the inspection of asbestos abatement work involving: removal; encapsulation; enclosure; repair; renovation or demolition work which disturbs asbestos in Educational Facilities.

##### 1. Rules concerning exceptions are as follows:

i. State-owned or State-managed buildings: The Department utilizing asbestos safety control monitors shall be the sole enforcing agency to administer and enforce the Asbestos Hazard Abatement Subcode with respect to State-owned or State-managed buildings.

(b) Except as is otherwise provided in l. below, the joint regulations adopted by the New Jersey Department of Health and Labor, which are cited as N.J.A.C. 8:60 and N.J.A.C. 12:120, respectively, provide the licensing requirements of contractors who perform any of the functions of application, enclosure, removal or encapsulation.

##### 1. Rules concerning licenses are as follows:

i. A licensed contractor shall be required for a large asbestos hazard abatement job or a small asbestos hazard abatement job.

ii. A licensed contractor shall not be required for a minor asbestos hazard abatement job.

(c) Whenever the Asbestos Safety Control Monitor determines that the need for interpretations and/or assistance exists with regard to a particular project, the asbestos safety control monitor shall contact the department who shall make such determination deemed necessary. Such may include, but not be limited to:

1. Plan and specification services;
2. Site investigation;
3. Site inspections.

#### 5:23-8.4 Minor asbestos hazard abatement job

(a) Minor asbestos hazard abatement job, as defined in N.J.A.C. 5:23-8.2 involves asbestos abatement work which may be made without application or notice to the administrative authority having jurisdiction. This work requires general isolation of the work area from the surrounding environment, proper clean-up procedures, and shall be conducted by trained personnel who have successfully completed a training program for maintenance and custodial personnel and other construction trade groups which meets the applicable requirements of the New Jersey Public Employees OSHA or applicable federal standards. Specific records of each minor asbestos hazard abatement job shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the administrative authority having jurisdiction and for public inspections during normal business hours. The information required shall be: exact locations of the worksite within the building, type of abatement work conducted, scope of work, type of replacement material used (if applicable), date, name(s) and address(es) of personnel, and the location of the disposal site. A copy of this information shall be sent to the administrative authority having jurisdiction each time a minor asbestos hazard abatement job takes place. Mechanical, electrical, plumbing or general construction work which involves the incidental disturbance of less than 25 square feet of asbestos-containing material used on an equipment, wall or ceiling area, or less than 10 linear feet of asbestos-containing material on covered piping shall be considered a minor asbestos hazard abatement job.

1. Exception: Although the enclosure of any amount of asbestos-containing material used to cover pipe does not require a permit for asbestos

abatement pursuant to this subchapter it shall be considered construction work. A construction permit, therefore, may be required by the administrative authority having jurisdiction pursuant to N.J.A.C. 5:23-2.

#### 5:23-8.6 Construction permit for asbestos abatement

(a) It shall be unlawful to undertake a large or small, but not a minor, asbestos hazard abatement job unless the owner, or an authorized representative on behalf of the owner, first files an application in writing with the administrative authority having jurisdiction and obtains the required permit. This permit shall serve as notice for public record in the office of the administrative authority having jurisdiction. All work shall be monitored and controlled by the Asbestos Safety Control Monitor, who will advise the administrative authority having jurisdiction of its findings. All asbestos abatement work shall be conducted in unoccupied buildings \*, **unless the work area can be properly separated and sealed off from the occupied portion of the building,\*** as approved by the New Jersey Departments of Community Affairs and Health, \*[county or local health departments, or a private business entity authorized by the New Jersey Department of Health]\* (and New Jersey Department of Education for public school projects). The type of asbestos abatement work to be performed and the amount of asbestos to be removed, encapsulated, enclosed or repaired shall be the governing factor in determining whether it is considered a large asbestos hazard abatement job, a small asbestos hazard abatement job or a minor asbestos hazard abatement job.

1. The Department or a municipality utilizing an Asbestos Safety Control Monitor which has been authorized by the Department to enforce the Asbestos Hazard Abatement Subcode within its jurisdiction, shall be the sole enforcing agency for asbestos hazard abatement work.

(b) The application for a construction permit for asbestos abatement shall be subject to the following:

1. The application for a permit shall be submitted in such form as the department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

2. The application for a construction permit for asbestos abatement shall be required to include the following:

i. The name, address and license number of the asbestos contractor pursuant to N.J.A.C. 12:120 Asbestos Licenses and Permits under the jurisdiction of the New Jersey Department of Labor;

ii. The asbestos hazard assessment prepared by the New Jersey Department of Health, \*[county or local health department, or a private business entity, authorized by New Jersey Department of Health]\* unless the requirement for an assessment has been waived \*[by any of the above];\*

iii. The name and address of the private air monitoring firm, hired by the building owner shall act as the Asbestos Safety Control Monitor authorized by the New Jersey Department of Community Affairs who will be responsible for continuously monitoring the asbestos abatement project;

iv. Plans and specifications (not less than three sets) indicating the scope of the proposed work, and the provisions proposed to contain the asbestos-containing material during abatement work showing but not limited to separation barriers, primary seal/critical barriers, route of travel of removing asbestos waste from the work site, a copy of the site plan and a floor plan indicating exits.

v. Documentation that all buildings, except as approved by the New Jersey Department of Health, Education or Community Affairs, as appropriate, will be unoccupied at the time an asbestos abatement job takes place. A building may be occupied only if the work area can be properly separated and sealed off from the occupied portion of the building.

vi. The name and address of the New Jersey Department of Environmental Protection registered waste hauler and of the New Jersey Department of Environmental Protection registered landfill where the asbestos waste will be deposited.

vii. The scheduled starting and completion dates for the asbestos abatement project.

(c) The issuance of a construction permit for asbestos abatement shall be subject to the following:

1. Submission of a completed application;

2. The described work and containment measures conform to the requirements of this subchapter and the requirements of any other applicable law or regulation adopted or enforced by any other State agency;

3. A written release of the plans and specifications by the Asbestos Safety Control Monitor.

4. Cursory plan review shall be done by the authority having jurisdiction to determine the need of replacement material for maintaining the structural integrity of a building; if required, a separate construction permit shall be issued by the authority having jurisdiction. In addition,

a review shall be done to ensure that means of egress is maintained in occupied buildings.

(d) The issuance of the construction permit for asbestos abatement authorizes the preparation of the work area. This initial preparation of the work area shall be observed by the asbestos safety technician to ensure compliance with this subchapter. No actual asbestos abatement work shall commence until:

1. A pre-commencement inspection has been conducted and approved by the asbestos safety technician **\*or another certified asbestos safety technician designated by the asbestos safety control monitor\***.

(e) (No change.)

(f) The applicant or contractor shall notify the following agencies in writing prior to the start of the asbestos abatement project. Such notice shall be supplied in the form of a copy of the completed application for a construction permit for asbestos abatement and a copy of the permit if the administrative authority is a municipal enforcing agency and not the department:

1.-3. (No change.)

4. New Jersey Department of Labor  
Office of Asbestos Control and Licensing  
CN 054  
Trenton, New Jersey 08625-0054

5. U.S. Environmental Protection Agency  
Asbestos NESHAPs Contact  
Air & Waste Management Division  
USEPA  
26 Federal Plaza  
New York, N.Y. 10007

#### 5:23-8.7 Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. Notification **\*in writing\*** to the Asbestos Safety Control Monitor shall be made by the applicant or contractor to request a pre-commencement inspection at least 48 hours in advance of the desired date of inspection. This inspection shall be requested each time another worksite is started in a multi-phase project.

2. The Asbestos Safety Technician **\*, or another certified asbestos safety technician designated by the asbestos safety control monitor,\*** shall ensure that:

i. The job site is properly prepared and that all containment measures are in place pursuant to this subchapter;

ii. All workers shall present to the Asbestos Safety Technician **\*, or another certified asbestos safety technician designated by the asbestos safety control monitor,\*** a valid work permit issued by the New Jersey Department of Labor;

iii. Measures for the disposal of removed asbestos material are in place and shall conform to the adopted standards;

iv. The contractor has a list of emergency telephone numbers at the job site which shall include the Asbestos Safety Control Monitor firm employed by the building owner and telephone numbers for fire, police, emergency squad, local hospital and health officer, New Jersey Department of Labor and New Jersey Department of Health.

3. If all is in order, the Asbestos Safety Technician **\*, or another certified asbestos safety technician designated by the asbestos safety control monitor,\*** shall issue a written notice to proceed with the asbestos removal in the field. If the job site is not in order, then any needed corrective action must be taken before any work is to commence. Conditional approvals shall not be granted.

(b) Progress inspections shall be conducted as follows:

1. Primary responsibility for ensuring that the asbestos abatement work progresses in accordance with this subchapter rests with the Asbestos Safety Technician. This Asbestos Safety Technician shall continuously be present to observe the progress of work and perform required inspections and tests.

2. If the Asbestos Safety Technician observes irregularities at any time, the Asbestos Safety Technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any regulation, then the Asbestos Safety Technician shall order the work stopped in writing. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a Stop Work Order to the contractor, have the work site secured until all violations are abated and assess a penalty of \$500 which shall not be waived or settled for any reason.

3. Where a sealant is required to be applied after removal, a pre-sealant inspection shall be conducted to ensure that all asbestos-containing ma-

terial has been removed properly before the sealant is applied. If the pre-sealant inspection is acceptable to the asbestos safety technician, he should indicate this acceptance in writing.

(c) Clean-up inspections shall be conducted as follows:

1.-2. (No change.)

3. The Asbestos Safety Technician **\*, or another certified asbestos safety technician designated by the asbestos safety control monitor,\*** shall ensure that:

i. (No change.)

ii. All removed asbestos has been properly placed in a locked secure container outside of the work area.

4. If all is in order, the Asbestos Safety Technician **\*, or another certified asbestos safety technician designated by the asbestos safety control monitor,\*** shall issue a written notice of authorization to remove barriers from the job site.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and at least 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials and that all removed asbestos and asbestos contaminated materials have been properly disposed of off-site in accordance with the regulations of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26-1 et seq. NOTE: A vehicle registered by the New Jersey Department of Environmental Protection shall be used.

(e) Department inspections shall be conducted as follows:

1. The Department shall make unannounced periodic inspections of any job-site involving asbestos abatement work.

(f) Violations: The Asbestos Safety Technician shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the Asbestos Safety Technician shall in writing order the work stopped. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a stop work order to the contractor, have the work site secured until all violations are abated, and assess a penalty of \$500 which shall not be reduced or settled for any reason.

#### 5:23-8.8 Certificate of occupancy; certificate of completion

(a) Certificate of occupancy requirements are as follows:

1. It shall be unlawful to re-occupy the portion of a building which was vacated during an asbestos hazard abatement project until a certificate of occupancy has been issued by the administrative authority having jurisdiction. The certificate of occupancy shall be issued upon receipt of a certificate of completion issued by the Asbestos Safety Control Monitor and verified by the administrative authority having jurisdiction that the building or a portion of a building is in conformance with all applicable requirements of the Uniform Construction Code and that any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired or refinished to match existing materials.

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1) The name and address of the owner;

(2) The address of the building or structure;

(3) Certificate of completion submitted by the asbestos safety control monitor;

(4) Final air monitoring level of .01 fibers/cc or lower submitted by the Asbestos Safety Control Monitor.

3. If all the information required is complete and in accordance with this subchapter, a certificate of occupancy shall be issued.

(b) Certificate of Completion requirements are as follows:

1. It shall be unlawful to apply for a certificate of occupancy until a certificate of completion has been issued by the asbestos safety control monitor.

2. Within 5 days of completion of an asbestos hazard abatement job the owner/agent shall file for a certificate of completion from the asbestos safety control monitor.

3. The application for a certificate of completion shall be in writing and submitted in such form as the department may prescribe.

4. A certificate of completion shall be issued only if:

i. All information is complete.

ii. Final inspection by the asbestos safety technician reveals no visible evidence of asbestos.

iii. All requirements of this subcode have been met.

iv. Final air monitoring level of .01 fibers per cc or lower has been attained.

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5:23-8.9 Fees

(a) The administrative authority having jurisdiction who issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation/ordinance the following flat fee schedule:

1. An administrative fee of \$50 for each construction permit issued for an asbestos hazard abatement project.
2. An administrative fee of \$10.00 for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

(b) The authorization and reauthorization fees for the Asbestos Safety Control Monitor are defined in N.J.A.C. 5:23-8.17.

5:23-8.10 Precautions and procedures during a large asbestos abatement job

(a) Protective clothing and equipment for asbestos abatement shall be subject to the following requirements:

1. The contractor shall provide the required respirators and make available protective clothing to all who may inspect or visit the job site;
- 2.-7. (No change.)

8. The contractor shall have available ladders and/or scaffolds of adequate length and sufficient quantity so that all work surfaces may be easily reached by asbestos safety technician and all others who may inspect the work;

9. (No change.)

**\*10. No asbestos hazard abatement work including preparation can be performed without having a certified asbestos safety technician on the job site.\***

(b) (No change.)

(c) Preliminary preparations in the work area shall be conducted as follows:

1. The contractor shall provide and post in clearly visible locations, caution signs indicating that asbestos work is being conducted and that unprotected persons should not enter;

2. The contractor or persons employed by the building owner shall clean with wet cloths and/or with HEPA vacuums as appropriate all movable items that can be removed from the work area without disrupting the asbestos material. This shall include furniture, equipment, drapes, curtains. The cloths used for cleaning shall be disposed of as asbestos contaminated waste;

3.-5. (No change.)

(d) (No change.)

(e) Initial activity in the work area shall be conducted in the following order:

1. Remove filters from all heating, ventilating and air conditioning systems and place them in 6 mil plastic bags, doubled bagged with visible labels, for disposal as asbestos-containing waste and securely sealed by knotting the bag or by sealing the bag with high quality tape, all excess air shall be squeezed out of the bag before sealing to prevent punctures during disposal. These bags should be handled in the same manner as removed asbestos;

2.-4. (No change.)

5. For floor covering two layers of 6 mil polyethylene sheeting shall be used. The first layer of floor sheeting shall extend up the wall at least 12 inches. The second layer shall be extended up sidewalls at least 24 inches. Sheeting shall be sized so as to minimize the number of seams necessary. No seams shall be located at the joints between walls and floors;

6.-8. (No change.)

(f) Sequence of asbestos removal activities shall be conducted as follows:

1.-6. (No change.)

7. After completion of this removal phase (stripping), all surfaces from which asbestos has been removed shall be scrubbed using nylon **\*[.] \*or\* bristle \*[or wire]\*** brushes and wet sponged or cleaned by an equivalent method to remove all visible asbestos containing material. During this work the surfaces being cleaned shall be kept wet using amended water. All disposable equipment shall be packaged for disposal. Containers shall be washed with amended water and shall have all exterior particulate matter removed prior to removal from the contaminated area.

8.-10. (No change.)

(g) Final clean-up work of the work area shall be conducted as follows in the order listed:

1. The contractor shall first clean all surfaces in the work area using a fine spray or mist of amended water applied to all surfaces followed by the wet-wiping procedure using disposable cloths. These cloths shall be disposed of or rinsed thoroughly on a frequency sufficient to eliminate

visible accumulation of debris. Allow all surfaces to dry before re-entering the work area and proceeding to step No. 2 below of this procedure.

i. Notify the asbestos safety technician in writing that a pre-sealant inspection is requested.

2. After completion of cleaning all surfaces in the work area and upon receiving a satisfactory pre-sealant inspection, the contractor shall spray coat all dried exposed surfaces with a sealant. The color of this coat shall be separate and distinct from the underlying substrate. The surfaces to be coated shall include surfaces from which asbestos-containing materials have been removed (such as ceilings) and polyethylene which has been used to cover walls, floors and non-removable fixtures and equipment.

3.-5. (No change.)

6. After completion of the cleaning operations the contractor shall:

i. Notify the asbestos safety **\*[technician]\* \*control monitor\*** that a clean-up inspection can be performed to ensure all visible asbestos has been removed and the area is dust free;

ii. Request air monitoring of the work area.

7. (No change.)

8. After the work area is found to be in compliance with the acceptance criteria, the following tasks shall be performed by the contractor:

i.-ii. (No change.)

9. Notice for a final inspection shall be made by the owner or contractor to the asbestos safety **\*[technician.]\* \*control monitor.\***

10. Upon receiving a satisfactory final inspection, application for a Certificate of Completion may be made.

5:23-8.11 Precautions and procedures during a small asbestos hazard abatement job

(a) **\*[Since this work may disturb small amounts of asbestos, it does not require the same level of precautions as with a large asbestos hazard abatement job, but it does require]\* \*Small asbestos hazard abatement jobs shall be carried out according to the following procedures which require\*** that all asbestos abatement work be performed by a licensed contractor and that the employees have valid work permits issued by the New Jersey Department of Labor. A construction permit shall be required. An asbestos safety control monitor authorized by the New Jersey Department of Community Affairs shall ensure compliance with the regulations except air monitoring will not be required. However a final air sample shall be taken to ensure that the asbestos fiber content of the air is .01 fibers/cc or lower.

1. Exception: The Asbestos safety control monitor may require air monitoring and the installation of a decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer when the type of asbestos abatement work to be performed may involve a highly friable asbestos-containing material, or that the asbestos-containing material contains a high percentage of asbestos by weight, or because of the asbestos abatement procedure, the asbestos-containing material becomes highly friable. If the owner or contractor believes that such measures are not necessary, the owner or contractor may appeal the requirement to the New Jersey Department of Health, county or local department of health or a private business entity authorized by the New Jersey Department of Health which performed the hazard assessment.

(b) The following minimum level of precautions and procedures shall be employed:

1.-6. (No change.)

7. Fans or blowers shall not be used to ventilate tunnels, basement areas or manholes before or during asbestos removal or repair work unless HEPA filter equipped. Note: Other safety precautions may be required for work in confined spaces such as these.

8.-9. (No change.)

10. All asbestos waste shall be picked up while wet and shall be placed in 6 mil plastic bags, double bagged with visible labels for disposal as asbestos-containing waste, and securely sealed by knotting the bag or by sealing the bag with high quality tape.

11. (No change.)

12. A final air sample shall be taken.

13. Asbestos waste must be disposed of in accordance with the regulations of the New Jersey Department of Environmental Protection, N.J.A.C. 7:26-1 et seq.

14. Outside contractors, who will be working in an area where asbestos materials are located, should be advised of its presence and cautioned to prevent disturbance of the material and possible exposure to the workers.

(c)-(d) (No change.)



5:23-8.13 Glove bag technique

(a) The removal of asbestos by use of the glove bag shall be limited to the removal of asbestos-containing insulation from pipe fittings, elbows and pipe.

(b) The preparation of the work area for glove bag removal shall include the following:

1. A minimum of two persons are required to perform a glove bag removal project. A third person may be required to conduct air monitoring and assist with supplies.

2. The work area where the technique is to be utilized shall be roped off and warning signs posted on the perimeter to prevent unauthorized personnel from entering the work area.

3. All necessary materials and supplies shall be brought into the work area before any removal begins.

(c) The following is a list of recommended equipment and tools for the removal of asbestos by the glove bag technique:

1. The glove bag which consists of a 6 mil bag fitted with long sleeve gloves, a tool pouch and a two-inch opening used for water application;

2. A pump-up sprayer (garden type) with a two or three gallon capacity;

3. Amended water (water with a surfactant);

4. 6 mil polyethylene disposal bags with the proper markings for asbestos waste;

5. A HEPA filtered vacuum with a capillary tube for insertion into the glove bag;

6. Tools such as: a small scrub brush; a utility knife for cutting the insulation, a stapler; wire cutters; smoke tubes with aspirator bulb; a bone saw; tin snips; duct tape and wettable cloths;

7. A roll of 6 mil polyethylene;

8. An encapsulant (tinted).

(d) Removal procedures shall be conducted as follows:

1. A visual inspection of the pipe where the work will be performed shall be made to determine if any damaged pipe covering (broken lagging, hanging etc.) exists. If there is, the pipe shall be wrapped in polyethylene plastic and fully secured with duct tape. This procedure will prevent high airborne fiber concentrations from occurring during the glove bag work cause by pipe lagging, hanging several feet or even several yards away which may be jarred loose by the activity. Debris on the floor and other surfaces which has accumulated and contains asbestos must be cleaned up as necessary. If the pipe is undamaged, one layer of duct tape shall be placed around the pipe at each end of where the glovebag will be attached. This permits a good surface to which to seal the ends of the glovebag, and it minimizes the chance of releasing fibers when the tape at the ends of the glovebag is peeled off at the completion of the job.

2. Slit the top of the glovebag open (if necessary) and cut down the sides to accommodate the size of the pipe (about two inches longer than the pipe diameter).

3. Place the necessary tools into the pouch located inside the glovebag. This will usually include the bone saw, utility knife, rags, scrub brush, wire cutters, tin snips and pre-cut wettable cloth. Cut out a donut shape in the cloth with the inner diameter one-half-inch smaller than the diameter of the pipe beneath the insulation. The outer diameter of the donut should be three inches longer than the diameter of the pipe insulation being removed. Finally, cut a slit in each of the two donuts so they can be slipped around the pipe.

4. One strip of duct tape shall be placed along the edge of the open top slit of the glovebag for reinforcement.

5. Place the glovebag around the section of pipe to be worked on and staple the top together through the reinforcing duct tape. Staple at intervals of approximately one inch. Next, fold the stapled top flap back and tape it down with a strip of duct tape. This should provide an adequate seal along the top. Next, duct tape the ends of the glovebag to the pipe itself, previously covered with plastic or duct tape (see step 1 above).

6. Using the smoke tube and aspirator bulb, place the tube into the water sleeve (two-inch opening to glovebag). By squeezing the bulb, fill the bag with visible smoke. Remove the smoke tube and twist the water sleeve closed. While holding the water sleeve tightly, gently squeeze the glovebag and look for smoke leaking out, especially at the top and ends of the glovebag. If leaks are found, they shall be taped closed using duct tape and the bag shall be re-tested.

7. Insert the wand from the water sprayer through the water sleeve. Using duct tape, tape the water sleeve tightly around the wand to prevent leakage.

8. One person places their hands into the long-sleeved gloves while the second person directs the water spray at the work.

9. If the section of pipe is covered with an aluminum jacket, this is removed first using the wire cutters to cut any bands and the tin snips to remove the aluminum. It is important to fold the sharp edges in to prevent cutting the bag when it is placed in the bottom. A box may be put in the bottom of the bag when the tools are placed in, and the metal placed in the box to further protect the bag from being cut.

10. With the insulation exposed, using the bone saw, cut the insulation at each end of the section to be removed. A bone saw is a serrated heavy-gauge wire with ring-type handles at each end. Throughout this process, water is sprayed on the cutting area to keep dust to a minimum.

11. Once the ends are cut, the section of insulation should be slit from end to end using the utility knife. The cut should be made along the bottom of the pipe and water continuously supplied. Again, care should be taken when using the knife not to puncture the bag. Some insulation may have wire to be clipped as well. Again, a box may be used here as in step nine above to protect the bag from puncture.

12. Rinse all tools with water inside the bag and place back into pouch.

13. The insulation can now be lifted off the pipe and gently placed in the bottom of the bag, while the side of the insulation adjacent to the pipe is being thoroughly wetted.

14. Using the scrub brush, rags and water, scrub and wipe down the exposed pipe.

15. Wet the donut-shaped pieces of wettable cloth over the exposed ends of insulation remaining on the pipe.

16. Remove the water wand from the water sleeve and attach the small nozzle from the HEPA-filtered vacuum. Turn on the vacuum only briefly to collapse the bag.

17. Remove the vacuum nozzle and twist the water sleeve closed and seal with duct tape.

18. From outside the bag, pull the tool pouch away from the bag. Place duct tape over the twisted portion and then cut the tool bag from the glovebag, cutting through the twisted/taped section. In this manner, the contaminated tools may be placed directly into the next glovebag without cleaning. Alternatively, the tool pouch with the tools can be placed in a bucket of water, opened underwater, and the tools cleaned and dried without releasing asbestos into the air. Rags and the scrub brush cannot be cleaned in this manner and should be discarded with the asbestos waste. If more than one adjacent section of pipe is to be removed, the glovebag may be loosened at each end and slid along the pipe to the next section. In this case, the tools would remain in the bag for continued use.

19. With removed insulation in the bottom of the bag, twist the bag several times and tape it to keep the material in the bottom during removal of the glovebag from the pipe.

20. Slip a 6 mil disposal bag over the glovebag (still attached to the pipe). Remove the tape and open the top of the glovebag and fold it down into the disposal bag.

21. All surfaces in the work area shall be cleaned using disposable cloths wetted with amended water. These cloths shall be disposed of or rinsed thoroughly to eliminate visible accumulation of debris. Then, when these surfaces have been allowed to dry, all surfaces shall be cleaned again using a HEPA filtered vacuum.

22. Place any contaminated articles, debris, etc. into the bag with the waste.

23. Twist the top of the bag closed, fold this over, and seal with duct tape. Place this bag into a second 6 mil disposable bag, and seal as in the above manner. Label the bag with a warning label.

24. Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.14.

25. Air sampling shall be conducted after completion of glovebag projects to determine if undetected leakage occurred. Once the area has been found to be safe for re-entry by unprotected personnel, the barriers may be removed.

5:23-8.14 Disposal of asbestos waste

(a) This subsection shall apply to the removal of asbestos from the job site and the disposal of asbestos waste.

1. Disposal of asbestos waste shall be conducted as follows:

i. A notification of intent to dispose of asbestos shall be sent to the New Jersey Department of Environmental Protection at least 10 days prior to actual disposal. The notification shall be sent to the Division of Waste Management, Bureau of Field Operations, 120 Route 156, Yardville, New Jersey 08620 pursuant to N.J.A.C. 7:26-1 et seq.

ii. All asbestos waste materials destined for disposal in New Jersey shall be wetted and packaged in permanently sealed, leaktight containers

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(such as 6 mil plastic bags, double bagged with visible labels) in accordance with 40 CFR 61.20-25 before it can be legally transported and disposed of in New Jersey. No haulage of loose asbestos is permitted.

iii. A locked, secure container shall be provided if asbestos waste is to be stored outside unattended.

iv. The notification of (a)i above shall include the following:

- (1) Name, address, and telephone number of the removal project;
- (2) Quantity and nature of the waste to be disposed;
- (3) Name, address, and New Jersey Department of Environmental Protection registration number of the collector-handler;
- (4) Name and address of the landfill at which disposal will occur;
- (5) Date and time of disposal;
- (6) A copy of any written notification required by 40 CFR 61.22 to 61.25.

v. Asbestos waste which is properly packaged is classified as Waste ID No. 27, non-hazardous industrial waste, and shall be disposed of at a landfill which is registered by the New Jersey Department of Environmental Protection in conformance with the following:

(1) The asbestos waste container shall be taken to the landfill by a vehicle that is registered by the New Jersey Department of Environmental Protection;

(2) The landfill used must be registered by the New Jersey Department of Environmental Protection to accept Waste ID No. 27;

(3) The specific landfill facility chosen must be one designated by the New Jersey Department of Environmental Protection as the recipient facility for the community in which the removal project is located;

(4) The waste hauler must possess a valid solid waste transporter registration issued by the New Jersey Department of Environmental Protection. A licensed solid waste transporter shall be a commercial collector/hauler or shall be the removal company if they are so registered;

(5) Asbestos waste can be hauled in trucks or in dumpster containers provided the load is comprised only of asbestos in bags and does not contain any other wastes or asbestos-containing wastes which could compromise the integrity of the permanent containers;

(6) If rough surfaces or other materials are present in the load which could potentially puncture the permanent containers, then those containers shall be enclosed in temporary fiber or steel drums during loading, transport, and unloading operations. In addition, asbestos wastes shall not be loaded into or hauled with vehicles containing compaction devices;

(7) To determine which landfill to use for a particular project, N.J.A.C. 7:26-6.5 shall be consulted.

#### 5:23-8.15 Duties of the Asbestos Safety Technician

(a) The asbestos safety technician shall perform all air sampling specified in this subchapter, and shall be thoroughly familiar with this subchapter. He shall have access to all areas of the asbestos removal project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter. The asbestos safety technician shall be on site from the initial preparation of the work area and during the entire abatement operation.

(b) The asbestos safety technician shall have the authority to direct the actions of the contractor verbally and in writing to assure compliance. The asbestos safety technician shall have authority to require that all workers present a valid work permit issued by the New Jersey Department of Labor before entering the worksite. The asbestos safety technician shall have the authority to test the seal of the respirator of all who enter the worksite to ensure a proper fit. In matters of gross negligence and/or flagrant disregard for the safety of others including the possibility of contaminating the building environment and the appearance of an emergent, unsafe condition at the worksite, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any regulation, then the asbestos safety technician shall order the work stopped in writing. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the administrative authority having jurisdiction who shall issue a Stop Work Order to the contractor and have the work site secured until all violations are abated.

(c) The asbestos safety technician upon receipt of testing results indicating that concentrations above 0.01 fibers per cc have occurred outside the containment barriers or above 0.02 fibers/cc within the clean room of the decontamination chamber during the abatement action shall report these results within one working day verbally or by telephone communication if necessary to the contractor, the owner and the architect/engineer so that prompt corrective action may be taken. This

telephone or verbal communication shall be followed by a written report to the contractor, the owner and the architect/engineer a copy of which shall be sent to the administrative authority having jurisdiction.

(d) The asbestos safety technician shall keep a daily log of on-site observations concerning contractor's compliance with activities required under this subchapter listing all deficiencies encountered. In addition, this log shall list the names of all persons entering the work area. This log shall be made available upon request at all times to the owner, the architect/engineer and to appropriate local and State agencies.

(e) The asbestos safety technician shall prepare a comprehensive final report, including daily logs, required inspection reports, observations and air monitoring results. The asbestos safety control monitor shall maintain the report as a permanent record, and present a copy to the owner and file a copy with the Department of Community Affairs within 20 working days.

i. For public school projects only, the results of tests shall be reported also to the Department of Education, Bureau of Facility Planning Services.

(f) During the removal phase the duties of the asbestos safety technician shall be as follows:

1.-3. (No change.)

4. If the contractor's barriers or other control methods are observed to malfunction and if the contractor does not correct the problems immediately upon notification, the asbestos safety technician shall inform the administrative authority having jurisdiction. In such a situation additional sampling of up to three samples per day shall be performed by the asbestos safety technician;

5. (No change.)

6. The maximum turn-around time for analysis of the samples shall be two **\*full\*** working days following **\*[delivery]\*** **\* the taking\*** of the samples **\*;\*** **\*[to the laboratory];\***

7. (No change.)

8. A series of smoke tests shall be performed at the decontamination unit entrance/exit, by the asbestos safety technician to ensure continuous negative air pressure. This test shall be performed before each work shift and every four hours thereafter until the work stops;

9. The asbestos safety technician shall calculate the required number of negative air filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor and the architect/engineer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the administrative authority having jurisdiction.

10. A record shall be kept in a daily log of all on-site observations, inspections and required activities of the contractor, asbestos safety technician and the owner.

11. The asbestos safety technician shall ensure that all asbestos waste shall be removed from the worksite by a New Jersey Department of Environmental Protection registered waste hauler pursuant to N.J.A.C. 5:23-8.14 unless it is placed in a locked secure container outside of the work area prior to removal by a registered waste hauler in a registered vehicle.

(g) Post-removal test shall be conducted as follows:

1. Within 48 hours after final clean-up and before the removal of critical barriers, a visual inspection and a final air test shall be performed. This test is required to establish safe conditions for removal of critical barriers and to permit reconstruction activity to begin. Sufficient time following clean-up activities shall be allowed so that all surfaces are dry during monitoring. Negative air filtration units shall not be in use during monitoring. At least 24 hours shall be allowed to pass after any wet cleaning has been done and negative air filtration units have been used before the post-removal tests are begun;

2.-6. (No change.)

7. Evaluation criteria: If test results exceeds 0.01 fiber/cc, the asbestos safety technician shall so inform the contractor, the owner and the architect/engineer. If these criteria have not been met, the contractor shall be required to re-clean all surfaces using wet cleaning methods and provide negative HEPA-filtered exhaust air during the re-cleaning process. This process of re-cleaning, allowing surfaces to dry and re-testing shall be repeated until compliance is achieved.

(h) Final inspections shall be conducted by the asbestos safety technician as follows:

1. Upon notice by the owner or by the contractor and at least 48 hours after the removal of the critical barriers, a final inspection shall be made

to ensure the absence of any visible signs of asbestos or asbestos-containing material.

2. The asbestos safety technician shall ensure that all asbestos waste and asbestos-contaminated waste has been removed from the work site in a registered vehicle by a registered waste hauler.

5:23-8.16 Coordination with other permits

(a) (No change.)

(b) When it is certified that asbestos may become disturbed, an assessment performed by \*[a]\* **\*the\*** New Jersey Department of Health **\*[, county or local health departments or a private business entity authorized by the New Jersey Department of Health]\*** shall be required.

1. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard abatement work necessary, then the construction official shall inform the building owner that all asbestos abatement work shall conform to this subchapter.

i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.

ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work.

5:23-8.17 Asbestos Safety Control Monitor

(a) The department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the department.

i. Except that, applicants who have received notice from the department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the time of undertaking any such activity, that he has not yet been authorized by the department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application, with the required fee pursuant to (f) below, and any additional information the department may require.

3. Following a determination by the department that an application is complete and suitable for processing, the department shall review and evaluate the information contained in the application and such other information as the department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the department shall provide the applicant with a written explanation of the reasons therefor and provide for a hearing pursuant to N.J.A.C. 5:23-8.20.

4. The authorization application shall contain information relating to:

i. The financial integrity of the applicant and any of its principal officers;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel **\*who are to be assigned as asbestos safety technicians\*** are certified by the department;

iii. The applicant shall indicate the type of analysis done (for example, NIOSH 7400) and the laboratory(s) that do the procedures. If the applicant does its own lab work then it shall list the equipment used and the personnel using it, with their qualifications. All laboratories shall participate in the Proficiency Analytic Testing Program conducted by the National Institute for Occupational Safety and Health and in the U.S. Environmental Protection Agency Asbestos Bulk Sample Analysis Quality Assurance Program;

iv. The range of salaries and other compensation of all technical personnel of the applicant;

v. The policies and procedures of the applicant for the hiring, training education and supervision of all technical personnel;

vi. The prior experience of the applicant in performing similar or related functions;

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subcode;

viii. A statement that the applicant is not affiliated with, influenced or controlled by any producer, manufacturers, supplier or vendor or products, supplies or equipment used in asbestos hazard abatement.

5. Authorization shall be valid for a period of one year.

6. Applications for reauthorization shall be filed with the department

at least 60 days prior to the scheduled expiration for the current authorization from the department. The asbestos safety control monitor shall make current the information previously submitted to the department. The asbestos safety control monitor shall provide additional information as the department may request. The application shall be accompanied by the fee established pursuant to (f) below. The department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following receipt by the department of an application for reauthorization, the department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the department shall provide the asbestos safety control monitor with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the department.

ii. The department may, on its own motion or at the request of any asbestos safety control monitor, grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(b) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subcode.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner. The contract shall specify: the scope of the project and provide that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subcode; how the asbestos safety control monitor is to be paid for their services and the name of the employee who shall serve as the responsible official and representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subcode.

2. Each asbestos safety control monitor authorized by the department shall organize its operation to effectively fulfill the requirements of this subcode. All personnel assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the department prior to the date of authorization. **\*Certification as an asbestos safety technician by the department shall be required for all personnel assigned to perform the duties of an asbestos safety technician in the future prior to their being allowed to perform such duties.\***

3. The asbestos safety control monitor shall report to the department through their designated responsible official and shall be subject to the orders and directives of the department in matters relating to the enforcement of this subcode.

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, plans reviewed, air tests, and any other information that may be required by the municipal construction official or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.

1. The asbestos safety control monitor shall provide the department with the following:

i. A copy of each permit, within two days of issuance, that they are contracted for;

ii. A list of names, certification numbers, addresses and telephone numbers of all technical personnel employed.

2. The administrative authority having jurisdiction shall be the sole agent for the collection of all fees and penalties from the property owner, his designated agent or anyone in his employ.

3. Each asbestos safety control monitor shall have the following responsibilities:

i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode;

ii. To review plans and specifications, and release in writing, and forward to the administrative authority having jurisdiction for issuance of a permit;

iii. To be subject to the department's rulings, directives and orders;

iv. To provide adequate supervision, so that its employees are prompt and diligent in discharging their duties;

v. To carry general liability insurance, at least in the amount of \$500,000.00 for each person and each occurrence;

vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subcode.

vii. To provide technical assistance to building owner in the preparation of a construction permit application;

viii. To perform all required inspections and reinspections;

ix. To perform all tests required by this subcode;



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x. To give testimony at a hearing or in court, as required by the construction official or department;

xi. To prepare all reports to the department as are required by this subcode or as may be required from time to time;

xii. To meet its obligations under its contract with the building owner;

xiii. To issue documentation and certification, such as written Pre-Commencement Inspections as required by this subcode;

xiv. To ensure the attendance of all technical and supervisory employees at required training and orientation programs;

xv. Upon completion of an asbestos hazard abatement project the asbestos safety control monitor shall submit a final report consisting of but not limited to daily logs, inspections, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The report shall be submitted within 20 days of issuance of the Certificate of Completion. Copies of the final report shall be submitted to the building owner and the department. For public school projects this report shall be also submitted to the New Jersey Department of Education, Bureau of Facility Planning Services.

(d) \*Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitor services, in connection with an asbestos hazard abatement project, the asbestos safety control monitor shall be in conflict of interest if it has any economic relationship with another party involved with that project; except for a sub-contract or laboratory services needs by the asbestos safety control monitor to perform its duties under this subcode.]\*

**\*Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitor services, in connection with an asbestos hazard abatement project, then the asbestos safety control monitor shall not have any economic relationship with another party involved with the project, except for a sub-contract for laboratory services needs by the asbestos safety control monitor to perform its duties under this subcode.\***

(e) Suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the department may suspend or revoke its authorization of any asbestos safety control monitor if the department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of this subcode, or that a change of facts or circumstances make it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subcode in a satisfactory manner, or that the asbestos safety control monitor has violated this subcode.

i. During the period of suspension the affected asbestos safety control monitor shall not be authorized to discharge any of its responsibilities under this subcode unless otherwise specified in the notice of suspension or order of the department.

2. The department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization, stating the grounds therefore, and establishing a time and place for a hearing on the question. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereon and to enter into an implementing contract with any other asbestos safety control monitor.

(f) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode, for approval as an asbestos safety control monitor shall pay a fee of \$2,000.00 for the authorization which is sought, plus an amount equal to five percent of

the gross revenue earned from asbestos safety control monitor activities, payable quarterly.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of \$1,000.00 plus an amount equal to five percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be payable quarterly with the first quarter due with application.

5:23-8.18 Asbestos Safety Technician: Certification Requirements

(a) The department establishes standards and procedures for the certifying of asbestos safety technicians and requires all persons performing duties with respect to this subcode to be certified as provided in this subcode.

(b) No person shall act to enforce this subchapter without first holding a certification from the department.

1. Any individual who holds a certification as an Asbestos Safety Monitor from the New Jersey Department of Health and who applies within one year from the date of the issuance of that certification shall be entitled to certification as an Asbestos Safety Technician upon submission of a proper application \*, **the successful completion of a mandatory training course for asbestos safety technicians conducted by the Department of Community Affairs,\*** and the required fee.

(c) It shall be a violation of this subcode for any person to hold or perform the duties of an asbestos safety technician for which a certification is required herein, or for any person to represent himself as qualified for such position, or to use any title or otherwise represent himself as certified or authorized to act under the code if the person does not possess a certification. A violation of this section shall subject the person to a penalty of not more than \$500.00 for each offense.

1. It shall be a violation of this subcode for any asbestos safety control monitor to offer employment to a person to act as an asbestos safety technician or to retain for employment any person who is not certified in accordance with this subcode. Further, it shall be a violation of this subcode for an asbestos safety control monitor to continue an individual in employment, in a position for which a certification is required pursuant to this subcode, if such person is not certified in accordance with this subcode. Violation of this section shall be deemed a failure to perform within the meaning of N.J.A.C. 5:23-8.17(b)ii and be subject to a penalty of not more than \$500.00 for each offense.

(d) Any candidate for certification as an asbestos safety technician shall submit an application to the department accompanied by the required application fee established in (i) below. The requirements for certification as an asbestos safety technician are as follows:

1. At least two years of college in academic sciences, that is, biology, chemistry, industrial hygiene, environmental science, or related fields; or one year experience which included performing environmental assessment activities may be substituted for this education requirement;

2. Successful completion of a course in air monitoring methods. This course could have been part of an academic curriculum or as a continuing education course. The course should have consisted of a minimum of 30 contact hours and include hands-on experience with using and calibrating various types of air monitoring equipment; or six months of employment experience performing air monitoring which included at least 30 hours of on-the-job training may be substituted for this education requirement;

3. Successful completion in an approved core training course for asbestos workers certified by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60; or two years of experience in monitoring asbestos abatement activities may be substituted for completion of a certified training course;

4. Successful completion of a special course for Asbestos Safety Technicians approved by the New Jersey State Department of Health;

5. Successful passing of an Asbestos Abatement Examination administered by the Department of Health (pursuant to N.J.A.C. 12:120-6.12 and 8:60-6.12).

(e) The department may renew the certification following submission of an application, payment of the required fee pursuant to (i) below, and verification by the department that the applicant meets the requirements for the certification in this section.

1. Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the department that the applicant has met such continuing educational requirements as may be established by the Commissioner. The department shall renew the certification previously issued for a term of two years. The renewal date shall be 45 days prior to the expiration date. The expiration dates shall be July 31 or January 31.

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2. The department shall issue, upon application, a duplicate certification upon a finding that the certification has been issued and the applicant is entitled to such certification to replace one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

3. The department may establish continuing education requirements as deemed necessary for the renewal of a certification.

(f) The department may suspend or revoke a certification, or assess a civil penalty of not more than \$500.00, if the department determines that the holder:

1. Has violated the provisions of the Uniform Construction Code regulations;

2. Has obtained a certification by fraud or misrepresentation, or the person named in the certification has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as an Asbestos Safety Technician any person not authorized to practice as an Asbestos Safety Technician under the provisions of this subcode;

4. Has fraudulently or deceitfully practiced as an Asbestos Safety Technician;

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed, over a period of time, to maintain a minimally acceptable level of competence.

7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction.

8. Has failed to comply with any order issued by the department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the department; or

10. Has failed to enforce this subchapter.

(g) The department, in addition or as an alternative, as the case may be, to revoking or suspending a certification, or assessing a penalty, may issue a letter or warning, reprimand, or censure with regard to any conduct which, in the judgement of the department, warrants a letter of warning, reprimand or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

(h) Conviction of a crime or an offense in connection with the practice as an Asbestos Safety Technician shall constitute grounds for revocation or suspension of a certification.

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be \$30.00;

2. A renewal application fee shall be \$30.00.

5:23-8.19 Application of asbestos

(a)-(b) (No change.)

5:23-8.20 Appeals

(a) An appeal may be made to the department for any of the following reasons:

1. Denial of the release of plans;

2. Denial of the release of specifications;

3. Denial of an application for a construction permit;

4. Refuse to act on an application for a construction permit;

5. Refuse to grant a variation;

6. Refuse to grant a Certification of Completion;

7. Failure to act on an application for a Certificate of Completion;

8. Failure to act on an application for a Certificate of Occupancy;

9. Denial of an application for a Certificate of Occupancy;

10. Issue an Order to Stop Work;

11. Assessment of a penalty;

12. Rejection of or suspension of or revocation of authorization as an Asbestos Safety Control Monitor;

13. Rejection of or suspension of or revocation of certification as an Asbestos Safety Technician.

(b) The application for appeal shall be made to the department within 20 business days of the receipt of written notice of the denial or other decision of the enforcing agency.

(c) The application for appeal shall be in writing, filed with the department briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question, the permit number, and shall reference the specific sections of the regulations in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to

his cause.

1. The enforcing agency shall make available to the department the full record of the application, which shall include a detailed explanation of the reasons for the denial of the appellant's request.

(d) The time for appeal may be extended prior to a meeting upon application to the department.

(e) Should the applicant be dissatisfied with the decision of the department, the case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act, (See N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1), and the time provisions applicable.

5:23-8.21 Demolition

(a) The asbestos that is present in a building or portion of a building that is to be demolished, shall be removed from that building or portion of a building prior to the demolition of that building.

1. This section applies only to buildings and portions of buildings that will not be reoccupied prior to demolition.

(b) A permit for the removal of asbestos shall be obtained from the administrative authority having jurisdiction.

(c) The permit for the removal of asbestos shall be obtained in the following manner:

1. A Plan Review must be conducted by the administrative authority having jurisdiction. The following shall be available for the plan review:

i. An asbestos hazard assessment prepared by the New Jersey Department of Health, County or local health department, or a private business entity, authorized by New Jersey Department of Health unless the requirement for an assessment has been waived by any of the above. This requirement can be met by removing all suspect material as asbestos containing waste.

ii. Uncertified plans and specifications:

(1) Site plan or sketch indicating adjacent buildings in the immediate area;

(2) Floor plan of building to indicate the scope of the work;

(3) Specifications; describe scope of work, removal procedures, and waste disposal;

(4) On large asbestos hazard abatement jobs as defined in this subcode a written release of the plans and specifications by a person, with technical knowledge of the project and designated by the owner to act in his behalf shall be required;

(5) Any deviations from the regulations of this subchapter suggested by the building owner or his agent will be evaluated during the plan review stage of the permit application procedure;

(6) The regulations of this subcode shall be followed unless modifications are specifically agreed to in writing by the plan reviewer or the regulations are modified by this section.

2. The plans and specifications will be released in writing by the administrative authority having jurisdiction. The written release of plans and specifications will allow the owner to obtain bids on the asbestos removal part of the demolition project.

3. The issuance of a construction permit for asbestos abatement shall be subject to the following:

i. A written release of the plans and specification by the administrative authority having jurisdiction;

ii. The name, address and license number of the asbestos contractor pursuant to N.J.A.C. 12:120 Asbestos Licenses and Permits under the jurisdiction of the New Jersey Department of Labor;

iii. The name, and address of the asbestos safety control monitor authorized by the New Jersey Department of Community Affairs who will be responsible for continuously monitoring the asbestos abatement part of the demolition project; and documentation that the building will be unoccupied at the time an asbestos abatement job takes place;

iv. The name and address of the analytical testing laboratory;

v. The name and address of the New Jersey Department of Environmental Protection registered waste hauler and of the New Jersey Department of Environmental Protection registered landfill where the asbestos waste will be deposited;

vi. The scheduled starting and completion dates for the asbestos abatement project.

(d) The requirements for actual asbestos removal will be the same as for asbestos abatement projects that are performed in buildings that are not to be demolished.

(e) Air monitoring samples during removal and final air samples after removal will be required for large asbestos abatement jobs only unless this is changed during the plan review.

1. Results of .02 fibers/cc or less shall be attained prior to demolition;

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2. If the demolition does not take place within thirty days of obtaining he fiber level above the building or portion of a building to be demolished will be resampled to ensure compliance with 1 above;

3. If air levels above .02 fibers/cc are obtained in either of the above cases the areas where the asbestos removal took place must be recleaned and resampled until they do meet the required level.

**(a)****New Home Warranties and Builders' Registration  
Readoption with Amendments: N.J.A.C. 5:25**

Proposed: December 2, 1985 at 17 N.J.R. 2816(a).

Adopted: March 31, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: March 31, 1986 as R.1986 d.141, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 46:3B-10.

Effective Date for Readoption: March 31, 1986.

Effective Date for Amendments: May 5, 1986.

Expiration Date: March 1, 1991.

**Summary of Public Comments and Agency Responses:**

During the public hearing held on December 19, 1985, oral comments were received from the Home Owners Warranty Corporation of New Jersey. In addition, the agency received written comments from six sources, Home Owners Warranty Corporation, Home Owners Corporation of New Jersey, Home Buyers Warranty Corporation III, K Hovnanian Enterprises, Inc. Country Place Condominium Association, and the Office of Administrative Law.

Based on the comments received, the agency has made technical changes to the proposal including specific clarifications of measurements and calculations within the Quality Standards (5:25-3.5) and changes to various other sections in order to make clarification of the agency intent.

The following represents the substantive changes made to the proposal based on the comments received:

5:25-1.3: Consequential damages was added to the section since clarification was necessary. New Jersey requires that consequential damages be covered while in other areas of the country they may not be. Since private warranty plans operating in New Jersey are also nationwide programs, the clarification will help define the requirements in New Jersey. Warranty date definition was questioned because of concern over the difficulty in receiving accurate information. The agency has accepted the points raised and returned to the old definition while clarifying model home warranties.

5:23-2.3: The ten percent minimum was seen by the agency as less burdensome on the applicant than the original regulations. However, comments indicate that it is still felt to be burdensome. The intent of the change is to continue to relate the interests of individuals in New Jersey building entities so that those that fail to perform under the law and regulations cannot establish new entities. The agency has changed the requirement on criminal charges to convictions since to do otherwise could be unfair to the applicant.

5:25-2.5(a)12: This reason for denial was added to enable revocation or suspension if a builder fails to participate in the dispute process. Comments seemed to confuse the issue of participation with performance under a dispute settlement decision. The issue of performance is addressed under 7 while 12 specifically addresses not participating in the process and all and relates directly to the State plan.

5:25-3.1(c): Many comments were received on the issue of warranting rental units in a single condominium structure. The broadening of the requirement was to protect the owner occupied units, units sold for residential purposes, and to acknowledge the fact that you cannot separate the units and common elements in a single structure. If common elements are to be insured then all units must be included in the warranty process. The recommendation was to limit the warranty to residential units. The agency finds this to be cost ineffective since the limit of liability for the structure including all units. Units placed into rental use by the builder/owner would have a commencement date, by definition, based on occupancy. Therefore, if sold later, would be subject to only those units covered by the existing warranty.

Further comments were received relative to a unit owner claiming defects for common elements no longer covered. This addition was made based on the fact that certain limited common elements impact only on

the specific unit and may not be seen by the association for a timely claim to have been filed. The agency will retain the language since it sees this as better defining what has historically occurred on many occasions in the administration of the program. The objective is to protect the rights of the unit owner insuring that he receives a warranty which affords him the same benefits as other unit owners. In cases where a unit is held on the market for an extensive period of time, it is the agency's opinion that it would become subject to a rental occupancy and the defects noted under that process.

5:25-3.1(g): The exclusion of piling foundation contracts is a direct result of an administrative hearing which defined the unique nature of this type of construction and found that because of the specialization of the industry, including piling foundation contracts would exclude many homes. Therefore, the agency will retain the change.

5:25-3.5(b): Based on comments received, many minor changes in the measurements and in the limits of responsibility have been made. The defect of snow/ice buildup on roofs has been deleted while the requirement regarding standing water on stoops has been reworded to make it similar to the original wording.

The agency received strong comment regarding the format of the quality standards and has accepted those comments with the changes noted. The agency concurs that a defect is really a possible deficiency until it is ruled a defect in the dispute settlement process.

Thirty day notification vs. punch list items: The revision was included to limit the home owner from submitting claims for certain items since they could be a result of owner neglect. Comments received suggest the feeling that the change was not restrictive enough and that items such as broken glass, chips in formica, etc., should only be included if they were noted on the inspection prior to closing. Since punch lists, walk through inspections, and similar procedures vary greatly in the industry, and are not required to be performed, the agency felt that the 30 day limit was an appropriate compromise between the home owner and the builder. Upon reconsideration, the agency has changed the wording to allow for both cases. If the builder and home owner conduct such a mutual inspection, then the items are covered. If no inspection is held, the home owner can make a claim against the builder after occupancy has occurred.

5:25-4.2(e)5: Comments received from the Home Owners Warranty Corporation state that the appeal process is not necessary, that the dispute settler's decision is not binding on the home owner, that it would lengthen the process and increase costs to all parties and further, the requirement of Federal law would preclude such an appeal (Magnuson/Moss Act). The agency, therefore, withdraws the revision to allow for sufficient time to investigate the relationship of the act to Federal law.

5:25-4.3: General comments were received regarding the increase in the registration fee. The review of the private plan application takes several man months to perform with a salary cost in excess of the increased fee. The increase is seen as a compromise between the old fee and the actual salary costs of the review. The agency did not want to be prohibitive in this area. In addition, comments received questioned the need for rate information and for clarification of the applicability of the required opinion on FT regulations. The agency will retain those requirements because it feels the information is readily available to the applicant and that the information is necessary for the agency to make a determination to approve or disapprove the plan. Because of Department of Insurance deregulation, the agency requires rate information so as to support the other financial requirements and to allow for a complete review of the plan.

5:25-5.5(c)3i(1): The agency received many comments on the requirement that arbitrators possess proof of passing a course in one and two family construction. The requirement was seen as restricting the number of available arbitrators and changing the dispute process by including code enforcement issues raised through technical training. The agency will retain the language since past administration of the program indicates that the home owner is at a disadvantage in the dispute settlement process since the builder is a technical expert and can exert pressure on an untrained arbitrator. The arbitrator is there to balance the scales of the process. The homeowner, in most cases, accepts the opinion of the arbitrator, therefore, it is the agency's responsibility to insure that all arbitrators have a basic knowledge of the construction industry. The arbitrator must take control of the process and render a technically sound decision so that compliance of the builder can be measured and the defects properly corrected.

5:25-5.5(c)3ii(1): The Office of Administrative Law has raised the issue of the legality of the agency to require a fee from parties contesting a decision of the agency. The legality of the proposal has been submitted



to the Attorney General's office for a formal opinion. The old language will be retained until such legal opinion is made available to the agency.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

CHAPTER 25  
REGULATIONS GOVERNING NEW HOME  
WARRANTIES AND BUILDERS' REGISTRATION

5:25-1.3 Definitions

"Appliances, fixtures, and equipment" shall mean and include, but not be limited to: furnaces, boilers, heat pumps, humidifiers, air purifiers, air handling equipment, ventilating fans, air conditioning equipment, water heater, pumps, stoves, ranges, ovens, refrigerators, garbage disposals, food waste disposers, compactors, dishwashers, automatic garage door openers, washers, and dryers, plumbing fixtures and trim, faucets, fittings, motors, water treating equipment, ejectors, **\*thermostats\***[stats]\* and controls, including any **\*fitting\***[fittings]\* attachments; electric receptacles, switches, lighting fixtures, and circuit breakers;

"Builder designee" means the partner, officer, or director designated as such in the builder's application for registration and is the individual responsible for on-site building activity.

"Common elements" shall mean those elements listed in the master deed on file for each such development or unit as required under law for common ownership.

**"Consequential damages" means damage to the home itself resulting directly or proximately from a defect covered by the warranty.\***

"Major structural defect" means any actual damage to the load-bearing portion of the home including consequential damages, damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load-bearing function and which vitally affects or is imminently likely to vitally affect use of the home for residential purposes.

"Mechanical and electrical systems" shall mean and include the following:

1. Plumbing system: Gas supply lines and fittings, and water supply, waste and vent pipes and their fittings; septic tanks and their drains; water, gas, and sewer service piping, and their extensions to the property line which tie-in to a public utility connection or on-site well and/or sewage disposal system\*[: and water potability]\*.

2. Electrical system: All wiring, electrical boxes, and connections up to the public utility meter connection, excluding appliances, fixtures and equipment.

3. Heating, Ventilating, Cooling and Mechanical systems: All ductwork, steam, water and refrigerant lines, registers, convectors, radiation elements and dampers.

"Warrantor" means the builder who constructed or transferred title to the owner.

"Warranty date" means the first occupation or settlement date **\*[or the date on which a certificate of occupancy issued pursuant to N.J.S.A. 52:27D-119 et seq. is given over to the owner,]\* whichever is sooner \*[:]\* **\*; in cases of model homes, the warranty date will be the date on which a temporary certificate of occupancy is issued pursuant to N.J.S.A. 52:27D-119 et seq.\*****

5:25-1.4 Administration and enforcement

(a) (No change.)

(b) Within the Division of Housing and Development, responsibility for the administration and enforcement of these regulations shall be vested in the Bureau of Construction Code Enforcement. All powers and responsibilities delegated by the Director, Division of Housing and Development by this chapter shall be executed by the Chief, Bureau of Construction Code Enforcement except the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) which power shall be vested in the Commissioner.

5:25-2.1 Registration required

(a)(b) (No change.)

(c) For the purpose of these regulations the term "engaging in the business of construction of new homes" shall mean and include constructing any new home for sale, acting as prime contractor to construct any new home on behalf of oneself or another person or advertising or holding oneself out as constructing or being available to construct a new home or homes. The term shall also mean and include the sale or transfer of title to a parcel of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferer. The term shall also include a person who contracts with a general contractor or with sub-contractors for the construction of a new home for the purpose of sale to a purchaser.

(d) Nothing herein shall be interpreted as requiring that a person who constructs a new home for his own personal use and occupancy or who contracts with a licensed architect, professional engineer or attorney to provide customary professional services in connection with said new home, be registered as a builder; nor shall a person acting as a licensed architect, professional engineer or attorney for said owner to provide customary professional services in connection with said new home, be registered as a builder. If such new homes are subsequently sold to purchaser who is not the original builder/owner, notification that the owner carries no warranty shall be made at the time of title transfer and/or closing. No person shall be permitted to construct a new home for his own use and occupancy more often than once each five years without being registered as a builder, and complying with these regulations.

(e) (No change.)

5:25-2.2 Registration; new home builder

(a) Rules concerning application are as follows:

1. (No change.)

2. Each application for registration as a new home builder shall include full name and address of the business. In the case of a corporation the name entered on the application shall be that registered with the Secretary of State. In all cases the address entered on the application shall be the street number, street name, and municipality at which the primary office of the applicant's business organization is located. In no case shall the address be a post office box or the address of an agent. It shall, in all cases, be the address at which the proprietor, or a listed builder designee who is a partner, officer, director or stockholder of the organization can usually be found. The address shall be that of a business office unless there is none in which case it may be a residence address. The application shall appoint an agent for the service of process and shall provide his address. The agent may be any person who is a resident of this State. The application shall also include the builder's business and home telephone number his Federal Employer Identification number and the names, and addresses and home phone numbers of all persons having a minimum of ten percent interest in the new home builder. In addition, the application shall include historical information concerning the experience of the builder in the State of New Jersey including the number of years in the new home construction business, and the municipalities in which the business has been practiced during the three years immediately previous to the date of application. The application shall also include any criminal **\*convictions\*** **\*[charges brought]\*** against any person having an interest in the new home builder and the disposition thereof:

3. (No change.)

5:25-2.3 Certificate of registration

Upon receipt of a completed application, a certificate of registration will be issued as a registered builder unless denied in accordance with N.J.A.C. 5:25-2.5. The certificate of registration shall remain valid, unless suspended or revoked in accordance with N.J.A.C. 5:25-2.5, until the expiration date indicated thereon except in the case of a builder whose relationship with the partner, director, officer, or stockholder who shall have been the registered designee is ended. In such a case the certificate of registration shall expire and become invalid unless another designee is substituted. The certificate of registration shall also become invalid if a builder shall fail to continue or let lapse his participation in either the State Plan or a private plan.

5:25-2.4 Registration renewal

A certificate of registration may be renewed for additional two year periods. Applications for renewal shall be made upon the forms provided by the Commissioner and shall be accompanied by a fee of \$200.00 and shall be subject to the same conditions as an original application.

5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied, suspended, or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant has at any time:

1.-8. (No change.)

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9. Has as an officer, partner, director or stockholder, any person who was serving as an officer, partner, director or stockholder for a builder whose certificate of registration has been suspended or revoked for cause pursuant to this subchapter at the time the incidents or practices leading to revocation occurred;

10. Has incurred or been responsible for incurring an award against the New Home Warranty Security Fund;

11. (No change.)

12. Fails to participate in the dispute settlement process;

13. Has violated any Order issued by the Commissioner **\*and which has been adjudicated in accordance with the Administrative Procedures Act\*.**

(b) Whenever the Department shall find cause to deny an application for a certificate of registration or to suspend or revoke same, it shall notify the registrant or applicant of the reasons therefor, in writing and provide opportunity for a hearing in accordance with the Administrative Procedure Act when an appeal is filed within 15 days from the date of notice. The appointed hearing officer shall issue a recommended report and decision to the Commissioner. The applicant will be afforded 15 days from the date of the recommended decision in which to file exceptions, objections and replies thereto. Within 45 days thereafter the Commissioner shall issue a decision which adopts or rejects the recommended decision, the decision of the Commissioner shall be final.

(c) (No change.)

#### 5:25-3.1 Warranty applicability

(a)-(b) (No change.)

(c) The following rules concern applicability to condominiums and cooperatives:

1. In addition to the individual dwelling units, the common elements serving condominiums or cooperatives are covered by this warranty, subject to the exclusions as defined under N.J.A.C. 5:25-3.4. The warranty date on common elements shall be the date on which that common element is first put to use. In the event one unit in a single condominium or cooperative structure is sold all remaining units in that structure shall be warranted whether sold or used for rental purposes.

2. Where the warranty date on common elements has expired, a unit owner who has taken first occupancy after that period may file a notice of defect on a common element directly with the builder and when it is established that such defect could not have been determined prior to occupying the unit, the defect shall be made a part of the unit owner's claim.

(d)-(f) (No change.)

(g) Where an owner has contracted with someone other than the builder for either the mechanical, electrical, foundation or framing, other than piling foundation, a warranty is not applicable.

#### 5:25-3.2 Warranty coverage

(a) The warranty made applicable by these regulations shall be as follows:

1. One Year Warranty: For a period of one year from the warranty date each new home shall be free from:

i. Performance standard defects (see N.J.A.C. 5:25-3.5)

ii. Appliance fixture and equipment defects (see N.J.A.C. 5:25-1.3).

iii. Mechanical and electrical systems defects (see N.J.A.C. 5:25-1.3 and 5:25-3.5 K and I).

iv. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

2. Two Year Warranty: For a period of two years from the warranty date each new home shall be free from:

i. Appliance, fixture and equipment defects only if such defects are covered under a manufacturer's warranty (see N.J.A.C. 5:25-1.3).

(1) NOTE: No warranty for appliances, fixtures or equipment shall exceed the length and scope of the warranty offered by the manufacturer.

ii. Mechanical and electrical system defects (see N.J.A.C. 5:25-3.6).

iii. Major structural defects (see N.J.A.C. 5:25-1.3 and 5:25-3.7).

3. Ten Year Warranty: For a period of 10 years from the warranty date on each new home shall be free from:

i. Major structural defects (see N.J.A.C. 5:25-1.3).

#### 5:25-3.3 Builder responsibilities

(a)-(c) (No change.)

(d) (No change.)

#### 5:25-3.4 Warranty exclusions

(a) The following are not included in the warranty required by this subchapter:

1. Any portion of a covered home which is not completed by the warranty date; except that, after completion, such portions will be covered until the end of the warranty period specified for that portion, pursuant

to N.J.A.C. 5:25-3.2. Builder failure to completion construction of such portions may constitute the basis for denial, supervision, or revocation of registration pursuant to N.J.A.C. 5:25-2.5. Any item for the completion of which funds are being held in escrow shall be deemed to be an incompleteness rather than a defect. If such item exhibits a defect after the release of the escrowed funds, then it shall be included in the warranty. In all cases, the warranty period shall be deemed to have commenced on the warranty date.

2. Defects in outbuilding (except that outbuildings which contain the plumbing, electrical, heating, or cooling systems serving the home are covered), swimming pools and other recreational facilities, driveways, walkways, unattached patios, boundary walls, retaining walls which are not necessary for the home's structural stability, fences, landscaping (including sodding, seeding, shrubs, trees and plantings, offsite improvements, or any other improvements not a part of the home itself).

3. Bodily injury, damage to personal property, or damage to real property which is not part of the home.

4. Any damage to the extent it is caused or made worse by:

i. Negligent or improper maintenance or improper operation by anyone other than the builder or his employees, agents or subcontractors, or;

ii. Failure **\*of\*** **\*[to]\*** anyone other than the builder or his employees, agents or subcontractors to comply with the warranty requirement of manufacturers of appliances, equipment or fixtures, or;

iii. Failure to give notice to the builder **\*[or this program]\*** of any defect within the time frame established under N.J.A.C. 5:25-3.3(e) and 5:25-5.5(b) **\*[.]\*** or **\*the applicable private warranty plan; or\***

iv. Changes of the grading of the ground by anyone other than the builder, or his employees, agents or subcontractors, or;

v. Failure to take **\*timely\*** **\*[time]\*** action in emergent cases to minimize any loss or damage.

5. Any defect in, or caused by, materials or work supplied by anyone other than the builder, or his employees, agents or subcontractors. The builder shall, however, be responsible for any defects in or damage to any materials or work not installed by the builder when the defect or damage is the direct consequence of defects in materials or work installed by the builder which is not in accordance with acceptance industry standards;

6. Normal wear and tear or normal deterioration in accordance with normal industry standards;

7. Accidental loss or damage from acts of nature such as, but not limited to; fire, explosion, smoke, water escape, changes which are not reasonably foreseeable in the level of the underground water table, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood and earthquake. However, soil movement (from causes other than flood and earthquake) is not excluded;

8. Insect damage;

9. Any loss or damage which arises while the home is being used primarily for non-residential purposes.

10. Changes, alterations, or additions made to the home by anyone after initial occupancy, except those performed by the builder as his obligation under this program.

11. Any defect caused to a finished surface material or any work supplied by anyone other than the Builder/Warrantor, or his employees, agents, or sub-contractors in that, it is determined the installer has accepted the Builder/Warrantor's surface to apply the finish material.

12. Any materials and/or workmanship furnished and installed by the Builder/Warrantor that does not comply with the specifications in a sales agreement or contract which is not defective.

13. Consequential damages to personal property are excluded, consequential damages to real property as a result of a defect or repair of a defect are covered.

(b) Other exclusions are included in the performance standards (5:25-3.5) to better define those standards and are identified by "Exclusion".

#### 5:25-3.5 Performance standards

(a) The following performance standards set minimum standards which prescribe the level for quality of materials and performances in workmanship for the construction of new homes.

1. To the extent that detailed minimum performance standards for construction have not been enumerated in these Performance Standards, builders shall construct homes in accordance with good industry practice which assures quality of materials and workmanship. Likewise, the validity of any home buyer's claims for defects for which a standard has not been enumerated here shall be determined on the basis of good

industry practice which assures quality of materials and workmanship, and any conciliation or arbitration of such claims shall be conducted accordingly.

2. The Performance Standards list specific items **[(defects)]** with each separate area of coverage.

(b) Rules concerning site work are as follows:

1. Grading:

i. **\*Possible Deficiency\* [(Defect)]**: Settling of ground around foundation, utility trenches or other areas on the property where excavation and back fill have taken place **\*that affect drainage away from the house\***.

(1) Performance standard: Settling of ground around foundation walls, utility trenches or other filled areas: which exceeds a maximum of six inches from finished grade established by the Builder/Warrantor **[(is a defect)]**.

(2) Builder/Warrantor responsibility: If Builder/Warrantor has provided final grading, Builder shall fill settled areas affecting proper drainage, one time only, during the first year Warranty period. Builder/Warrantor is then responsible for removal and replacement of shrubs and other landscaping **\*installed by the Builder/Warrantor\*** affected by placement of the fill.

2. Drainage:

i. **\*Possible Deficiency\* [(Defect)]**: Improper grades and swales which cause standing water and affects the drainage in the immediate area surrounding the home.

(1) Performance standard: Necessary grades and swales shall be established to provide proper drainage away from the house. Site drainage under this warranty is limited to those immediate grades and swales surrounding the home. Standing or ponding water within the immediate surrounding area of the home **\*shall not\* [(which)]** remain for a period longer than 24 hours after a rain **[(is a defect)]**. Where swales are draining from adjoining properties or where a sump pump discharges, an extended period of 48 hours is to be allowed for the water to dissipate. The possibility of standing water after an unusually heavy rainfall should be anticipated and is not to be considered a **\*deficiency\* [(defect)]**. No grading determination is to be made while there is frost or snow or when the ground is saturated.

(2) Exclusion: Standing or ponding water on the property which does not directly affect the immediate area surrounding the foundation of the home, caused by unusual grade conditions, retainage of treed areas, or sodding done by the homeowner is not considered a defect.

(3) Builder/Warrantor responsibility: Responsible for initially establishing the proper grades, swales and drainage away from the home.

(4) Owner responsibility: The owner is responsible for maintaining such grades and swales once properly established by the Builder/Warrantor to prevent runoffs and erosion of the soil.

(5) Exclusion: Soil erosion and runoff caused by failure of the owner to maintain the properly established grades, drainage structures and swales, stabilized soil, sodded, seeded and landscaped areas; are excluded from the Warranty.

ii. **\*Possible Deficiency\* [(Defect)]**: Grassed or landscaped areas which are disturbed or damaged due to work on the property in correcting **\*a deficiency\* [(a defect)]**.

(1) Performance standard: Landscaped areas which are disturbed during repair work is a defect.

(2) Builder/Warrantor responsibility: Restore grades, seed and landscape to meet original condition.

(3) Exclusion: Replacement of trees **\*and large bushes\*** which existed at the time the house was constructed or **\*those added by the owner after occupancy or\*** those which subsequently die are excluded from Warranty Coverage.

(c) Rules concerning concrete are as follows:

1. Cast-in place concrete:

i. **\*Possible Deficiency\* [(Defect)]**: Basement or foundation wall cracks, other than expansion or control joints.

(1) Performance standard: Non-structural cracks are not unusual in concrete foundation walls. Cracks one-eighth inch in width or greater are **\*considered excessive\* [(a defect)]**.

(2) Builder/Warrantor responsibility: Repair non-structural cracks in excess of one-eighth inch by surface patching. These repairs should be made toward the end of the first year of ownership to permit normal stabilizing of the home by settling.

ii. **\*Possible Deficiency\* [(Defect)]**: Cracking of basement floor.

(1) Performance standard: Minor cracks in concrete basement floors are common. Cracks exceeding **\*one quarter\* [(three sixteenths)]** inch width or **\*one quarter\* [(one eighth)]** inch in vertical displacement is a **\*deficiency\* [(defect)]**.

(2) Builder/Warrantor responsibility: Repair cracks exceeding maximum tolerance by surface patching or other methods, as required.

iii. **\*Possible Deficiency\* [(Defect)]**: Cracking of attached garage floor slab.

(1) Performance standard: Cracks in garage floor slabs in excess of one quarter inch in width or **\*one quarter\* [(one eighth)]** inch in vertical displacement is a **\*deficiency\* [(defect)]**.

(2) Builder/Warrantor responsibility: Repair excessive cracks by chipping out and surface patching or other methods, as may be required.

iv. **\*Possible Deficiency\* [(Defect)]**: Cracks in attached patio slab.

(1) Performance standard: Cracks in excess of **\*one quarter\* [(one eighth)]** inch in width or **\*one quarter\* [(one eighth)]** inch in vertical displacement are defects. An "attached patio" is defined as a concrete patio slab on grade which is an integral part of the home being structurally supported **\*by footings, block walls, or reinforced concrete\*** and connected to the foundation.

(2) Exclusion: Patio slabs which are poured separately, and abut the house are excluded from warranty coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make repairs as required. Where cracks are caused by settlement or improper installation, Builder/Warrantor shall replace that portion which has settled and finish as close as possible to match the existing surface **\*. Where\* [(where)]** a major portion **\*of\* [(at)]** the patio has cracked, the entire slab shall be replaced.

v. **\*Possible Deficiency\* [(Defect)]**: Cracks in concrete slab-on grade floors, with finish flooring.

(1) Performance standard: Cracks which rupture or significantly impair the appearance or performance of the finish flooring material, is a **\*deficiency\* [(defect)]**.

(2) Builder/Warrantor responsibility: Determine the cause for the cracking, and correct (remove and replace if required). Repair cracks as required, so as not to be apparent when the finish flooring material is in place. Repair or replace finish flooring. (See **\*[(h)\* [(g)]]**. FINISHES").

vi. **\*Possible Deficiency\* [(Defect)]**: Uneven concrete floor slabs.

(1) Performance standard: Except for basement floors or where a floor or portion of floor has been designed for specific drainage purposes, concrete floors in rooms designed for habitability shall not have pits, depressions or area of unevenness exceeding 1/4 inch in 32 inches, or slopes in excess of 1/240 of room width or length (i.e.: 10.0 wide room-not to exceed 1/2 inch out of level).

(2) Builder/Warrantor responsibility: Determine cause and repair/replace to meet the Standard. Where applicable, surface patching is an accepted method of repair. Reinstall or replace any finish flooring material as necessary.

vii. **\*Possible Deficiency\* [(Defect)]**: Pitting, scaling or spalling of concrete work.

(1) Performance standard: Concrete surfaces **\*shall\* [(which do)]** not disintegrate to the extent that the aggregate is exposed and loosened under normal conditions of weathering and use is a **\*deficiency\* [(defect)]**.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to repair or replace defective concrete surfaces.

(3) Exclusion: Deterioration caused by salt, chemicals, implements used and other factors beyond Builder/Warrantor control.

viii. **\*Possible Deficiency\* [(Defect)]**: Excessive powdering or chalking of concrete surfaces.

(1) Performance standard: **\*Excessive powdering\* [(Powdering)]** or chalking of concrete surfaces is a **\*deficiency\* [(defect)]**, but should not be confused with **\*normal\*** surface dust that may accumulate for a short period after the home is occupied.

(2) Builder/Warrantor responsibility: Take whatever corrective action is necessary to treat, repair or resurface defective areas.

ix. **\*Possible Deficiency\* [(Defect)]**: Separation of brick or masonry edging from concrete slab and step.

(1) Performance standard: It is common for the joint to crack between concrete and masonry due to the dissimilarity of the materials. Cracks in excess of **\*one quarter\* [(one eighth)]** inch is a **\*deficiency\* [(defect)]**.

(2) Builder/Warrantor responsibility: Grout crack fully and reset loose masonry where required. Replacement of masonry material, if required, shall match the existing as close as possible.

2. Construction and control joints:

i. **\*Possible Deficiency\* [(Defect)]**: Separation or movement of concrete slabs within the structure at construction and control joints.

(1) Performance standard: None.

(2) Exclusion: Concrete slabs within the structure are designed to move at construction and control joints and is not a **\*deficiency\* [(defect)]**.



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- (3) Builder/Warrantor responsibility: None.
- (4) Homeowner responsibility: Maintenance of joint material.
- (d) Rules concerning masonry are as follows:

- i. Unit masonry (brick, block and stone):
- i. **\*Possible Deficiency\*** **\*[Defect]\***: Cracks in non-bearing or non-supporting **\*[basement and foundation]\*** walls.

- (1) Performance standard: Small shrinkage cracks are not unusual running through masonry and mortar joints. Cracks in excess of one-eighth inch in width is a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: Repair non-structural shrinkage cracks in excess of 1/8 inch by pointing or patching. Repairs shall be made near the end of the first year warranty period.

- ii. **\*Possible Deficiency\*** **\*[Defect]\***: Cracks in bearing or supporting masonry walls.

- (1) Performance standard: Vertical or diagonal cracks which do not affect the structural ability of masonry bearing walls, are not unusual. Cracks in excess of one-eighth inch in width are a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: Repair shrinkage cracks in excess of 1/8 inch by pointing or patching. Where the structural integrity of the wall is affected, suitable repair or replacement shall be done to eliminate the condition.

- iii. **\*Possible Deficiency\*** **\*[Defect]\***: Horizontal cracks in basement and foundation walls.

- (1) Performance standard: Horizontal cracks in the joints **\*of\*** **\*[or]\*** masonry walls are not common but may occur. Cracks one-eighth inch or more in width are **\*[a]\*** **\*deficiencies\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks **\*between one eighth and three sixteenths\*** **\*[up to one eighth]\*** inch in width by pointing and patching. Cracks exceeding **\*three sixteenths\*** **\*[one eighth]\*** inch shall be investigated by the builder to determine the cause. Builder shall take the necessary steps to remove the cause and make repairs by pointing and patching, reinforcement or replacement of the defective courses.

- iv. **\*Possible Deficiency\*** **\*[Defect]\***: Cracks in masonry walls or veneer above grade.

- (1) Performance standard: Small cracks are common in mortar joints of masonry construction. Cracks one eighth inch or greater in width are **\*deficiencies\*** **\*[a defect]\***.

- (2) Builder/Warrantor responsibility: Repair cracks and voids in excess of one eighth inch by surface pointing. These repairs should be made toward the end of the **\*first year\*** warranty period to permit the home to stabilize and normal settlement to occur. **\*Builder/Warrantor\*** is not responsible for color variations between existing and new mortar, however, it shall be made to match as close as possible.

- v. **\*Possible Deficiency\*** **\*[Defect]\***: Cracking, settling, or heaving of stoops and steps.

- (1) Performance standard: Stoeps and steps are not to settle or heave in excess of one inch in relation to the house structure. Cracks, except airline cracks less than **\*one eighth\*** **\*[one sixteenth]\*** inch, are not acceptable in concrete stoeps. A separation of up to **\*one half\*** **\*[one quarter]\*** inch is permitted where the stoep or steps abut the house or where an expansion strip has been installed.

- (2) Builder/Warrantor responsibility: Take whatever corrective action required to meet acceptable standards. In a case where repair is made to the concrete surface, it is required that such repair match the adjoining surfaces as closely as possible or the entire area be resurfaced or replaced.

- vi. **\*Possible Deficiency\*** **\*[Defect]\***: Standing water on stoeps, steps, porches and attached concrete patios.

- (1) Performance standard: **\*Standing water is a deficiency if it is a hazard to individuals and/or causes damage to the home, or\*** **\*[Not a defect, except]\*** in cases where standing water exists due to settlement or heaving as defined under paragraph **\*[d)\*** **\*[(c)]\***lv. above.

- (2) Builder/Warrantor responsibility: Take whatever corrective action necessary to eliminate standing water **\*[if the condition is due to settlement or heaving]\***.

- 2. Stucco and cement plaster:

- i. **\*Possible Deficiency\*** **\*[Defect]\***: Cracking or spalling of stucco and cement plaster.

- (1) Performance standard: Hairlines cracks in stucco or cement plaster are common especially if applied directly to masonry back-up. Cracks greater than one eighth inch in width or spalling of the finish surface is a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: Scrape out cracks and spalled areas. Fill with cement plaster or stucco to match **\*finish\*** **\*[finished]\*** and color as close as possible.

NOTE: Builder not responsible for failure to match color or texture, due to nature of the material.

- (e) Rules concerning carpentry are as follows:

- 1. Rough carpentry:

- i. **\*Possible Deficiency\*** **\*[DEFECT]\*** Floors squeak, due to improper installation or loose subfloors.

- (1) Performance standard: A large area of floor squeak which is noticeable, loud and objectionable is a defect.

- (2) Exclusion: Squeak proof floor cannot be guaranteed, an isolated floor squeak is not a defect.

- (3) Builder/Warrantor responsibility: Correct the problem if caused by faulty construction within reasonable repair capability. Where a finished ceiling exists under the floor, the corrective work may be attempted from the floor side. Where necessary, remove the finish floor material to make the repair and reinstall or replace if damaged.

- ii. **\*Possible Deficiency\*** **\*[DEFECT]\***: Uneven wood framed floors.

- (1) Performance standard: Floors which are more than one quarter inch out of level within any 32 inch measurement is a **\*deficiency\*** **\*[defect]\***. Floor slope within any room which exceeds one-two hundred fortieths of the room width or length is a **\*deficiency\*** **\*[defect]\***. (that is, 10'-0" wide room—not to exceed one-half inch out of level.)

- (2) Builder/Warrantor responsibility: Correct or repair to meet the allowances at the above standard.

- iii. **\*Possible Deficiency\*** **\*[DEFECT]\***: Bowed stud walls or ceilings.

- (1) Performance standard: All interior and exterior frame walls or ceilings have slight variations on the finish surfaces. Bowing should not be visible so as to detract from the finished surface. Walls or ceilings which are bowed more than one quarter inch within a 32 inch horizontal or vertical measurement.

- (2) Builder/Warrantor responsibility: Exterior and interior frame walls or ceilings bowed in excess of the allowable standard shall be corrected to meet the allowances of the above standard.

- iv. **\*Possible Deficiency\*** **\*[DEFECT]\***: Wood frame walls out of plumb.

- (1) Performance standard: Wood frame walls which are out of plumb more than **\*three quarters\*** **\*[one half]\*** inch in an eight foot vertical measurement is a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: Make necessary repairs to meet the allowable Standard.

- v. **\*Possible Deficiency\*** **\*[DEFECT]\***: **\*Minor warping\*** **\*[Warping]\***, checking or splitting of wood framing is common as the wood **\*[itself]\*** dries out, and is not considered a **\*deficiency\*** **\*[defect]\***. **\*[Such]\*** **\*A\*** condition **\*[,]\*** which affects the **\*[structural]\*** integrity of the member or any applied surface material is a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: Where a **\*[structural]\*** problem exists **\*and\*** **\*[or]\*** the surface material is affected, builder shall repair, replace or stiffen the frame member as required.

- vi. **\*Possible Deficiency\*** **\*[Defect]\***: **\*Exterior\*** **\*[Delamination of plywood]\*** sheathing and subflooring **\*which delaminates or swells.\***

- (1) Performance standard: **\*Sheating\*** **\*[Plywood sheating]\*** and subflooring when properly installed for its intended use and delaminates **\*or swells\*** on the side a finish material has been applied is a **\*deficiency\*** **\*[defect]\***.

- (2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace **\*[plywood]\*** subflooring or sheathing as required. Replacement of the finish materials when necessary shall be done to match the existing as closely as possible.

- 2. Finish carpentry:

- \*[i. DEFECT: Exterior or interior wood trim does not match.]**

- (1) Performance standard: Grade or species of wood which is dissimilar to cause a distinct difference in the finish is a defect.

- Exclusion: Wood is a natural material and differences in color, graining and surface irregularities are the nature of wood and not a defect.

- (2) Builder/Warrantor responsibility: Match wood as close as possible within limitations of the material and refinish to match as close as possible where applicable.\*

- \*[i]\*** **\*[ii]\***. **\*Possible Deficiency\*** **\*[DEFECT]\***: Unsatisfactory quality of finished exterior trim and workmanship.

- (1) Performance standard: Joints between exterior trim elements, and siding or masonry which are in excess of **\*three-eighths\*** **\*[one-quarter]\*** inch is a **\*deficiency\*** **\*[defect]\***. In all cases, the exterior trim abutting masonry and siding shall be capable of performing its function to exclude the elements.

- (2) Builder/Warrantor responsibility: Repair open joints and touch up finish coating where required to match existing as close as possible. Caulk open joints between dissimilar materials.

**\*ii\* \*iii\*. \*Possible Deficiency\* \* [DEFECT]\*:** Unsatisfactory quality of finished interior trim and workmanship.

(1) Performance standard: Joints between moldings and adjacent surfaces which exceed 1/8 inch in width is a defect.

(2) Builder/Warrantor responsibility: Repair defective joints and touch up finish coating where required to match as close as possible.

**\*iii\* \*iv\*. \*Possible Deficiency\* \* [DEFECT]\*:** Surface defects in finished woodwork and millwork such as checks, splits, and **\*hammer marks\* \* [gouges]\*.**

(1) Performance standard: Finished woodwork and millwork is to be smooth and without surface marks. Finished surfaces which fall beyond the limits of the Quality Standards of the Architectural Woodwork Institute is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: Correct repairable defects; sanding, filling, or puttying is acceptable to return the surface to its original condition. Replace material not repairable, refinish and restore to match surrounding surfaces as closely as possible.

**\*iv\* \*v\*. \*Possible Deficiency\* \* [DEFECT]\*:** Exposed nail heads in woodwork.

(1) Performance standard: Material used to fill nail holes has a tendency to shrink and dry up after a period of time and is not considered a **\*deficiency\* \* [defect]\*.** Nail holes which have not been filled on finished painted wood work is a **\*deficiency\* \* [defect]\*.**

(2) Exclusion: Nail holes do not have to be filled where the surface finish is not conducive or so designed to have nail holes filled because of the product.

(3) Builder/Warrantor responsibility: Fill nail holes where required and if necessary, touch up paint to match as close as possible.

(f) Rules concerning thermal and moisture protection are as follows:

1. Waterproofing:

**i. \*Possible Deficiency\* \* [DEFECT]\*:** Leaks in basement or in foundation/crawlspace.

(1) Performance standard: Leaks resulting in actual trickling of water through the walls or seeping through the floor are **\*deficiencies\* \* [defect]\*.**

(2) Exclusion: Leaks caused by landscaping improperly installed by owner, or failure by owner to maintain proper grades are excluded from the warranty. Dampness in basement and foundation walls or in concrete basement and crawlspace floors is often common to new construction and is not a **\*deficiency\* \* [defect]\*.**

(3) Builder/Warrantor responsibility: Take such action as is necessary to correct basement and crawlspace leaks, except where the cause is determined to be the result of owner negligence. Where a sump pit has been installed by the Builder/Warrantor in the affected area but the sump pump was not contracted for or installed by the Builder/Warrantor, no action is required until a properly sized pump is installed by the owner in an attempt to correct the condition. Should the condition continue to exist, then the Builder/Warrantor shall take necessary action to correct the problem.

2. Insulation:

**i. \*Possible Deficiency\* \* [DEFECT]\*:** Insufficient insulation.

(1) Performance standard: Insulation which is not installed around all habitable areas in accordance with **\*established codes\* \* [the energy sub-code of the New Jersey Uniform Construction Code]\*** is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install insulation of sufficient thickness and characteristics to meet the **\*codes\* \* [Energy Code Requirements]\*.** In the case of dispute, cost for investigating the sufficiency of insulation and restoring areas to prior condition is to be borne by the homeowner if it is found that the standard has been met by the builder.

3. Louvers and vents:

**i. \*Possible Deficiency\* \* [DEFECT]\*:** Insufficient attic and crawlspace ventilation.

(1) Performance standard: Attics and crawlspaces which are not properly vented **\*causing moisture to accumulate resulting in damage to supporting members or insulation is a deficiency\* \* [in accordance with the New Jersey Uniform Code Requirements is a defect].** (Attic spaces shall have a natural ventilation area equal to (a) 1/150 of floor area or (b) 1/300 of floor area when an accepted vapor barrier is installed on the warm side of the ceiling and when at least 50% of the required ventilation is provided at least 3 feet above the ceiling. Crawlspaces shall have a natural ventilation area equal to (a) 1/150 of floor area or (b) 1/1500 of the floor area when the ground surface is covered with an accepted vapor barrier\*).

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install properly sized louvers or vents to **\*correct deficiency\* \* [meet the New Jersey Uniform Construction Code]\*.**

**ii. \*Possible Deficiency\* \* [DEFECT]\*:** Leaks due to snow or driven rain through louvers and vents.

(1) Performance standard: Improperly installed louvers and vents that permit penetration **\*of the elements\* under normal conditions is a \*deficiency\* \* [defect]\*.**

(2) Exclusion: Properly installed louvers or vents may at times allow penetration of rain or snow under strong wind conditions and is not a **\*deficiency\* \* [defect]\*.**

(3) Builder/Warrantor responsibility: Take necessary steps to eliminate penetration of rain or snow under normal conditions **\*if it is determined the installation was improper\*.**

4. Exterior siding:

**i. \*Possible Deficiency\* \* [DEFECT]\*:** Delamination, splitting, joint separation or deterioration of exterior siding.

(1) Performance standard: Exterior siding with joint separations or which delaminates, splits or deteriorates is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: Repair/replace only the damaged siding. Siding to match the original as close as possible, however, the owner shall be aware that the new finish may not exactly match the original surface texture or color.

**ii. \*Possible Deficiency\* \* [DEFECT]\*:** Damaged siding or broken shingles.

(1) Performance standard: Damaged siding or broken shingles is a **\*deficiency\* \* [defect]\* \*if document on a pre-closing walk through inspection form.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair damaged siding if **\*[properly reported in time]\* \*noted on a pre-closing walk through inspection form. If Builder/Warrantor does not perform a pre-closing walk through then the Builder/Warrantor will be responsible for the deficiency if reported by the owner.\***

(3) Owner responsibility: **\*[The owner shall notify the Builder/Warrantor of any defect within 30 days of warranty date.] \*If a pre-closing walk through inspection is performed the deficiency should be reported on such report. If no walk through report exists the deficiency shall be reported in writing within 30 days of occupancy.\***

**iii. \*Possible Deficiency\* \* [DEFECT]\*:** Loose or fallen siding.

(1) Performance standard: All siding which is not installed properly so as not to come loose or fall off is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: Reinstall or replace siding and make it secure.

5. Roofing:

**i. \*Possible Deficiency\* \* [DEFECT]\*:** Roof or flashing leaks.

(1) Performance standard: Roof or flashing leaks that occur under normal weather conditions is a **\*deficiency\* \* [defect]\*.**

(2) Exclusion: Where cause is determined to result from severe weather conditions such as ice and snow build-up, high winds and driven rains.

(3) Builder/Warrantor responsibility: Correct any roof or flashing leaks which are verified to have occurred under normal weather conditions.

**ii. \*Possible Deficiency\* \* [DEFECT]\*:** Lifted, curled or torn roof shingles.

(1) Performance standard: Roof shingles which lift or curl during the first year of warranty coverage or tear loose during normal weather conditions is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: Repair or replace lifted, curled or torn shingles.

(3) Note: See N.J.A.C. 5:25-3.4(a)7. Warranty exclusions for exceptions to Builder/Warrantor Responsibility.

**\*[iii. DEFECT: Build-up of ice and snow on roofs.**

(1) Performance standard: During prolonged periods of cold weather, ice and snow have a tendency to build up on flat roofs, roof eaves and gutters. Improper installation or construction of a roof which causes a build-up of ice and snow is a defect.

(2) Builder/Warrantor responsibility: When determined the cause was due to improper installation or construction, the Builder/Warrantor shall make the necessary repairs to correct the condition.

Exclusion: Build-up of ice and snow on flat roofs, roof eaves and gutters is a homeowner maintenance item and builder is not responsible for any subsequent damage.]\*

**\*iii\* \*iv\*. \*Possible Deficiency\* \* [DEFECT]\*:** Standing water or built-up roofs.

(1) Performance standard: A properly pitched built-up roof is to drain water except for minor ponding. Dead flat roofs will retain a certain amount of water. Excessive ponding of water which causes leaking on the built-up roof is a **\*deficiency\* \* [defect]\*.**

(2) Builder/Warrantor responsibility: Repair all leaks due to or caused by standing water.

(3) Exclusion: Standing or ponding water is not considered a **\*deficiency\*\*[defect]\***.

6. Sealants:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Water or air leaks in exterior walls due to inadequate caulking.

(1) Performance standard: Joints and cracks in exterior wall surfaces and around openings which are not properly caulked to exclude the entry of water or excessive drafts\*]; and does not meet the requirements of the Energy Subcode of the New Jersey Uniform Construction Code\* is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: Repair and/or caulk joints or cracks in exterior wall surfaces as required to correct deficiency one time during the first year of the warranty period.

(3) Owner responsibility: Maintain caulking once the condition is corrected.

7. Sheet metal:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Gutters and downspouts leak.

(1) Performance standard: Gutters and downspouts which leak is a **\*deficiency\*\*[defect]\***. Gutters which are improperly pitched to drain water is a **\*deficiency\*\*[defect]\***.

(2) Exclusion: Standing water in gutters is acceptable if it does not exceed 1 inch in depth.

(83) Builder/Warrantor responsibility: Repair leaks and pitch gutters to drain properly to meet standard.

(4) Owner responsibility: Responsible to keep gutters and downspouts free from leaves and debris to prevent overflow.

(g) Rules concerning doors and windows are as follows:

1. Doors: interior and exterior:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Warpage of interior or exterior doors.

(1) Performance standard: Interior and exterior doors that warp so as to prevent normal closing and fit is a **\*deficiency\*\*[defect]\***. The maximum allowable warpage **\*of an interior door\*** is one-quarter inch when measured from top to bottom vertically or diagonally.

(2) Builder/Warrantor responsibility: Repair or replace as may be required. New doors to be refinished to match the original as close as possible. **\*[Exterior doors must fit properly to meet the U.C.C./Energy Subcode requirements.]\***

ii. **\*Possible Deficiency\*\*[DEFECT]\***: Door binds against jamb or end of door frame. Does not lock.

(1) Performance standard: Passage doors that do not open and close easily without binding against the door frame is a **\*deficiency\*\*[defect]\***. Lock bolt is to fit the keeper to maintain a closed position.

(2) Builder/Warrantor responsibility: Adjust door and keeper to operate freely.

iii. **\*Possible Deficiency\*\*[DEFECT]\***: Door panels shrink and expose bare wood.

(1) Performance standard: None.

(2) Exclusion: Door panels will shrink due to the nature of the material, exposing bare wood at the edges and is not a **\*deficiency\*\*[defect]\***.

(3) Builder/Warrantor responsibility: None.

iv. **\*Possible Deficiency\*\*[DEFECT]\***: Door panels split.

(1) Performance standard: Door panels that have split to allow light to be visible through the door is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: If light is visible, fill crack and finish panel to match as close as possible. Correct one time during first year of warranty. If panel cannot be repaired to hide crack, the panel of the door itself shall be replaced and finished to match original.

v. **\*Possible Deficiency\*\*[DEFECT]\***: Bottom of doors rub on carpet surface.

(1) Performance standard: Where it is understood by Builder/Warrantor and Homeowner that carpet is planned to be installed as a poor finish, whether by the Builder/Warrantor or Homeowner, the bottom of the doors which rub or disturb the carpet is a **\*deficiency\*\*[defect]\***.

(2) Exclusion: Where carpet is selected by the Homeowner having excessive high pile, the Homeowner is responsible for any additional door undercutting.

(3) Builder/Warrantor responsibility: Undercut doors as required.

vi. **\*Possible Deficiency\*\*[DEFECT]\***: Excessive opening at the bottom of interior doors.

(1) Performance standards: Passage doors from room to room that have an opening between the bottom of the door and the floor finish material in excess of one and one-half inches is a **\*deficiency\*\*[defect]\***.

Closet doors having an opening in excess of two inches is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: Make necessary adjustment or replace door to meet the required tolerance.

2. Garage doors (attached garage):

i. **\*Possible Deficiency\*\*[DEFECT]\***: Garage door fails to operate or fit properly.

(1) Performance standard: Garage doors that do not operate and fit the door opening within the manufacturer's installation tolerances is a **\*deficiency\*\*[defect]\***. Some entrance of the elements can be expected under heavy weather conditions and is not **\*considered a deficiency\*\*[a defect]\***.

(2) Builder/Warrantor responsibility: Make necessary adjustments to meet the manufacturer's installation tolerances.

(3) Exclusion: No adjustment is required when cause is determined to result from the owner's installation of an electric door opener.

3. Wood, plastic and metal windows:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Malfunction of windows.

(1) Performance standard: Windows which do not operate in conformance with manufacturer's design standards is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: Consult with manufacturer when necessary and make necessary adjustments for windows to operate and meet the Standard.

ii. **\*Possible Deficiency\*\*[DEFECT]\***: Double hung windows do not stay in place when open.

(1) Performance standard: Double hung windows are permitted to move within a two inch tolerance, up or down when put in an open position. Any excessive movement exceeding the tolerance is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: Adjust sash balances one time only during the first year warranty period where possible instruct the owner on the method of adjustment for future repair.

iii. **\*Possible Deficiency\*\*[DEFECT]\***: Condensation or frost on window frames and glass.

(1) Performance standard: None.

(2) Exclusion: Window glass and frames will collect condensation on the frame and glass surface when humidity and temperature differences are present. Condensation is usually the result of temperature/humidity conditions in the home.

(3) Builder/Warrantor responsibility: None.

4. Hardware:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Hardware does not work properly, fails to lock or perform its intended purpose.

(1) Performance standard: All hardware installed on doors and windows which does not operate properly is a **\*deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust, repair or replace hardware as required.

**\*[ii. DEFECT: Failure to furnish keys for locks.]**

(1) Performance standard: Keys for all locks requiring key operation that are not furnished to the owner is a defect.

(2) Builder/Warrantor responsibility: Furnish keys as required.]\*

5. Storm doors, windows and screens:

i. **\*Possible Deficiency\*\*[DEFECT]\***: Storm doors and windows do not operate or fit properly.

(1) Performance standard: Storm doors and windows when installed and do not operate or fit properly to provide the protection for which they are intended is **\*[a]\*\*considered a deficiency\*\*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustments for proper fit and operation. Replace when adjustment can not be made.

ii. **\*Possible Deficiency\*\*[DEFECT]\***: Screen panels do not fit properly. Screen mesh is torn or damaged.

(1) Performance standard: Rips or gouges in the screen mesh **\*reported on a pre-closing walk through inspection report\*** or openings between the screen panel and frame are **\*[defects]\*\*deficiencies\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace rips and gouges in the screen mesh **\*if reported on the pre-closing walk through inspection.\*** The screen panels shall be adjusted to fit properly in frame one time only during the first year of warranty. **\*If there is no pre-closing walk through inspection the Builder/Warrantor is responsible to repair deficiency when reported by owner.\***

(3) Owner responsibility: The owner shall be responsible to notify Builder/Warrantor within 30 days from the warranty date or the date on which the screens are furnished **\*[and/or installed.]\*if there was no pre-closing walk through inspection.\***



6. Weatherstripping and seals:

i. **\*Possible Deficiency\*** [DEFECT]\*: Drafts around doors and windows.

(1) Performance standard: Weatherstripping is required on all doors leading directly to the outside from a habitable area. Some infiltration is normally noticeable around doors and windows, especially during high winds. Excessive infiltration resulting from opening in poorly fitted doors or windows, or poorly fitted weatherstripping is a **\*deficiency\*** [defect]\*.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall adjust or correct poorly fitted windows or doors, or poorly fitted weatherstripping [so as not to exceed the limits set by the U.C.C. Energy Subcode]\*.

7. Glass and glazing:

i. **\*Possible Deficiency\*** [DEFECT]\*: Broken glass.

(1) Performance standard: Broken glass is a **\*deficiency\*** [defect]\* **if it is reported on a pre-closing walk through inspection report.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace [if notified by the owner within the required time] **if reported on a pre-closing walk through inspection report. If no report exists, the Builder/Warrantor shall replace if deficiency is reported by owner\*.**

(3) Owner responsibility: Owner shall notify the Builder/Warrantor within 30 days from warranty date **if no pre-closing walk through inspection report exists\*.**

ii. **\*Possible Deficiency\*** [DEFECT]\*: Clouding and condensation on inside surfaces of insulated glass.

(1) Performance standard: Insulated glass which clouds up or has condensation on the inside surfaces of the glass is a **\*deficiency\*** [defect]\*.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace glass in accordance with window and glass manufacturer's requirements.

(h) Rules concerning finishes are as follows:

1. Lath and plaster:

i. **\*Possible Deficiency\*** [DEFECT]\*: Cracks in plaster wall and ceiling surfaces.

(1) Performance standard: Noticeable cracks in plaster wall and ceiling surfaces is a **\*deficiency\*** [defect]\*.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair cracks and touch up paint to match as close as possible, one time only. Such conditions should be reported near the end of the first year warranty date to allow for normal movement in the home.

2. Gypsum wallboard:

i. **\*Possible Deficiency\*** [DEFECT]\*: Defects caused by poor workmanship such as cracks over door and window frames, over archways, blisters in tape, excess compound in joints, exposed corner beads, nail pops, or trowel marks.

(1) Performance standard: Slight defects such as occasional nail pops, seam lines and cracks are common gypsum wallboard installations. Blisters in tape, cracks over door and window frames and over archways, excess compound in joints, trowel marks, nail popping and exposed corner beads are **\*deficiencies\*** [defects]\*. Nail pops are a defect only when there are signs of spackle compound cracking or falling away.

(2) Exclusion: Depressions or slight mounds at nail heads are not **\*considered deficiencies\*** [a defect]\*.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct such defects to acceptable tolerance and repaint affected areas one time only to match as close as possible. Where excessive repair has been made the entire area shall be painted. Such conditions shall be reported near the end of the first year warranty date to allow for normal **\*settlement\*** [movement]\* of the home.

3. Hard surface flooring (flagstone, marble, quarry tile, slate, ceramic tile, etc.):

i. **\*Possible Deficiency\*** [DEFECT]\*: Flooring cracks or becomes loose.

(1) Performance standard: Ceramic tile, flagstone or similar hard surfaced sanitary flooring which crack or become loose is a defect. Subfloor and wallboard are required to be structurally sound, rigid and suitable to receive finish.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine and correct the cause for the cracking or loosening of the finish material. Replace cracked material and reset loose flooring.

(3) Exclusion: Cracking and loosening of flooring caused by the Owner's negligence is not a **\*deficiency\*** [defect]\*.

(4) The Builder/Warrantor is not responsible for slight color and pattern variations or discontinued patterns of the manufacturer. It shall not be required to replace the entire finish when the new material consists of less than 25 percent of the finish area.

ii. **\*Possible Deficiency\*** [DEFECT]\*: Cracks appear in grouting of ceramic tile joints or at junctions with other material such as a bathtub or shower.

(1) Performance standard: Cracks in grouting of ceramic tile joints are **\*deficiencies\*** [defects]\*. Regrouting of these cracks is a maintenance responsibility of the homeowner within the life of the home after the first year of warranty.

(2) Exclusion: Open cracks or loose grouting, where the wall surface abuts the flashing lip at a tub or shower basin, are considered Owner's maintenance and any resultant damage to other finish surfaces due to leaks, etc. are not **\*considered a deficiency\*** [a defect]\*.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair grouting as necessary one time only within the first year of warranty.

4. Resilient flooring:

i. **\*Possible Deficiency\*** [DEFECT]\*: Nail pops appear on the surface of resilient flooring.

(1) Performance standard: Readily apparent nail pops are a **\*deficiency\*** [defect]\*.

(2) Exclusion: See N.J.A.C. 5:23-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct nail pops that [will or] have caused damage to the floor material and repair or replace damaged floor covering in the affected area.

(4) Builder/Warrantor is not responsible for discontinued patterns or color variations.

ii. **\*Possible Deficiency\*** [DEFECT]\*: Depressions or ridges appear in the resilient flooring due to subfloor irregularities.

(1) Performance standard: Readily apparent depressions or ridges exceeding one eighth inch is a **\*deficiency\*** [defect]\*. The ridge or depression measurement is taken as the gap created at one end of a six-inch straight edge placed over the depression or ridge with three inches on one side of the defect held tightly to the floor.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall take required corrective action[, repair/replace subfloor,] to bring **\*deficiency\*** [defect]\* within acceptable tolerances so as to be not readily visible. Builder is not responsible for discontinued patterns or color variations in floor covering, owner neglect or abuse, nor installations performed by others.

iii. **\*Possible Deficiency\*** [DEFECT]\*: Resilient flooring or base loses adhesion.

(1) Performance standard: Resilient flooring or base that lifts, bubbles, or becomes unglued is a **\*deficiency\*** [defect]\*.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace resilient flooring or base as required. Builder is not responsible for discontinued patterns or color variation.

iv. **\*Possible Deficiency\*** [DEFECT]\*: Seams or shrinkage gaps show at resilient flooring joints.

(1) Performance standard: Gaps in excess of one-eighth inch in width in resilient floor covering joints is a **\*deficiency\*** [defect]\*. Where dissimilar materials abut, a gap in excess of three-sixteenths inch is a **\*deficiency\*** [defect]\*.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take required action to correct the cause of the **\*deficiency\*** [defect]\* **\*[by reinstalling or replacement of the resilient floor covering]\*.**

(3) The Builder/Warrantor is not responsible for discontinued pattern: or color variations of floor covering.

5. Plywood wall covering:

i. **\*Possible Deficiency\*** [DEFECT]\*: Variations in paneling color scratches or checks on the finished surface.

(1) Performance standard: Plywood paneling pattern and color will often vary and this is not a **\*deficiency\*** [defect]\*. Scratches on the paneling surface are [defects, except where a check or crack are part of the finish] **\*deficiencies if reported on a pre-closing walk through inspection report\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace damaged paneling when the **\*deficiency has been reported on the pre-closing walk through inspection report\*** [defect has been reported in the stipulated time]\*. Builder is not responsible for discontinued panel or color variations. **\*If no pre-closing walk through was done the Builder/Warrantor is responsible to repair damage if notified by owner.**

(3) If damaged paneling cannot be replaced with new paneling to owner's satisfaction, the **\*deficiency\*** [defect]\* may be repaired with reasonable standard of good materials and workmanship.

(4) The owner shall notify the Builder/Warrantor within 30 days of the warranty date **if no pre-closing walk through inspection report exists.**

6. Finished wood flooring:

i. **\*Possible Deficiency\* \*[DEFECT]\*:** Dents, chips, knotpops, open joints or cracks in wood flooring. **\*Dents and chips are deficiencies if reported on a pre-closing walk through inspection report.\***

(1) Performance standard: Dents, chips, knotpops, open joints or cracks in floor boards of finished wood flooring which exceed the manufacturer's quality standards of the wood flooring grade are **\*[a]\* \*considered deficiencies\* \*[a defect]\***. Manufacturer's grade quality standards shall be as defined by: Wood and Synthetic Flooring Institute, National Oak Flooring Association and Maple Flooring Manufacturer's Association.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause for **\*deficiencies\* \*[defect(s)]\*** and correct. **\*Dents and chips are to be corrected if reported on a pre-closing walk through inspection report. If the inspection was not conducted, then the Builder/Warrantor shall correct if notified by the owner.\*** For repairable **\*deficiency\* \*[defect]\***, repair cracks, chips or dents by filling and refinishing to match the wood surface as close as possible. For non-repairable **\*deficiencies\* \*[defects]\*** replace and finish affected area to match remaining flooring as closely as possible.

(3) The owner shall report such **\*deficiencies\* \*[defects]\*** to Builder/Warrantor within 30 days of the warranty date **\*if there was no pre-closing walk through inspection.\***

7. Painting:

i. **\*Possible Deficiency\* \*[DEFECT]\*:** Knot and wood stains appear through paint on exterior.

(1) Performance standard: Excessive knot and wood stains which **\*bleed\* \*[bleeding]\*** through the paint are **\*considered deficiencies\* \*[defects]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall seal affected areas where excessive bleeding of knots and stains appear and touch up paint to match.

ii. **\*Possible Deficiency\* \*[DEFECT]\*:** Exterior paint or stain peels, deteriorates or fades.

(1) Performance standard: Exterior paints or stains that peel or deteriorate during the first year of ownership is a **\*deficiency\* \*[defect]\***.

(2) Exclusion: Fading, however, is normal and subject to the orientation of painted surfaces to the climatic conditions which may prevail in the area. Fading is not a **\*deficiency\* \*[defect]\***.

(3) Builder/Warrantor responsibility: shall properly prepare and refinish affected areas, matching color as closely as possible. Where finish repairs affect the majority of the surface area, the whole area should be refinished. The warranty on the newly repainted surfaces will not extend beyond the original warranty period.

iii. **\*Possible Deficiency\* \*[DEFECT]\*:** Painting required as corollary repair because of other work.

(1) Performance standard: Necessary repair of a painted surface required under this warranty is to be refinished to match surrounding areas as closely as possible.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish repaired areas to meet the standard as required.

iv. **\*Possible Deficiency\* \*[DEFECT]\*:** Mildew or fungus forms on painted or factory finished surfaces.

(1) Performance standard: None.

(2) Exclusion: Mildew or fungus that forms on a painted or factory finished surface when the structure is subject to various exposures (that is, ocean, lake, riverfront, heavily wooded areas or mountains) is not a **\*deficiency\* \*[defect]\***.

(3) Builder/Warrantor responsibility: None.

v. **\*Possible Deficiency\* \*[DEFECT]\*:** Deterioration of varnish or lacquer finishes.

(1) Performance standard: Natural finishes on interior woodwork which deteriorate during the first year of ownership is a **\*deficiency\* \*[defect]\***.

(2) Exclusion: Varnish-type finishes used on the exterior will deteriorate rapidly and are not covered by the warranty.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall refinish affected areas of natural finished interior woodwork, matching the color as closely as possible.

vi. **\*Possible Deficiency\* \*[DEFECT]\*:** Interior paint **\*[quality and]\*** coverage.

(1) Performance standard: Interior paint **\*[of poor quality and]\*** not applied in a manner sufficient to visually cover wall, ceiling and trim surfaces is a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repaint wall, ceiling or trim surfaces where inadequate paint has been

applied. Where a large area is affected the entire surface shall be repainted.

vii. **\*Possible Deficiency\* \*[DEFECT]\*:** Paint splatters and smears on finish surfaces.

(1) Performance standard: Paint stains on porous surface which are excessive that detract from the finish and which cannot be removed by normal cleaning methods **\*and are reported on a pre-closing walk through inspection report are considered deficiencies\* \*[is a defect]\***.

(2) Exclusion: Minor paint splatter and smears on impervious surfaces which cannot be easily removed is considered as homeowner maintenance and not a **\*deficiency\* \*[defect]\***.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall remove paint stains without affecting the finish of the material, or replace the damaged surface if stain cannot be removed **\*if reported on a pre-closing walk through inspection report. If no such inspection was done, the Builder/Warrantor shall correct if notified by the owner.\***

**\*[4] The owner shall notify the builder within 30 days of the warranty date if a pre-closing walk through inspection report was not completed.\***

**\*[viii. DEFECT: Painted area damaged due to minor repairs.**

1. Performance standard: Repaired areas are to be refinished to match surrounding area as closely as possible.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repaint affected area. Where 25% or more of any one surface has been repaired then the entire surface shall be painted to match the existing or abutting paint color as close as possible.

ix. DEFECT: Pitting scaling and rust spots on exterior painted metal surfaces.

(1) Performance standard: Excessive areas of pitting, scaling and rust spots on painted metal surfaces is a defect.

(2) Builder/Warrantor responsibility: Remove the defect and repaint the repaired area to match as closely as possible.]\*

8. Wall covering:

i. **\*Possible Deficiency\* \*[DEFECT]\*:** Peeling of wallcovering installed by builder.

(1) Performance standard: Peeling of wallcovering is a **\*deficiency\* \*[defect]\***, unless it is due to owner's abuse or negligence.

(2) Exclusion: See N.J.A.C. 5:25-3.4(a)11.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective wallcovering.

ii. **\*Possible Deficiency\* \*[DEFECT]\*:** Mismatching in wallcovering pattern.

(1) Performance standard: Mismatched wall covering pattern **\*over a large area\*** that severely detracts from its intended purpose due to poor workmanship is a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove mismatched wall covering and replace. Builder/Warrantor is not responsible for discontinued patterns or variations in color.

iii. **\*Possible Deficiency\* \*[DEFECT]\*:** Lumps and ridges and nail pops in wallboard which appear after owner has wallcovering installed by others.

(1) Performance standard: None.

(2) Exclusion: Owner shall insure that the surface to receive wallcovering is suitable and assumes full responsibility should lumps, ridges and nail pops occur at a later date.

(3) Builder/Warrantor responsibility: None.

9. Carpeting:

i. **\*Possible Deficiency\* \*[DEFECT]\*:** Seams in carpet.

(1) Performance standard: Seams in carpeting that separate due to improper installation is a **\*deficiency\* \*[defect]\***.

(2) Exclusion: Carpeting material is not covered under the warranty.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate the separation.

ii. **\*Possible Deficiency\* \*[DEFECT]\*:** Carpeting comes loose or excessive stretching occurs.

(1) Performance standard: Wall to wall carpeting that comes loose is a **\*deficiency\* \*[defect]\***.

(2) Exclusion: Stretching that may occur in the carpeting is subject to the quality and surface over which it is laid and is not a **\*deficiency\* \*[defect]\***.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall resecure loose carpeting one time during the first year of warranty coverage.

iii. **\*Possible Deficiency\* \*[DEFECT]\*:** Spots on carpet, minor fading.

(1) Performance standard: Spots or stains on the carpeting is a **\*deficiency\* \*[defect]\*** **\*if reported on a pre-closing walk through inspection report.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall remove spots and stains on a one time basis **\*if reported on a pre-closing walk through inspection report.\*** Replace when excessive spots and stains cannot be removed. **\*If no pre-closing inspection report exists, the Builder/Warrantor shall correct when notified by owner.\***

(3) Exclusion: Fading is not a **\*deficiency\* \*[defect]\***; and builder has no responsibility.

(4) The owner shall notify the Builder/Warrantor within 30 days from the warranty date **\*if no pre-closing walk through inspection report exists.\***

(i) Rules concerning specialties are as follows:

1. Fireplaces:

i. **\*Possible Deficiency\* \*[DEFECT]\***: Fireplace or chimney does not draw properly causing smoke to enter the house.

(1) Performance standard: A properly designed and constructed fireplace or chimney is to function as intended. It is normal to expect that high winds can cause temporary negative draft situations. Similarly, negative draft situations can also be caused by obstructions such as large branches of trees too close to the chimney. In addition, the geographic location of the fireplace or its relationship to adjoining walls and roof may be the cause of negative draft conditions. In some cases, it may be necessary to open a window slightly to create an effective draft. Since negative draft conditions could be temporary, it is necessary the owner substantiate the problem to the Builder/Warrantor by constructing a fire so the condition can be observed.

(2) Builder/Warrantor responsibility: When determined the malfunction is based upon improper construction of the fireplace then take the necessary steps to correct the problem.

(3) Exclusion: Where it is determined that the fireplace is properly designed and constructed, but still malfunctions due to natural causes beyond the builder's control, builder is not responsible.

**\*[ii. DEFECT: Darkening of the surrounding wall surfaces of the fireplace.**

(1) Performance standard: Darkening of the surrounding wall surfaces of a fireplace due to excessive smoking from an improperly constructed fireplace is a defect.

(2) Builder/Warrantor responsibility: Responsible to clean the surfaces and take corrective action to prevent the condition from reoccurring.

iii. DEFECT: Malfunctioning fireplace damper.

(1) Performance standard: A fireplace damper which does not operate with reasonable ease to provide a fully open or closed position is a defect.

(2) Builder/Warrantor responsibility: Make necessary repairs for the damper to operate properly.]\*

**\*ii.\* \*[iv]\*. \*Possible Deficiency\* \*[DEFECT]\***: Chimney separation from structure to which it is attached.

(1) Performance standard: Newly built fireplaces will often incur slight amounts of separation. Separation which exceeds one-half inch from the main structure in any **\*10\* \*[20]\*** foot vertical measurement is a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall determine the cause of separation and correct. Caulking or grouting is acceptable up to one half inch displacement.

2. Built-in sauna and steam bath units:

i. **\*Possible Deficiency\* \*[DEFECT]\***: Refer to the pertinent section of these Standards for deficiencies that may exist in construction, materials, finish and equipment of a steam bath or sauna unit **\*constructed on-site.\***

(1) Performance standard: Built-in equipment such as sauna and steam bath units are to be constructed and must operate properly under the same applicable standard for finishes and mechanical and electrical equipment involved. Any deficiencies in finish materials or equipment referred to in these standards are **\*considered deficiencies\* \*[defects]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make all necessary repairs or replacements including equipment covered under a manufacturer's warranty.

(j) Rules concerning kitchen cabinets and vanities are as follows:

i. **\*Possible Deficiency\* \*[DEFECT]\***: Kitchen or vanity cabinet doors and drawers malfunction.

(1) Performance standard: Cabinet doors, drawers and other operating parts that do not function as designed are **\*deficiencies\* \*[defects]\*** **\*if they are reported on a pre-closing walk through inspection report.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace operating parts **\*[as required.]\*** **\*if a pre-closing report exists. If not report exists, the Builder/Warrantor shall correct if notified by the owner.\***

**\*[3] The owner shall notify the Builder/Warrantor within 30 days of the warranty date if a pre-closing walk through inspection was not conducted.\***

ii. **\*Possible Deficiency\* \*[DEFECT]\***: Surface cracks, delaminations and chips in high pressure laminates of vanity and kitchen cabinet countertops.

(1) Performance standard: Countertops fabricated with high pressure laminate coverings that delaminate, have chips, scratches, or surface cracks or joints between sheets exceed one sixteenth inch are **\*considered deficiencies\* \*[defect]\*** **\*if reported on a pre-closing walk through inspection report.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace laminated surface covering having chips, cracks, scratches or joints exceeding the allowable width **\*if reported on a pre-closing inspection report. If a pre-closing inspection report was not performed, the Builder/Warrantor shall correct when notified by the owner.\***

(3) The owner shall notify the Builder/Warrantor within 30 days at the warranty date **\*if a pre-closing walk through inspection report does not exist.\***

iii. **\*Possible Deficiency\* \*[DEFECT]\***: Warping of kitchen and vanity cabinet doors and drawer fronts.

(1) Performance standard: Warpage that exceeds one quarter inch as measured from the face of the cabinet frame to the further most point of warpage on the drawer or door front in a closed position is a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct or replace door or drawer front as required.

iv. **\*Possible Deficiency\* \*[DEFECT]\***: Gaps between cabinets, ceiling and walls.

(1) Performance standard: Counter top, splash, base and wall cabinets are to be securely mounted. Gaps in excess of one quarter inch between wall and ceiling surfaces is a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary adjustment of cabinets and top or close gap by means of moulding suitable to match the cabinet or counter top finish; or other acceptable means.

**\*[iv. DEFECT Natural wood finished kitchen and vanity cabinets do not match.**

(1) Performance standard: Doors, drawers and other natural wood finished surfaces may vary in color, grain and shade. Mismatched finishes due to variations in grade or species of the wood is a defect.

(2) Builder/Warrantor responsibility: Repair or replace when dissimilar grade or species of wood are used.]\*

(k) Rules concerning mechanical systems are as follows:

1. Septic tank systems:

i. **\*Possible Deficiency\* \*[DEFECT]\***: Septic system fails to operate properly.

(1) Performance standard: Septic system is to be capable of properly handling normal flow of household effluent. It is, however, possible that due to freezing, soil saturation, changes in the ground water table or excessive use of plumbing or appliances, an overflow can occur. Periodic pumping of the septic tank is considered homeowner maintenance, and a normal need for pumping is not a **\*deficiency\* \*[defect]\***.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take corrective action as required, if it is determined that malfunction is due to improper design or construction. Builder is not responsible for malfunctions which occur through owner negligence or abuse. Builder is also not responsible for malfunctions which occur due to acts of nature such as freezing and changes in the ground water table.

(3) Exclusion: The following are considered owner negligence or abuse as an exclusion under the warranty:

(A) Excessive use of water such as overuse of washing machine and dishwasher; including their simultaneous use.

(B) Connection of sump pump, roof drains or backwash from water conditioner, to the system.

(C) Placing of non-biodegradable items in the system.

(D) Addition of any harsh chemicals, greases or cleaning agents; and excessive amounts of bleaches or drain cleaners.

(E) **\*Use\* \*[Excessive use]\*** of a food waste disposer **\*not supplied by builder.\***

(F) Placement of impervious surfaces over the disposal area.

(G) Allowing vehicles to drive or park over the disposal area.

(H) Failure to periodically pump out the septic tank, when required.

**\*[4] Note: coverage is for first two years of warranty.\***

2. Plumbing:

i. **\*Possible Deficiency\* \*[DEFECT]\***: Plumbing pipes freeze.

(1) Performance standard: Drain, waste and water pipes are to be adequately protected to prevent freezing during normally anticipated cold



weather\*[, as required by the Uniform Construction Code]\*. Freezing of pipes is a **\*deficiency\*[defect]\* and covered only during the first year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct the condition responsible for pipes freezing, and repair piping damaged by freezing.

(3) The owner is responsible to maintain suitable temperatures in the home to prevent pipes from freezing. Homes which are periodically occupied such as summer homes, or where there will be no occupancy for an extended period of time must be properly winterized or periodically checked to insure a reasonable temperature is maintained. Leaks occurring due to owner's neglect and resultant damage are not the builder's responsibility.

ii. **\*Possible Deficiency\*[DEFECT]\*:** Leakage from any piping.

(1) Performance standard: Leaks in any sanitary soil, waste vent and water piping are **\*deficiencies\*[defects]\* and are covered during the first and second year of the warranty.\***

(2) Exclusion: Condensation on piping does not constitute leakage, and is not a **\*deficiency\*[defect]\***, except where pipe insulation is required.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall make necessary repairs to eliminate leakage.

iii. **\*Possible Deficiency\*[DEFECT]\*:** Faucet or valve leak.

(1) Performance standard: A valve or faucet leak due to material or workmanship is a **\*deficiency\*[defect]\* and covered only during the first year of the warranty.\***

(2) Exclusion: Leakage caused by worn or defective washers or seal are a homeowner maintenance item.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace the leaking faucet or valve.

iv. **\*Possible Deficiency\*[DEFECT]\*:** Defective plumbing fixtures, appliances or trim fittings.

(1) Performance standard: Fixtures, appliances or fittings are to be judged according to the manufacturer's standards as to use and operation **\*and are covered only during the first year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall replace or repair any fixture or fitting which is outside of acceptable standards as defined by the manufacturer.

v. **\*Possible Deficiency\*[DEFECT]\*:** Stopped up sanitary sewers, fixtures and sanitary drains are **\*deficiencies\*[defects]\***.

(1) Performance standard: Sanitary sewer, fixtures and sanitary drains should operate and drain properly **\*and are covered during the first and second year of the warranty.\***

(2) Builder/Warrantor responsibility: Where defective construction is shown to be the cause, the builder shall make necessary repairs.

(3) Exclusion: Sewers, fixtures, and drains which are clogged through the owner's negligence, the owner shall assume repair costs.

(4) NOTE: Builder responsibility for defective sewer lines extends to the property line on which the home is constructed.

vi. **\*Possible Deficiency\*[DEFECT]\*:** Chipped or damaged plumbing fixtures and appliances.

(1) Performance standard: Chips, cracks, or other such damage to plumbing fixtures and appliances are **\*deficiencies\*[defects]\* if they are included in a pre-closing walk through inspection report.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair any chips or cracks if **\*[notified within the stipulated time.]\*\*included in the pre-closing inspection report.\*** If repair cannot be made, the fixture or appliance is to be replaced to match the original. **\*If a pre-closing inspection was performed, the Builder/Warrantor shall correct if notified by owner.\***

(3) The owner shall notify Builder/Warrantor within 30 days of warranty date **\*if no pre-closing walk through inspection was performed.\***

(4) Exclusion: Where a fixture is built into surrounding wall areas such as a tub or shower basin which requires repair, replacement is not covered under the warranty except where the **\*deficiency\*[defect]\*** causes the fixture to be unuseable.

3. Water supply:

i. **\*Possible Deficiency\*[DEFECT]\*:** Staining of plumbing fixtures due to high iron content in water.

(1) Performance standard: High iron content in the water supply system will cause staining of plumbing fixtures.

(2) Builder/Warrantor responsibility: None. Maintenance and treatment of the water is the homeowner's responsibility.

ii. **\*Possible Deficiency\*[DEFECT]\*:** Drinking water supply is not potable.

(1) Performance standard: All water must be free from contamination that would affect its potability. Potable water is defined as water fit for human consumption. In many cases, well water tests will show contamination that exceeds the recommended amounts permitted under applicable Federal and State standards, however, it still may be considered potable. In order to make this determination, the owner must provide written documentation from a independent testing laboratory or a board of health providing such service stating that the water is unfit for human consumption. Water test reports furnished by a commercial water treatment company cannot be used to make such a determination. Water is considered potable when a certificate of compliance is issued by the local/county board of health. Any recommendation for treatment of the water by the Local/County Board of Health is contractual between owner and builder and cannot be considered a **\*deficiency\*[defect]\***.

(2) Exclusion: Water which becomes non-potable after certification by a source beyond the control of the builder shall be excluded from coverage.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall supply potable drinking water.

iii. **\*Possible Deficiency\*[DEFECT]\*:** Water supply system fails to deliver water; or pressure is low.

(1) Performance standard: All service connections to municipal water main or private water supply are the Builder/Warrantor's responsibility when installed by him. **\*[Water supply installations must be designed and installed in accordance with The New Jersey Uniform Construction Code.]\***

(2) NOTE: Low water pressure is defined as follows: Use of the cold water supply at any one single fixture drastically reduces the cold water supply at any one other single fixture.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall repair as required, if failure to supply water is the result of **\*deficiency in\*[defective]\* workmanship or materials**. If conditions exist which disrupt or eliminate the sources of water supply that are beyond his control, then the builder is not responsible.

iv. **\*Possible Deficiency\*[DEFECT]\*:** Noisy water pipes.

(1) Performance standard: Some noise can be expected from the water pipe system, due to the flow of water. Water hammer in the supply system is a **\*deficiency\*[defect]\* and is covered only during the first year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct to eliminate "water hammer".

(3) Exclusion: Noises due to water flow and pipe expansion are not **\*considered deficiencies\*[defects]\***.

4. Heating and air conditioning:

i. **\*Possible Deficiency\*[DEFECT]\*:** Inadequate heat.

(1) Performance standard: A heating system shall be capable of producing an inside temperature of 70 degrees F. as measured in the center of the room at a height of 5 feet above the floor, under local outdoor winter design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Heating: The outdoor design temperature established by ASHRAE varies geographically throughout the State of New Jersey. There may be periods when the outdoor temperature falls below the design temperature, thereby lowering the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the heating system is controlled by a single thermostat for one or more floor levels.

(3) Builder/Warrantor responsibility: The Builder/Warrantor shall correct heating system as required to provide the required temperatures. Balance dampers, registers and make minor adjustments one time only **\*, during the first year of the warranty.\***

ii. **\*Possible Deficiency\*[DEFECT]\*:** Inadequate cooling.

(1) Performance standard: Where air conditioning is provided, the cooling system is to be capable of maintaining a temperature of 78 degrees F. as measured in the center of each room at height of 5 feet above the floor, under local outdoor summer design conditions as specified in the latest edition of the New Jersey U.C.C. Energy Subcode and ASHRAE Handbook in effect at the time the home was constructed.

(2) Note for Air Conditioning: The cooling cycle outdoor design temperature established by ASHRAE provides for a maximum of 12 degree temperature differential between the outdoor and the indoor temperature. There may be periods when the outdoor temperature rises above the design temperature, thereby raising the temperature in the home. Orientation of the home and location of rooms will also provide a temperature differential, especially when the air conditioning system is controlled by a single thermostat for one or more floor levels.

(3) Builder/Warrantor responsibility: Correct cooling system to meet the above temperature requirements **\*during the first year of the warranty.\***

iii. **\*Possible Deficiency\*\*[DEFECT]\*:** Ductwork and heating piping not insulated in uninsulated areas.

(1) Performance standard: Ductwork and heating pipes that are run in uninsulated crawlspaces, garages or attics are to be insulated **\*[in accordance with the New Jersey U.C.C. Energy Subcode.]\*** Basements are not "uninsulated areas", and no insulation is required.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall install required insulation.

iv. **\*Possible Deficiency\*\*[DEFECT]\*:** Refrigerant lines leak.

(1) Performance standard: Refrigerant lines that develop leaks during normal operation are **\*deficiencies\*\*[defects].\*\*during the first year and second year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair leaking lines and recharge unit as required.

v. **\*Possible Deficiency\*\*[DEFECT]\*:** Condensate lines clog-up.

(1) Performance standard: Condensate lines will clog under normal conditions.

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall provide clean and unobstructed lines on warranty date.

(3) Owner responsibility: Continued operation of drain line is homeowner maintenance item.

vi. **\*Possible Deficiency\*\*[DEFECT]\*:** Improper mechanical operation of evaporative cooling system

(1) Performance standard: Equipment that does not function properly at temperature standard set is a **\*deficiency\*\*[defect]\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall correct and adjust so that blower and water system operate as designed **\*during the first year of the warranty.\***

vii. **\*Possible Deficiency\*\*[DEFECT]\*:** Ductwork noisy.

(1) Performance standard: Noise in ductwork may occur for a brief period when the heating or cooling begins to function and is not considered a **\*deficiency\*\*[defect]\*.** Continued noise in the ductwork during its normal operation is a **\*deficiency\*\*[defect]\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall take necessary steps to eliminate noise in the ductwork.

viii. **\*Possible Deficiency\*\*[DEFECT]\*:** Ductwork separates, becomes unattached **\*[or leaks excessive air]\*.**

(1) Performance standard: Ductwork that is not intact or securely fastened **\*[and leaks air excessively]\*** is a **\*deficiency\*\*[defect]\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall re-attach and resecure all separated or unattached ductwork **\*[and seal joints or seams that leak air]\*.**

(1) Rules concerning electrical systems are as follows:

1. Electrical conductors:

i. **\*Possible Deficiency\*\*[DEFECT]\*:** Failure of wiring to carry its designed **\*circuit\*\*[fuse]\*** load to switches and receptacles.

(1) Performance standard: Wiring that is not capable of carrying the designed load, for normal residential use to switches and receptacles and equipment is a **\*deficiency\*\*[defect]\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring **\*[for conformity with N.J. U.C.C.]\*\*[Replace]\*\*and replace\*** wiring if it **\*[does not conform to code requirements or]\*** fails to **\*carry\*** the design load **\*[requirements]\*.**

2. Switches and receptacles:

i. **\*Possible Deficiency\*\*[DEFECT]\*:** Fuses blow, or circuit breakers kick out.

(1) Performance standard: Fuses and circuit breakers which deactivate under normal usage, when reset or replaced is a **\*deficiency\*\*[defect]\*\* during the first year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall check wiring **\*[for conformity with N.J. U.C.C. Replace]\*\*and replace\*** wiring or breaker if it does not **\*[conform to code requirements]\*\*perform adequately\*** or is defective.

ii. **\*Possible Deficiency\*\*[DEFECT]\*:** Drafts from electrical outlets.

(1) Performance standard: The electrical junction box on exterior walls may produce a slight air flow whereby the cold air can be drawn through the outlet into a room. This problem is normal in new home construction.

(2) Builder/Warrantor responsibility: None<sup>\*</sup>, except where it is determined the installation is faulty and creates an excessive draft<sup>\*</sup>.

iii. **\*Possible Deficiency\*\*[DEFECT]\*:** Malfunction of electrical outlets, switches or fixtures.

(1) Performance standard: All switches, fixtures and outlets which do not operate as intended **\*[is a defect]\*\*are considered deficiencies only during the first year of the warranty.\***

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall repair or replace defective switches, fixtures and outlets **\*[in accordance with N.J. U.C.C.]\*\*.**

3. Service and distribution:

i. **\*Possible Deficiency\*\*[DEFECT]\*:** Ground fault interruptor trips frequently.

(1) Performance standard: Ground fault interruptors are sensitive safety devices installed into the electrical system to provide protection against electrical shock. These devices are sensitive and can be tripped very easily. Ground fault interruptors are required on outlets located in the kitchen, bath and powder rooms along with all exterior outlets. Ground fault outlets which do not operate as intended **\*[is a defect]\*\*are considered deficiencies\*.**

(2) Builder/Warrantor responsibility: The Builder/Warrantor shall **\*replace\*\*[install ground fault interruptors in accordance with N.J. U.C.C. If]\*** the device **\*[is]\*\*if\* defective \***, the Builder/Warrantor shall correct the problem by replacement<sup>\*</sup>.

5:25-3.6 Structural and mechanical system standards:

The structural and mechanical systems standards to be used in determining the adequacy of design, materials and workmanship for the structural components of the home and for the mechanical systems of the home including plumbing, electrical and heating and cooling systems shall be the provisions of the State Uniform Construction Code in effect on the date that the construction permit under which the new home was constructed was issued. The standards of adequacy for plumbing systems shall be as specified in N.J.A.C. 5:25-3.5(k)\*2\*\*[3]\*; for Heating and Air Conditioning systems shall be specified in N.J.A.C. 5:25-3.5(k)\*4\*\*[5]\* and for the Electrical system capability shall be as specified in N.J.A.C. 5:25-3.5\*(l)\*\*[g]\*.

5:25-3.7 Major structural defects

(a) The load bearing portion of a home is defined as the framing members and structural elements that transmit both dead and live loads of the home to the supporting ground. Examples of load bearing elements are: roof rafters and trusses; ceiling and floor joists; bearing partitions, supporting beams, columns, basement and foundation walls, and footings.

(b) A structural failure will not be considered a defect until it has been established by the Bureau of Construction Code Enforcement under the Uniform Construction Code in effect on the date that the Construction Permit under which the new home was constructed was issued as an actual or pending structural failure of some part of the load bearing system as defined in (a) above. To be eligible, such defect does not have to render the home uninhabitable, however, it must be of such a serious nature that it vitally affects the use of the home for residential purposes and the Construction code Official shall issue a notice to that effect under N.J.A.C. 5:23-2.32 (Unsafe Structures).

(c) The following are excluded as major structural defects:

1. Changes by the owner to the established grade lines affecting basement and foundation walls;

2. Movement caused by flood or earthquake;

3. Actual or resultant damage caused by lighting, tornado, unnatural high winds or hurricanes;

4. Damage caused by additions or alterations to the home;

5. Improper loading over and above the design criteria for which that portion of the house was intended;

6. Resultant structural damage due to fire;

7. Changes in the water level which is caused by new development in the immediate area or can be directly traced to an act of nature;

8. Water seepage in basement or crawlspace after the first year of coverage.

(d) In the case where a major structural defect exists and the home is rendered uninhabitable, the Builder/Warrantor shall be responsible to pay for reasonable **\*shelter\*\*[living]\*** expenses of the Owner until the home is made habitable should the condition occur during the first two years of the warranty. The State Plan or private plan will assume such responsibility during the third through tenth year coverage.

5:25-3.8 Limit on liability

The liability of a builder under the new home warranty shall be limited to the purchase price of the home in the first good faith sale thereof or the fair market value of the home on its completion date if there is no good faith sale. In the event a Certificate of Participation misstates the purchase price or the commencement date and the homeowner fails to notify the New Home Warranty Program within 45 days from the actual warranty commencement date, the limit of liability shall be as stated on the Certificate of Participation at the time of validation.

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5:25-3.9 Warranty minimum  
(No change in text.)

5:25-3.10 Remedy exclusive

Pursuant to New Home Warranty and Builders' Registration Act (P.L. 1977, c.467) the filing of a claim against the warranty specified by this subchapter shall constitute the election of a remedy and shall bar the owner from all other remedies. Nothing herein shall be deemed to limit the owner's right to elect other remedies except that such election shall bar the owner from pursuing the same claim under the warranty specified in this subchapter and in accordance with the procedures related hereto. For the purpose of this section, election of other remedies shall mean the filing of a complaint, counter-claim, cross-claim or third party complaint in any court that alleges matters covered by the warranty in particular or unworkmanlike construction in general.

5:25-4.2 Requirements

(a) In order to receive or maintain an approval a private plan shall conform to all the requirements specified in this section.

(b) The private plan shall provide financial security adequate to cover the total amount of claims that may be reasonably assessed against participating builders and adequate to cover the costs of operation of the plan.

(c)-(d) (No change.)

(e) A private plan shall provide a complaint, claims and payment procedure which:

1.-2. (No change.)

3. Provides the owner with an opportunity to accept or reject **\*a conciliation\*\***[an arbitration]\* decision in satisfaction of the claim and notice of the opportunity to appeal that decision to a court of competent jurisdiction.

4. (No change.)

\*[5. Provides for a process through which arbitration decisions that either party finds to be technically unsound, not specifically in accordance with the Act and these regulations or outside the scope of the arbitrator's authority may be reviewed. This process shall provide for the following:

i. A review of the decision by a panel of qualified, disinterested third parties who shall determine if the award is technically sound in accordance with the Act and these regulations and within the scope of the arbitrator's authority. A copy of the review shall be given to the owner, builder, private plan and the Department.

ii. A new arbitration hearing when ordered by the Department as a result of the finding of the review panel that the decision was technically unsound, not specifically in accordance with the Act and these regulations or outside the scope of the arbitrator's authority.]\*

(f) (No change.)

(g) Private plans shall maintain such loss and payment records as the Department may require and shall provide such reports as the Department may require including, but not limited to the following:

1.-2. (No change.)

3. Within ten days, all private plans shall notify the Department in all cases where a builder's enrollment has been terminated and shall provide sufficient information on the cause of termination as it relates to N.J.A.C. 5:25-2.5 "Denial, Suspension and Revocation of Registration."

(h)-(j) (No change.)

5:25-4.3 Application approval

(a) Applicants for approval of a private plan shall submit a written application in letter form, the required fee in the amount of \$5,000 which is non-refundable and any additional information the Department may require.

(b) Each application for approval shall contain all such information as may be necessary to determine that the plan if approved will conform to the requirements established by N.J.A.C. 5:25-4.2. Such information shall include but not be limited to, the following:

1. Warranty Guarantor:

i. The name, full street and postal address and telephone number of the warranty guarantor;

ii. The documents necessary for the qualifications of the warranty guarantor, as required by N.J.A.C. 5:25-4.2(j);

iii. A copy of the agency agreement between the warranty administrator and the warranty guarantor, if any.

2. Warranty Administrator:

i. The name, full street and postal address and telephone number of the warranty administrator if different from the warranty guarantor;

ii. Copy of the Certificate of Incorporation if the warranty administrator is a corporation, copy of the Partnership Agreement if the warranty

administrator is a general or limited partnership, other business organization papers if organized under another form;

iii. The names, addresses and positions of all principals of the corporation, partnership or other type of business entity and the percent of interest held by each.

3. Agents:

i. The name, full street and postal address of the agents for service of process for the warranty guarantor and warranty administrator who shall be a resident of the State of New Jersey or a corporation licensed to do business in New Jersey.

4. Division of responsibility:

i. Specific information in narrative form on the division of responsibility between the builder and the warranty guarantor for the processing and satisfaction of claims under the warranty security plan, detailing such information as the coverage periods under the warranty for which either the builder or the warranty guarantor is primarily responsible.

5. Rate schedule and charges:

i. The rate schedule of charges by the warranty guarantor showing all rate classes and the manner in which charges are determined, including a justification for any deductible amounts charged to an owner, builder or the warranty administrator;

ii. The rate schedule of charges or fees, if any by the warranty administrator for builder membership in the private plan;

iii. A complete breakdown of proposed plan expenses for the warranty administrator, expressed in percent of the total premium dollars collected, including but not limited to expenses for overhead costs, advertising, dispute settlement services, claims processing, etc.

6. Financial security:

i. A certified, audited financial statement of income and expense for the warranty administrator, showing assets and liabilities for the fiscal year directly preceding the date of the application; and an estimated statement of income and expenses for the current fiscal year; and a certified statement of assets and liabilities as of the date of the application;

ii. A full description of the manner by which financial security is assured and through which sufficient funds to pay all claims which may be reasonably anticipated are available. The Plan's procedures for receipt of premiums and other funds shall be included.

7. Complaint/claims process:

i. A full description of the complaint/claims process proposed for use by the private plan which clearly specifies the respective responsibilities of the warranty administrator and the warranty guarantor, if different entities. The description shall include all time limits established for action by any party;

ii. Specific information of the plan's technical "Quality Standards" and Major Structural Defects Standards, including all exclusions, with full description of how the plan will deal with such exclusions.

8. Copy, samples and submissions:

i. Final copy of samples of the notice of warranty, claims forms and dispute settlement procedures required by N.J.A.C. 5:25-4.2(e). The name and address of the agency or agencies that will provide settlement services for the plan must be included and a full description of the manner in which dispute settlement will be conducted under the plan.

ii. Final copy samples of any contractual agreements between member builders and the warranty administrator, including indemnification agreements, member application and all other forms;

iii. Final copy samples of the homeowners' package, including the warranty, insurance policy and all forms used;

iv. Copy of the plans' builder information program literature.

9. Federal Trade Commission regulations:

i. A legal opinion from the plan's attorney regarding the applicability of any regulation administered by the Federal Trade Commission and the Magnuson-Moss Warranty Act.

10. Affidavit of application certification:

i. Provide an affidavit signed by the responsible partners and notarized certifying that in the event the approval is granted to the Private Plan by the Department of Community Affairs of this filed Application, that the Warranty Guarantor, Warranty Administrator and Agents are fully and completely aware of all the requirements and conditions of the Act and Regulations for the Private Plan and all Amendments thereto; and that they will abide by all requirements and conditions of the Act and Regulations and Amendments thereto; and that they will operate the Plan exactly as stated in their Application without any deviation from the filing.

(c) Each application for approval as a private alternate new home warranty security plan shall be submitted in the following manner:



1. Two sets of the required information and documents shall be submitted in separate binders, maximum size to be 8-1/2" by 11", fastened at the top or side in such a manner as to permit the reading of each page without requiring removal, the first page of which shall be a table of contents.

2. All information and documents shall be arranged in the order set forth in (b) above.

3. Each binder shall note the name and address of the person responsible for preparation of the application on the front cover.

4. The right side of the first page of each section shall bear a tab numbered in conformity with the table of contents. Each tab shall be visible without the necessity of lifting any other tab.

5. If a section or document is omitted a single sheet of paper, properly tabbed, shall be inserted containing a description of what is omitted and an explanation as to the reason for the omission.

6. Any information or document which cannot practically be included in the binder shall be submitted in a separate folder and a notation of such shall be in the binder.

(d) Each application for approval of a private plan shall be accompanied by a non-refundable application fee in the amount of \$5,000.

(e) Upon receipt of a complete application for approval, in proper form, accompanied by payment of the proper fee, the Department shall, within 10 business days, issue a notice of filing indicating the application is complete as to contents and form. This notice shall not be construed as an approval of the application or any portion thereof.

(f) Within 90 days from the date of the notice of filing or notice of correction as provided in (g) below, the Department shall enter an order approving the application, provided the Department affirmatively determined that the private plan meets the requirements set forth in the Act and these regulations and that there is reasonable assurance that the private plan will act in accordance with the Act and these regulations.

(g) When the Department determines that any of the requirements of the Act or these regulations have not been met it shall notify the applicant of the deficiencies and the applicant shall make the necessary corrections within 30 days.

(h) In the event an order of approval is not issued within 90 days from the date of the notice of filing or notice of correction, no notice of rejection is issued or the applicant has not consented to an extension, the application shall be deemed to have been denied for the purposes of appeal.

(i) In the event the Department finds the application does not meet the requirements of the Act and these regulations it shall issue a notice of rejection which shall include the findings of fact upon which the order is based.

(j) Approval shall be valid for a period of two years from the date of approval. Applications for reapproval shall be filed with the Department not later than 60 days before the expiration of the previous approval. No private plan shall permit approval to lapse so long as any home is covered by the warranty secured by the program. Applications for reapproval shall be accompanied by a \$1,000 fee and shall include such information as may then differ from that submitted on the original application for approval. If nothing has changed then the application for renewal of approval shall so certify. The Department shall then review the application for renewal and if required, stipulate any conditions imposed for renewal.

(k) If at any time during the period of approval any material fact stated or described in the application for approval shall change, the applicant shall file an amended application with the Department within 30 days the change takes place. No change, except as may be made outside the control of the applicant, shall be made without prior approval of the Department.

1. Whenever a private plan shall seek to substitute one warranty guarantor or administrator for another, such shall be permissible, provided that the rights and benefits due owners under the plan, shall not be materially affected.

#### 5:25-4.5 Denial, suspension or revocation hearing

(a) Whenever the Department shall believe that it has cause to suspend, deny or revoke approval, the following procedure shall apply:

1. (No change.)

2. Hearing: The hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act (P.L. 1968, C.410 c.52:14B-1 et seq.) applicable to contested cases. Upon the conclusion of the hearing, the hearing officer shall issue a recommended report and decision, a copy of which shall be furnished the Commissioner and the applicant. Each party shall be afforded 15 days in which to file exceptions, objections and replies hereto.

3. Decision: The Commissioner shall, upon the expiration of the period permitted for the filing of exceptions, objections and replies, issue a decision within 45 days which adopts, rejects, or modifies the recommended report and decision. The decision of the Commissioner shall be final. Failure of the Commissioner to issue a decision within 45 days shall be deemed an affirmation of the decision below.

#### 5:25-5.4 Warranty contributions, amount, date due:

(a) Each builder not participating in an approved private plan shall contribute to the State in an amount equal to 0.4 of one percent of the purchase price of the home or the fair market value of the home on its completion date if there is no good faith sale, each time he sells a home. When the cost of land is not included in the sale the purchase price shall be \*125\* \* [1.25] \* percent of the contract amount and shall be the basis of calculating the premium and will be the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgagee in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for such a follow-up services, or may at his option pay an additional 0.4 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State Plan shall then stand in his place and the Department will inspect the new home for any defects. The list of defects will be attached to the Certificate of Participation as incompleting portions and will be excluded from the warranty coverage until completed under N.J.A.C. 5:25-3.3(d)1. The additional amount paid shall not be passed through to the owner.

2. Where a builder is under contract with a property owner to fully construct a new home and provide the required warranty coverage and fails to complete the contract and obtain a certificate of occupancy, the owner may apply to the Department for a new home warranty and pay a premium of 0.8 of one percent of the sales value of the home. Such procedure shall be similar to that defined in N.J.A.C. 5:25-5.4(a)1. A warranty will not be applicable when the home is less than 80 percent complete or it is determined that cause for not completing the home is due to the owner failing to meet their responsibility in the contract.

Renumber old 2.-3. and 3.-4. (No change in text.)

#### 5:25-5.5 Claims procedure

(a) (No change.)

(b) Owner responsibilities rules are as follows:

1. Except as specifically required in N.J.A.C. 5:25-3.4, any owner who believes he has a covered defect shall provide written notice of the nature of the defect(s) to the builder not later than seven calendar days after the date on which the warranty on that item expires. The notice shall be delivered to the builder's business address.

2. (No change.)

3. If the matter cannot be resolved through the informal dispute settlement process established in (a)5., (b)1. and 2. above, then the owner may file Notice of Claim and demand, for dispute settlement with the Division. The Notice of Claim shall be filed not later than 14 days after the expiration of the 30 day period provided in (b)2. above. The claim shall state the name of the builder, the date on which the notice of defect was given to the builder, the Certificate of Participation number and a copy of the written notice of the defect, as prescribed in (b)1. above.

i.-ii. (No change.)

iii. Where a claimed defect is filed that cannot be observed or determined under normal conditions it is the owner's responsibility to substantiate that the condition does exist. Any cost involved shall be paid by the owner and if properly substantiated, reimbursement shall be made by the builder or the State Plan, whichever is liable for the claim.

4. Where an owner of a new home has not received a valid Certificate of Participation pursuant to (a)1. above from the builder then the owner may file both the notice of defect and the notice of claim and demand for conciliation with the Division directly and need not provide notice to the builder. In the event the builder subsequently pays the warranty premium the Department shall give him notice of any pending claims and the status thereof.

(c) Rules concerning departmental responsibilities, formal claims resolution process are:

1.-2. (No change.)

3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:

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i. Arbitration:

(1) Where both parties agree, the Division shall designate an arbitrator, who shall hear the matter in accordance with the rules of procedure of the American Arbitration Association. The arbitrator **\*for both the State and private plans\*** shall possess proof of satisfactorily passing the course and tests for the One and Two Family Dwelling Code and such proof shall be obtained within two years from the effective date of these regulations.

(2) The decision of the arbitrator shall be binding on both parties and reviewable only under such circumstances and to such extent as is available pursuant to the New Jersey Arbitration Act. The decision shall fix responsibility, the extent of the defect, and the date by which it must be corrected. In all cases where both parties elect to arbitrate the claims dispute and an arbitration decision has been rendered, there shall be no recourse to subsequent arbitration. In the event the decision of the arbitrator requires clarification, either party or the Division may request the arbitrator's jurisdiction be reinstated for the sole purpose of clarification of the award.

(3)-(4) (No change.)

(5) In lieu of separate conciliation and arbitration, the Division may provide, at its sole option and discretion, for an expedited dispute settlement process wherein conciliation and arbitration are performed simultaneously and any agreement arrived at or decision rendered shall be binding as provided in (2) above. Such arbitration shall be subject to the same rules and regulations as defined in (3) above.

ii. Administrative hearing:

(1) Where both parties do not agree to arbitration, the Bureau of Construction Code Enforcement shall thoroughly review the matter and shall make a decision as to the merits of the claim. This decision shall be binding on both parties, provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision **\*[such notice shall be accompanied with a certified check in the amount of \$200.00 made payable to the State Warranty Fund]\***. The Division shall then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(2) Such hearing shall be held within 30 days of demand by either party, as in (1) above, and a recommended report and decision shall be issued within 45 days of the hearing. **\*[The fee of \$200.00 shall be retained, if such decision is found in favor of the Division. If part or all of the decision is found in favor of the complainant, then the decision shall contain a statement as to the amount of the fee to be refunded to the complainant.]\*** Each party shall be permitted 15 days from the date of their receipt of the recommended report and decision to file written exceptions, objections, or argument before the Commissioner, who shall, within 45 days thereafter, issue a final decision which adopts, modifies or rejects the recommended decision. Failure of the Commissioner to issue a decision within 45 days shall constitute affirmation of the recommended decision.

(d) Claim on common elements rules are as follows:

1. Claims including common elements in a condominium or cooperative may only be made by an authorized representative of the association. Where, however, the builder retains control of more than 50 percent voting interest in the association, claim may be made by the owners of unit interest directly to the Bureau **\*or the applicable private plan administrator\***. The claimed common element defect will then be part of the unit claim and processed according to (c) above.

(e) Final payment in event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of Construction Code Enforcement or the Director, as the case may be, refuse to correct the defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and upon verification that the defect is covered and upon submission of the bids and review thereof as provided in 2. below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2. The amount of the award shall, in all cases, be based upon the lower or lowest of two or more bona fide estimates acceptable to the Division for the work intended to be covered. Payment shall be made jointly to the owner and to the contractor performing the work upon certification by both of them that the work is complete and the defect has been removed, provided, however, that payment may be made to the owner only, upon presentation of proof that the contractor has been paid. An owner electing to perform the work himself shall receive payment in an

amount not to exceed the cost of the materials upon certification by him of the completion of the work and the removal of the defect. Payment shall be made only for work authorized in writing by the Department and upon completion to the Department's satisfaction.

3. (No change.)

4. When a payment is made under these regulations the owner shall assign to the State all rights, title and interest in any claim or cause of action the owner may have against the builder arising out of the claim for which payment is made. The owner shall execute and deliver any instruments and do whatever else is necessary to secure such rights and shall do nothing to prejudice such right.

(f)-(g) (No change.)

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Governor's Teaching Scholars Program Program Rules

#### Adopted New Rules: N.J.A.C. 6:12

Proposed: January 21, 1986 at 18 N.J.R. 135(a).

Adopted: April 7, 1986 by State Board of Education, Saul

Cooperman, Secretary.

Filed: April 10, 1986 as R.1986 d.158, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-15.

Effective Date: May 5, 1986.

Expiration Date: April 2, 1991.

#### Summary of Public Comments and Agency Responses.

#### No comments received.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

#### CHAPTER 12

#### GOVERNOR'S TEACHING SCHOLARS PROGRAM (GTSP)

#### SUBCHAPTER 1. PROGRAM RULES

##### 6:12-1.1 Scope and purpose

The rules set forth in this chapter provide for the establishment of a selection and loan program for academically superior high school seniors who wish to pursue a career in teaching, to be known as the Governor's Teaching Scholars Program (GTSP).

##### 6:12-1.2 Definitions

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

"Academic progress" means attaining a minimum academic average of "B" in a full-time college or university program leading to graduation in a four year time period.

"Academic year" means the period between the time school opens in any school or under any district board of education after the general summer vacation until the next succeeding summer vacation.

"Academically superior" means that the student has reached a high school class rank in the upper one fifth of the student's graduating class at the end of the junior year.

"Accredited" means that the high school, college, or university has met the criteria and standards set by the appropriate accrediting agency, such as determined by the American Council on Education or the Middle States Association.

"Approved program" means a course of study either in teacher training or in a specialized field of study, indicated as an accepted curriculum program by the college or university selected.

"Full-time college student" means one who, in each semester, quarter or equivalent thereof, carries the minimum number of credit hours or other coursework necessary to constitute a full-time undergraduate courseload as defined by the college or university attended.

"Full-time high school student" means one who will graduate with the senior class in June of the academic year.

"GTSP" means Governor's Teaching Scholars Program in abbreviated form.

"Legal resident of New Jersey" means a student who has resided in the State of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving the loan. The residence of a student

is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever absent, he or she has the intention of returning.

"Loan redemption schedule" means the plan whereby redemption (forgiveness) of the loan is based upon number of years taught in a public school in New Jersey and the schedule shall take into account the location of teaching assignment.

"Minority" means any United States citizen or permanent resident who is a member of a racial-ethnic group that has been historically disadvantaged in obtaining access to equal educational opportunities as designated by the United States Department of Education, Office of Civil Rights, including Blacks, Hispanics, Native Americans, Asians and Pacific Islanders.

"Qualified" means that the student has met the requirements as set forth in this subchapter.

"Rank" means a system whereby students are listed, highest to lowest, using the grade point average.

"Recipient" or "program participant" means one who has been recommended by the screening committee to participate in the program, notified of selection, and one who has formally accepted the terms and conditions to participate in the GTSP, thereby entering the loan program.

"Redeem" or "forgive" as applied to the loans means that they will be diminished by a specified percentage rate, based on the number of years the borrower has taught in New Jersey schools and the location of the teaching assignment.

"Urban," "critical geographic area," or "high priority location" means designation of a New Jersey school district as eligible for the New Jersey State Department of Education's 1984 Urban Initiative Program.

"Verified" means a signed and dated statement by the appropriate individual.

#### 6:12-1.3 Administration of the program

(a) The Governor's Teaching Scholars Program (GTSP) shall be jointly administered by the Department of Education and the Higher Education Assistance Authority under the auspices of the Department of Higher Education. Their respective responsibilities shall be as follows:

1. The New Jersey Department of Education shall serve as the lender, guarantor and selector of the participants of this loan program and is required to:

- i. Provide applications for the GTSP to all New Jersey public and private high schools;
- ii. Provide information to candidates on details of the program;
- iii. Convene a committee of at least 12 members appointed by the Commissioner of Education to review and recommend nominations to the GTSP. The commissioner shall fill any vacancy on the committee in a timely manner. The committee shall be composed of public and private school educators, school administrators, a representative of the Department of Higher Education and a representative from the Department of Education;
- iv. Compile follow-up information on graduates of the program and the impact of the loan program on the teaching profession;
- v. Update and maintain files on applications and re-applications for the loans;
- vi. Verify each student's enrollment and progress in a college or university;
- vii. Provide for rendering assistance to college graduates in the GTSP in order that they may secure a teaching position in the State of New Jersey.

2. The New Jersey Department of Higher Education shall serve as the servicer of the loan program and is required to:

- i. Administer the payments to colleges and universities selected by the recipients;
- ii. Enter into the loan agreement with the nominees, setting forth conditions of repayment, including interest charges and redemption or forgiveness schedule;
- iii. Maintain records and report on the status of the loans to the Commissioner of Education;
- iv. Assume responsibility if the loan does not enter redemption by collection and/or pursuit of repayment of the loan.

#### 6:12-1.4 Program eligibility

(a) The GTSP will be open to all high school senior students from public and non-public high schools who are citizens of the United States and legal residents of the State of New Jersey who plan to attend an accredited college or university in the United States.

(b) A goal of the program is to select minority students approximating the minority population of the appropriate Statewide graduating class.

(c) The applicant must declare that entering the teaching profession in the State of New Jersey is an objective of his or her advanced schooling and shall enter the loan program with this understanding.

#### 6:12-1.5 Academic requirements

(a) To qualify for academic eligibility under the GTSP, an applicant must:

1. Rank in the upper one-fifth of his or her class at the end of the junior academic year in high school;
2. Attain a combined Scholastic Aptitude Test score of at least 1100;
3. Fulfill the requirements for participants as set forth in N.J.A.C. 6:12-1.6.

(b) Permission must be given by the student for the Department of Education to verify the information required in (a) above. This can be accomplished by the student authorizing the high school attended to release records to the screening committee.

#### 6:12-1.6 Loan application and selection process

(a) All high school senior students who are New Jersey residents and citizens of the United States having attained the level of academic achievement as previously set forth in N.J.A.C. 6:12-1.5 are considered eligible for the loan program. The applicant must submit in packet form:

1. An official transcript complete with grades from the first marking period of the applicant's senior academic year and class rank at the end of the junior academic year. If applicant's high school regulations require that this information be submitted directly by high school personnel, applicant must include a copy of a letter to the high school principal as evidence that the request has been made;
2. S.A.T. scores (P.S.A.T. and A.C.T. scores are not acceptable);
3. A profile of the applicant's high school and an explanation of its procedures for class ranking and grading;
4. A list of applicant's community and school activities, honors, awards and accomplishments, verified by the principal or principal's designee, and/or adult representative of community service on appropriate letterhead;
5. Two written recommendations submitted from school administrators, guidance counselors or teachers attesting to the applicant's interest in and aptitude for teaching;
6. A typewritten essay of no more than 300 words by the applicant discussing his or her specific strengths that will contribute to an effective teaching career;

(b) The committee of educators appointed by the Commissioner of Education shall nominate eligible candidates for participation in the GTSP. The committee's nominations shall be based on criteria set forth in (a) above.

(c) The committee will reconvene to continue the process and to review the progress of the program each year that it continues.

(d) The commissioner shall select a minimum of 100 high school graduates eligible to receive the GTSP loans from the pool of students nominated by the selection committee as meeting the criteria for the GTSP. However, if the appropriation for a fiscal year changes, the number of nominees selected will reflect that change.

(e) The commissioner shall notify nominees of the selections on or before April 15 each year that the program continues.

#### 6:12.1.7 Program participant responsibilities

(a) Students selected for GTSP participation shall:

1. Abide by all rules and regulations of the GTSP;
2. Maintain satisfactory academic progress in the college or university selected;
3. Be responsible for all tuition fees and other educational expenses not provided for in the loan program or in excess of the loan amount;
4. Represent and declare an intention to enter the teaching profession in a public school in the State of New Jersey upon graduation from college;
5. Provide a letter to the commissioner from the college or university indicating the cost of the schooling, known as the "college budget," each year that the student participates in the program;
6. Submit an official college or university transcript to the commissioner for review at the conclusion of each school year that the loan is in effect;
7. Submit an annual letter of intent to the commissioner to continue as a participant in the program;
8. Matriculate in an approved program of study in a college or university no later than the fall term immediately succeeding notification of the selection to the GTSP and continue in full-time attendance;
9. Report immediately in writing to the commissioner any changes in college attendance or career intentions;



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10. Provide the Department of Education verification of registration for an academic term in an undergraduate degree program and appropriate transcripts when required.

(b) Program participants will be encouraged to:

1. Attend the yearly conference with recent nominees;

2. Provide updated information to the commissioner on the progress of their individual careers.

#### 6:12-1.8 Source of loan funds

(a) The eligible student will be considered a Governor's Teaching Scholar if selected by the commissioner from the pool of nominees. The amount of the loan will depend on the tuition, room and board and necessary fees and expenses, known as the "college budget." Verification of this expense is provided in N.J.A.C. 6:12-1.7(a)5.

(b) The maximum loan amount received shall not exceed \$7,500 annually and \$30,000 aggregate over a four year period, contingent on the continuance of the program.

(c) The loan may not exceed the student's costs as determined by the educational institution which the student has selected less the total value of other scholarships and grants received by the participant for any given academic year.

(d) Interest will accrue on the loan from the time the first payment is made until the program is complete; however, all interest is redeemable as set forth in N.J.A.C. 6:12-1.9.

(e) All checks issued by the Department of the Treasury must be negotiated within 90 days of their issuance. Checks are automatically cancelled if not cashed within 90 days.

(f) Interest will accrue during the summer months while the borrower is technically a full-time student.

#### 6:12-1.9 Redemption

(a) Redemption (forgiveness) of the loan is contingent upon teaching service in the New Jersey public school system.

(b) Borrowers with earned baccalaureate degrees will be eligible for the redemption phase of the GTSP.

(c) Depending on the location of the teaching assignment, the principal balance of each loan will be cancelled with cumulative percentages as per the following schedule:

##### Urban Location (high priority)

Years teaching in New Jersey public schools:	1	2	3	4
Rate of loan cancellation:	10%	20%	30%	40% = 100% total redemption

##### Non-Urban Location

Years teaching in New Jersey public schools:	1	2	3	4	5	6
Rate of loan cancellation:	5%	10%	10%	20%	25%	30% = 100% total redemption

(d) Loans shall accrue interest at the time of disbursement and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. (Substitute teaching is not permitted as approved redemption service.)

(e) Total cancellation of loan indebtedness will not exceed the maximum of \$30,000 plus accrued interest per student. Any other loans obtained by the borrower will not be eligible for loan redemption.

(f) The participant's loan indebtedness will be redeemed each year based on submission of a copy of:

1. The signed contract between the district board of education and the borrower indicating a full-time teaching agreement is in force, submitted by a specified date; and

2. A letter from the chief school administrator submitted by a specified date indicating a year of service has been completed.

(g) If the participant is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest will be assigned a rate determined by the State Board of Education consistent with rates assigned by the Assistance Authority of the Department of Higher Education, as with the PLUS Program, or three and one-half percent above the rate of 91 day Treasury bills, at the time the loan enters repayment.

(h) If the participant is unable to secure a position as teacher, requests for deferment may be made as provided in N.J.A.C. 6:12-1.11(b).

#### 6:12-1.10 Terms of repayment

(a) Repayment of loans under the GTSP shall be governed under the following conditions:

1. Interest will begin to accrue with the issuance of the first check payable to the college or university of the recipient's choice;

2. Interest will be waived for a three-month period from the month of graduation until employment in September of the same year. The grace period will extend to those who present a bona fide contract of employment. Interest will accrue again on or as close to September 16 as possible if a copy of the contract has not been presented to the commissioner. The interest period will be deferred while the borrower is employed as a full-time teacher in the New Jersey public school system and is therefore participating in the redemption plan. (Substitute teaching is not permitted as approved redemption service.)

#### 6:12-1.11 Special loan forgiveness

(a) In the case of a program participant's death or total and permanent disability, the loan will be forgiven.

(b) Requests for deferment or forgiveness of loans must be made by the borrower to the commissioner. Such requests shall be referred for an initial recommendation to a three member panel appointed by the commissioner. Following receipt of such recommendation, the commissioner shall issue a final determination and inform the Department of Higher Education of the decision.

#### 6:12-1.12 Termination and forgiveness of service

(a) Borrowers who terminate their participation in the program or who are not reemployed as teachers while in the redemption phase will notify the commissioner by certified mail within a 15 day time period of the termination.

(b) The Department of Education will then authorize the Higher Education Assistance Authority to issue a statement of indebtedness by the borrower to the State of New Jersey. The repayment schedule will be sent to the borrower by the Department of Higher Education.

(c) Failure to notify the Department of Education of the conditions specified in (a) above will constitute a violation of the contract between the borrower and the State of New Jersey, and the Department of Education will advise the Higher Education Assistance Authority of the Department of Higher Education to take the necessary steps to ensure return of monies.

#### 6:12-1.13 Review and adjustments

The State Board of Education upon the recommendation of the commissioner may make periodic adjustments to the tuition amount.

#### 6:12-1.14 Appeals

If, for any reason, a student believes that the application of the rules in this subchapter results in an unfair determination of eligibility or selection, an appeal may be filed with the Commissioner of Education within 60 days of notification. Appeals should be in the form of a letter addressed to the Commissioner of Education, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, and should contain the student's full name, social security number, high school of attendance, and a description of the basis for the appeal.

(a)

## Pupil Transportation Contracts

### Adopted Amendment: N.J.A.C. 6:21-16.1

Proposed: January 21, 1986 at 18 N.J.R. 138(a).

Adopted: April 7, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: April 10, 1986 as R.1986 d.156, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.5).

Authority: N.J.S.A. 18:1-1, 18A:4-15, 18A:58-7, 18A:39-2.

Effective Date: May 5, 1986.

Expiration Date: August 9, 1990.

### Summary of Public Comments and Agency Responses.

#### No comments received.

The Department, however, is making several technical changes upon adoption, one of which is the deletion of the current text of subsection (d) which is in the N.J.A.C. but was not published in the proposal notice.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

6:21-16.1 Rules

(a) All contracts for transportation or renewals thereof shall be made in triplicate and shall be submitted to the county superintendent of schools for approval on or before September 1 in each year.

(b) Each contract or renewal thereof shall be accompanied by a certified copy of the minutes of the district board of education authorizing the contract.

(c) Review and approval of transportation contracts by the county superintendent of schools is a review and approval as to form only. The final determination of State transportation aid, if any, that is payable to a district board of education for approved transportation expenditures shall be made by the Bureau of Pupil Transportation and Audit within the Division of Finance of the State Department of Education.

\*[(d) If the county superintendent shall not approve the contract or renewal, it shall be without force or effect.]\*

(d) If the county superintendent of schools approves the contract or renewal, one copy shall be filed with the county superintendent, one with the district board of education, and one with the contractor.

(e) If the county superintendent of schools approves the transportation contract or renewal thereof, this does not by itself guarantee that the \*[local school]\* district **\*board of education\*** will receive State aid for pupil transportation expenditures.

(f) All transportation contracts require the approval of the county superintendent of schools regardless of whether State aid is involved.

(a)

**Controversies and Disputes**

**Readoption with Amendments: N.J.A.C. 6:24**

Proposed: February 18, 1986 at 18 N.J.R. 404(b).

Adopted: April 7, 1986 by State Board of Education, Saul Cooperman, Secretary.

Filed: April 10, 1986 as R.1986 d.157, with technical changes not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-9, 18A:6-10 et seq. and 18A:29-14.

Effective Date for Readoption: April 10, 1986.

Effective Date for Amendments: May 5, 1986.

Expiration Date: April 2, 1991.

**Summary of Public Comments and Agency Responses:**

One letter of comment was received. The letter suggested that:

1. N.J.A.C. 6:24-1.4 dealing with conference of counsel not be deleted from the amended rules.

2. Those sections of the rules relating to the budget hearing process not be removed from the Department of Education rules, because the issues involved in budget determinations are educational issues.

The agency responded as follows:

1. The section of the amended rules which makes reference to conference of counsel does provide at N.J.A.C. 6:24-1.10(a) that "... procedures relating to pre-hearing conferences shall be governed by the rules of OAL (see N.J.A.C. 1:1-10.1)" even when the matter is retained for hearing by the Commissioner.

2. Since the rules relating to and about budget hearings specifically deal with the conduct of the hearing, they would necessarily fall under the jurisdiction of OAL's rules. Educational issues which require being addressed by the Commissioner may be addressed when the Commissioner reviews in the initial decision.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

**SUBCHAPTER 1. GENERAL PROVISIONS**

**6:24-1.1 Definitions**

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

"ALJ" means an administrative law judge from the Office of Administrative Law.

"Commissioner" as used in these rules, unless a different meaning appears from the context, shall mean the Commissioner of Education or his or her designee.

"Interested person(s)" means a person(s) who will be substantially, specifically and directly affected by the outcome of a controversy before the commissioner.

"OAL" means the Office of Administrative Law.

**6:24-1.2 Filing and service of petition**

(a) To initiate a contested case for the commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original of the petition with the commissioner c/o the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

(b) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education which is the subject of the requested contested case hearing.

**6:24-1.3 Format of petition**

(a) The petition must include the name and address of each petitioner, the name and address of or a description sufficient to identify each party respondent, and a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws, and must be verified by oath. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen and should be presented in substantially the following form:

(NAME OF PETITIONER(S)) : BEFORE THE COMMISSIONER  
PETITIONER(S) : OF EDUCATION OF NEW JERSEY  
V.

(NAME OF RESPONDENT(S)) : PETITION  
RESPONDENT(S) :

Petitioner, \_\_\_\_\_ residing at \_\_\_\_\_, hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address (or other identification) is \_\_\_\_\_, pursuant to the authority of the commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. (Here set forth in appropriate paragraphs the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner requests that (here set forth prayer for the relief desired).

\_\_\_\_\_  
Signature of petitioner or  
his or her attorney

Date \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.  
2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature)

Sworn and subscribed to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature)

(b) Any party to a controversy or dispute before the commissioner, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(c) Whenever such duplicate filing is discovered, and after the filing of the answer by the respondent, the case will be transmitted to the OAL for initial determination of which agency, if any, has the predominant interest in the outcome of the case.

**6:24-1.4 Filing and service of answer**

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain

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terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

(b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the complaint.

(c) The commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original of the answer shall be filed with the commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service may result in the petition being transmitted to the OAL for proceedings pursuant to the provisions of N.J.A.C. 1:1-5.1.

#### 6:24-1.5 Interim relief and stay of district board action

(a) Where the subject matter of the controversy is a particular course of action by a district board of education, the petitioner may include in the petition an application for a stay of that action pending the commissioner's final decision in the contested case.

(b) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the commissioner may act upon such application prior to the filing of an answer.

(c) The commissioner may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-9.6.)

#### 6:24-1.6 Amendment of petition and answer

Prior to the transmittal of any matter to the OAL, the commissioner may order the amendment of any petition or answer, or any petitioner may amend his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.3.)

#### 6:24-1.7 Permission to intervene

Prior to any transmittal to the OAL, requests for intervention or participation in a contested case shall be addressed to the commissioner. Upon transmittal, requests should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-12.

#### 6:24-1.8 Appearance pro se

Any person may appear pro se or may be represented by an attorney at law admitted and authorized to practice in this State. (See N.J.A.C. 1:1-1.3.)

#### 6:24-1.9 Dismissal of petition

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, lack of jurisdiction, failure to prosecute or other good reason.

#### 6:24-1.10 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the commissioner may either retain the matter for hearing directly and individually or transmit the matter for hearing before the OAL. Should the commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-10.1).

(b) Upon transmittal to the OAL, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the commissioner or the ALJ, whoever is hearing the case.

#### 6:24-1.11 Oaths

The commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters. (See N.J.A.C. 1:1-15.5(b).)

#### 6:24-1.12 Subpoenas

Subpoenas, including subpoenas duces tecum, may be issued in the discretion of the commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-8.3, 8.4, 8.5.)

#### 6:24-1.13 Evidence

Parties in a contested case shall be bound by the rules of evidence as contained within the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1 (See N.J.A.C. 1:1-15.)

#### 6:14-1.14 Stenographic transcript

Where there is available a stenographic transcript of proceedings before a district board of education or before any other official or body whose action is called into question before the commissioner, \*either party may, if at least three days' notice of intention to do so has been given to opposing parties or counsel therefor, offer the transcript of testimony of any witness or witnesses named in said notice in lieu of producing said witness or witnesses at the hearing. In such event, any opposing party may subpoena such witness or witnesses to appear personally and any party may produce any additional relevant or material evidence, oral or documentary, at the hearing. The parties may agree, or the commissioner or the ALJ, whoever is hearing the case, may require, that the controversy be presented solely upon such stenographic transcript.]\* **\*the parties may proceed pursuant to N.J.A.C. 1:1-15.2.\***

#### 6:24-1.15 Summary judgment

(a) Should the commissioner determine to decide a motion for summary judgment **\*prior to transmission to OAL\*** such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the commissioner, or if for any other reason there are no issues of fact to be heard, the commissioner shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the commissioner in consultation with the parties and confirmed by a written directive. The commissioner shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the commissioner on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the commissioner in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-13.

3. Unless otherwise ordered by the commissioner, there shall be no oral argument in connection with a summary judgment action. If the commissioner grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

#### 6:24-1.16 Written decision

Every determination of a controversy or dispute arising under the school law, or of charges against a board of education employee under tenure, shall be made by the commissioner. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-16.

#### 6:24-1.17 Relaxing of rules

The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the commissioner in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

#### 6:24-1.18 Awarding of interest

(a) The commissioner pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award. (b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. Post-judgment interest is interest determined by the commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the commissioner when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established and the party respon-



sible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) Rate of interest shall be awarded as follows:

1. Pre-judgment interest shall be awarded based upon the average rate of interest earned on investments by the party responsible for such payment during the period of time in which the monies awarded were illegally detained.

2. Post-judgment interest shall be awarded based upon the prevailing rate of interest established by court rules at the time that the right to the monetary claim was determined. (See New Jersey Court Rules, R. 4:42-11(a).

## SUBCHAPTER 2. DECLARATORY RULINGS

### 6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the commissioner for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the commissioner. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

### 6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

CAPTION : BEFORE THE COMMISSIONER OF  
: EDUCATION OF NEW JERSEY  
: PETITION FOR DECLARATORY  
: JUDGMENT

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, hereby requests the commissioner to render a declaratory judgment concerning the application of (N.J.S.A. 18A:\_\_\_\_\_, N.J.A.C. 6:\_\_\_\_\_) to the controversy which has arisen between petitioner and respondent who resides at \_\_\_\_\_ by reason of: \_\_\_\_\_

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare

\_\_\_\_\_  
Signature of petitioner or  
his or her attorney

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.

2. I have read the petition and aver that the facts contained therein are true to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature)

Sworn and subscribed to before me this  
day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
(Signature)

## SUBCHAPTER 3. ORDER TO SHOW CAUSE

### 6:24-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the commissioner should become aware of violation(s) of the school laws in local school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);

2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);

3. Withholding salaries of:

i. A county superintendent (N.J.S.A. 18A:7-4); and

ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon him or her until such time as he or she complies;

4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);

5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13).

## SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

### 6:24-4.1 Withholding salary increment

Where a district board of education acts to withhold a teacher's salary increment pursuant to N.J.S.A. 18A:29-14, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

## SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

### 6:24-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the commissioner, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the commissioner together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be filed in writing with the secretary of the district board of education, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the secretary of the district board. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of respondent's written statement of evidence under oath, or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary. (See N.J.S.A. 18A:-6-11.)

5. The district board of education shall forthwith notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the commissioner together with proof of service upon the employee.

7. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency must be filed with the secretary of the district board of education along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

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3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-1.21(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90 day period for improvement, or such longer period as may be provided by the district board of education, the administrator or administrators responsible for bringing such charges to the attention of the board shall notify the board in writing of what charges, if any, have not been corrected.

6. The district board of education upon receipt of the written notification shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90 day period, or such longer period as may be provided by the board, to the notification of the employee by the board shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary. (See N.J.S.A. 18A:6-11.)

9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the commissioner together with proof of service upon the employee.

10. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

#### 6:24-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary:

1. That the district board of education has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and if so whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education;

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

#### 6:24-5.3 Filing and service of answer to written charges

The filing and service of an answer to written charges pursuant to the Tenure Employees' Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

### SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

#### 6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the commissioner or an ALJ.

#### 6:24-6.2 Cost of recounts

Cost of recounts shall be in compliance with N.J.S.A. 18A:14-63.6 and 63.7.

#### 6:24-6.3 Subpoenas

In any school election recount initiated pursuant to this subchapter, the commissioner shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

#### 6:24-6.4 Continuation of recheck

In districts where election machines have been used, the commissioner shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days, apply to the commissioner to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

#### 6:24-6.5 Finding of error/relief

Where the commissioner finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient to influence the outcome, he or she shall order such relief as is appropriate.

### SUBCHAPTER 7. BUDGET HEARING RULES

#### 6:24-7.1 Authority

Unless otherwise expressly noted, all provisions of this subchapter governing a petition by a district board of education appealing a governing body's decision to reduce a school budget have been prescribed by the commissioner and approved by the State Board of Education pursuant to N.J.S.A. 18A:6-9 and Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick, 48 N.J. 94 (1966).

#### 6:24-7.2 Time for filing petition

A petition by a district board of education appealing the decision of its governing body to certify a tax levy less than that deemed necessary by the district board to insure a thorough and efficient educational program shall be taken no later than 30 days following the governing body's decision.

#### 6:24-7.3 Format and documentation of petition

(a) The format of the petition shall be the same as that set forth in N.J.A.C. 6:24-1.3.

(b) The district board of education shall attach to its petition a copy of a resolution adopted by a majority of its members authorizing the filing of such a petition and setting forth its reasons for doing so.

(c) The district board of education shall attach to its petition a copy of the following form:

Proposed tax levy adopted by the district board of education	Amount of tax levy certified by governing body
Current expense \$	Current expense \$
Capital outlay \$	Capital outlay \$
Amount of reduction in the budget by governing body	
	Current expense \$
	Capital outlay \$
Amount of reduction in dispute before the commissioner	
	Current expense \$
	Capital outlay \$

#### 6:24-7.4 Filing and service of answer

The governing body shall file an answer with the commissioner not later than 15 days after receiving the district of education's petition.

#### 6:24-7.5 Documentation of answer

(a) The governing body shall submit with its answer the following documents:

1. The amount certified for each of the major accounts;
2. Line item budget stating recommended specific economies together with supporting reasons.

#### 6:24-7.6 Conference of parties with county superintendent

(a) Following receipt of the petition and answer, the commissioner may schedule a conference to be attended by representatives of the district board of education and the governing body and to be conducted by the county superintendent of schools.

(b) If the district board of education and governing body reach an agreement at the conference as to the tax levy to be certified to the county board of taxation, the district board shall submit a consent order reflecting the elements of that agreement to the commissioner not later than 10 days after the conference is concluded.

(c) If the parties do not reach an agreement settling the case, any agreement reached as to stipulations of facts or narrowing of issues shall be submitted to the commissioner or the ALJ, whoever is hearing the case.

6:24-7.7 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1, as supplemented by the Rules of Special Applicability in this chapter.

(b) Upon the filing of the petition and answer(s) in a contested case, the commissioner may either retain the matter for hearing directly and individually or transmit the matter for hearing before the OAL.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the commissioner or the ALJ, whoever is hearing the case.

(d) \*[(When transmitting the case to the OAL, the commissioner shall include any material submitted by the district board of education or board of school estimate or any decisions by the commissioner relating to a request for a cap waiver by the district board.]\* \*See N.J.A.C. 1:6-1.1 Rules of Special Applicability for description of the rules governing Department of Education budget hearings.\*

\*[(e) Within 10 days of receipt of the notice of hearing, the governing body shall forward a copy of each of the following to the district board of education and two copies to the ALJ assigned to hear the case:

1. If changes were made to the operating budget, a line item budget detailing the specific reductions that were effectuated by the governing body and a statement of supporting reasons for each of these reductions;

2. If changes were made to the capital budget, a capital budget with a statement of supporting reasons for each change.

(f) Within 10 days of receipt of the governing body's budget(s), the district board of education shall forward a copy to the governing body and two copies to the ALJ of each of the following:

1. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters), amount reduced by the governing body and revised budgeted amount for the next school year. This budget should be accompanied by written testimony, approved by the district board of education, as to why each of the amounts in dispute is necessary to provide a "thorough and efficient" system of education;

2. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year. Notate reasons for increase or decrease;

3. Pupil enrollment by grade for the district as of June 30, preceding, September 30, preceding, and that projected for September of the next school year;

4. Salary schedules for all employees;

5. Number of schools and classrooms in each;

6. Costs for non-aided transportation for the previous school year and projected for the current school year and the next school year;

7. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

8. Advertised budget for the next school year;

9. If a capital budget is in dispute, a substantiation for each proposed capital project.

(g) The governing body and the district board shall submit their statements of supporting reasons in the form of written testimony, verified by each and accompanied by a certified copy of each official document.]\*

6:24-7.8 (Reserved)

6:24-7.9 (Reserved)

6:24-7.10 (Reserved)

6:24-7.11 (Reserved)

6:24-7.12 (Reserved)

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF WASTE MANAGEMENT

##### Discharge of Hazardous Substances Discharge Notification and Response

##### Adopted Amendment: N.J.A.C. 7:1E-2.3

Proposed: March 3, 1986 at 18 N.J.R. 456(a).

Adopted: April 11, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: April 14, 1986 as R.1986 d.161, **without change**.

Authority: N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 13:1D-1 et seq.

Effective Date: May 5, 1986.

Expiration Date: July 15, 1990.

DEP Docket No. 006-86-02.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text of the adoption follows.**

#### 7:1E-2.3 Discharge response

(a) Upon learning that a discharge of hazardous substance has occurred, the department may act to contain, clean up and remove the discharge of any substance which the department has specifically designated as hazardous in N.J.A.C. 7:1E-1.3, unless it determines that such action will be done properly and expeditiously by the owner or operator of the facility or source from which the discharge occurred, or by any other authorized person.

(b) (No change.)

(c) The owner or operator of a facility from which a discharge has occurred may take immediate measures to clean up and remove the discharge, except that he may not apply chemicals without the prior approval of the division or the Federal on-scene coordinator under the National Contingency Plan pursuant to 40 CFR part 300, unless such application is necessary to prevent or mitigate a situation that poses a serious and imminent threat to human life. In any such situation of serious and imminent threat to human life, the owner or operator shall make reasonable efforts to secure the approval of the division or the Federal on-scene coordinator before applying chemicals, if time and the circumstances of the situation permit. Approval to apply chemicals may be obtained orally or by telephone. Application of chemicals pursuant to a DCR plan approved by the division shall be deemed to have prior approval. Unauthorized use of chemicals shall be regarded as a prohibited discharge.

(d) The department in its discretion may observe, supervise or participate in any aspect of containment or cleanup and removal activities. In the exercise of its supervisory power, the department may order any person to cease cleanup and removal activities and other discharge-related operations if it determines that the person is not capable of properly containing, cleaning up or removing a discharge, or if that person fails to conduct cleanup operations in a proper and expeditious manner. All actions of the department shall, to the greatest extent possible, be consistent with the National Contingency Plan for removal of oil and hazardous substances. 40 CFR part 300.



## (a)

**Recycling or Reclamation of Hazardous Waste  
Pursuant to Tolling Agreements****Adopted Amendments: N.J.A.C. 7:26-1.4, 1.6, 9.1  
and 12.1**

Proposed: August 19, 1985 at 17 N.J.R. 1968(a).

Adopted: April 11, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: April 14, 1986 as R.1986 d.160, **without change**.

Authority: N.J.S.A. 13:1E-6.

Effective Date: May 5, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 038-85-07.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Environmental Protection ("NJDEP" or "Department") received comments from interested parties on the August 19, 1985 proposal from August 19, 1985 until September 18, 1985. Six written comments were received prior to the close of the comment period. In addition, NJDEP received one additional written comment after the close of the official comment period.

COMMENT: The August 19, 1985 proposal will inadvertently regulate as hazardous waste a large volume of metals routinely and safely recycled under tolling agreements.

RESPONSE: NJDEP is not changing the established mechanism for determining whether a material meets the definition of solid waste pursuant to N.J.A.C. 7:26, or whether a waste is hazardous or non-hazardous by adopting the August 19, 1985 proposal. The August 19, 1985 proposal clarified the regulatory requirements for generators and commercial recycling or reclamation facilities that recycle or reclaim hazardous waste pursuant to tolling agreements. The definition of "Tolling Agreement" or "Agreements" at N.J.A.C. 7:26-1.4 expressly relates only to hazardous waste. A non-hazardous waste metal recycled pursuant to the equivalent of a tolling agreement would not be affected by the adopted amendments. Therefore, the adopted amendments will not inadvertently or improperly classify and regulate non-hazardous wastes recycled or reclaimed pursuant to tolling agreements as hazardous wastes for the purposes of N.J.A.C. 7:26. Pursuant to N.J.A.C. 7:26-8.5, a determination should be made in all appropriate cases whether wastes received for recycling or reclamation constitute hazardous or non-hazardous wastes. This determination will provide the threshold for application of New Jersey's hazardous waste management regulations at N.J.A.C. 7:26.

COMMENT: NJDEP should hold a public hearing on the August 19, 1985 proposal to receive oral comments prior to formal adoption.

RESPONSE: NJDEP believes that the official 30 day written comment period from August 19, 1985 through September 18, 1985 afforded a sufficient opportunity for all interested parties to adequately express their concerns about the August 19, 1985 proposal. NJDEP fully satisfied the statutory provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., to afford all interested persons a reasonable opportunity to submit data, views or arguments concerning the August 19, 1985 proposal. Furthermore, N.J.S.A. 52:14B(a)3 provides that only a committee of the Legislature or a governmental agency or subdivision may require a State Agency to hold a public hearing on rulemaking if the State Agency decides only to accept written comments. Any request pursuant to N.J.S.A. 52:14B-4(a)3 must be made within 15 days after publication of the rule proposal in the New Jersey Register. No such requests were received by NJDEP within the specified time period.

COMMENT: NJDEP has previously determined that the handling and reclamation of precious metals was not subject to regulation under N.J.A.C. 7:26. Does NJDEP intend to fully regulate such facilities? NJDEP should revise the August 19, 1985 proposal upon adoption to exempt secondary precious metals recycled or reclaimed pursuant to tolling agreements from regulation under N.J.A.C. 7:26.

RESPONSE: The commenters correctly assert that NJDEP has made previous case-by-case determinations that certain precious metal bearing wastes and related recovery processes are not subject to New Jersey's hazardous waste regulations at N.J.A.C. 7:26. NJDEP made these determinations because such precious metal wastes are never "sometimes discarded" as required by the current definition of solid waste at N.J.A.C. 7:26-1.6. NJDEP reiterates that this adoption does not alter the existing regulatory mechanism for determining whether a material meets the defi-

nition of solid waste, and whether a solid waste is a hazardous waste. NJDEP fully intends to continue to regulate materials determined to be hazardous waste when recycled, whether pursuant to tolling agreements or not, except as specifically excluded in N.J.A.C. 7:26.

It is important to note that the revised federal definition of solid waste adopted by the United States Environmental Protection Agency ("EPA") in the January 4, 1985 Federal Register at 50 FR 614 no longer uses the "sometimes discarded" language and specifically regulates recycled spent materials as solid wastes. Under the "Preamble" EPA discusses precious metals in the January 4, 1985 adoption as follows:

"Although EPA has concluded that most of the proposed conditional exemptions are unwarranted, we continue to believe that the exemption for precious metal-containing wastes being reclaimed for their precious metal-content remains justified because of the high value of the metals being reclaimed. . . . The Agency thus believes that the value of the contained precious metals, corroborated by the usual management practices for these wastes, supports the partial exemption. At the same time, the Agency does not believe a complete exemption is warranted." (see 50 FR 648).

EPA's partial exemption would still require notification, manifesting, prevention of over accumulation and recordkeeping requirements for recycled precious metal-containing wastes. NJDEP plans to propose a new definition of solid waste and related regulatory requirements for precious metal-containing waste recyclers similar to EPA's January 4, 1985 adoption in the near future.

COMMENT: NJDEP provides a perception of imbalance between incentives for on-site and off-site hazardous waste processing by focusing only on off-site hazardous waste processing in the August 19, 1985 proposal. The January 4, 1985 adoption by EPA asserts authority over types of both on-site and off-site recycling.

RESPONSE: As mentioned above, NJDEP is currently developing regulatory proposals in response to the January 4, 1985 adoption. NJDEP currently plans to regulate on-site recycling activities similar to the January 4, 1985 adoption. Specifically, the EPA delineates its requirements for on-site recycling at 40 CFR 261.6(a)1, (b), and (c)1 and 2 (see 50 FR 665). A short period of time will occur between the promulgation of these adopted amendments and any future rulemaking on the subject. Please note that adoption of these amendments does not represent the full extent of NJDEP's intended regulatory requirements for hazardous waste recycling or reclamation activities, including on-site recycling.

COMMENT: The addition of a new subsection (f) to the definition of solid waste at N.J.A.C. 7:26-1.6 is unnecessary, redundant and subject to future misinterpretation as a vehicle for NJDEP to regulate non-hazardous waste recycling as hazardous waste under tolling agreements.

RESPONSE: NJDEP prepared the August 19, 1985 proposal as a clarification of existing policy. The new subsection at N.J.A.C. 7:26-1.6(f) removes any doubt that any material recycled or reclaimed by a commercial recycling or reclamation facility pursuant to any tolling agreement or agreements defined pursuant to N.J.A.C. 7:26-1.4 shall be considered a solid waste pursuant to N.J.A.C. 7:26. The definition of "Tolling Agreement" or "Agreements" at N.J.A.C. 7:26-1.4 clearly limits tolling agreements to those contractual arrangements involving hazardous waste. NJDEP finds no realistic potential for misinterpretation or confusion. Furthermore, N.J.A.C. 7:26-1.6(f) greatly assists NJDEP in its efforts to clarify the entire tolling agreements issue.

**Full text of the adoption follows.****7:26-1.4 Definitions**

"Tolling agreement" or "agreements" means a contractual arrangement between a generator and a recycling or reclamation facility whereby the generator, whether or not ownership of the hazardous waste is retained by the generator, sends the generator's hazardous waste to a recycling or reclamation facility and receives back the recycled or reclaimed portion of the generator's waste stream. Tolling agreements may be conducted by, but not be limited to, the following methods:

1. A recycling or reclamation facility processes a generator's hazardous waste separately without commingling with the waste streams of other generators, known as batch toll processing; or

2. A recycling or reclamation facility processes a generator's hazardous waste by commingling the generator's hazardous waste with the waste streams of other generators and returning to the generator an agreed upon quantity and quality of recycled or reclaimed material, known as continuous toll processing.

7:26-1.6 Definition of solid waste

(a)-(e) (No change.)

(f) Any material recycled or reclaimed by a commercial recycling or reclamation facility pursuant to any tolling agreement or agreements defined pursuant to N.J.A.C. 7:26-1.4 shall be considered a solid waste for the purposes of this chapter.

7:26-9.1 Scope and applicability

(a)-(d) (No change.)

(e) All generators and recycling or reclamation facilities that recycle or reclaim hazardous waste pursuant to any tolling agreement or agreements defined pursuant to N.J.A.C. 7:26-1.4 shall be included within the scope of this subchapter and shall be subject to all the requirements of this subchapter as applicable.

7:26-12.1 Scope and applicability

(a)-(b) (No change.)

(c) All generators and recycling or reclamation facilities that recycle or reclaim hazardous wastes pursuant to any tolling agreements defined pursuant to N.J.A.C. 7:26-1.4 shall be included within the scope of this subchapter and shall be subject to all the requirements of this subchapter as applicable.

(a)

**Solid Waste Disposal  
Exempt from Registration**

**Adopted New Rule: N.J.A.C. 7:26-1.8**

**Adopted Recodification: N.J.A.C. 7:26-1.8**

Proposed: December 16, 1985 at 17 N.J.R. 2945(a).

Adopted: April 11, 1986 by Richard T. Dewling, Commissioner,  
Department of Environmental Protection.

Filed: April 14, 1986 as R.1986 d.162, **without change.**

Authority: N.J.S.A. 13:1E-4, 13:1E-6 and 58:10A-1 et seq.

Effective Date: May 5, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 065-85-11.

**Summary of Public Comments and Agency Responses:**

The Department received five written comments on the proposed new rule during the comment period which closed on January 16, 1986.

COMMENT: The issue of sludge regulation should be held in abeyance pending further research into the risks specifically as addressed by Donald Lisk of Cornell University.

RESPONSE: The concerns raised are inappropriate to the New Jersey Sludge Management Program. New Jersey has imposed a stringent quality control program on all sludge applications. The NJDEP sludge quality control procedures include strict compliance with the Sludge Quality Assurance Reporting Regulations, evaluation of all industrial contributions to the treatment plant under review, ongoing monitoring of sludge applications, monitoring of soils, groundwater, and crop production.

COMMENT: The Department should consider additional regulatory changes to the sludge management program specifically related to responsibility for sampling, liabilities, public comment, past performance of permittees, storage of residuals, testing of sludge and soils, and limiting the issuance of emergency permits.

RESPONSE: The Department is continually reviewing regulations for all its programs and making recommendations for appropriate changes based upon supporting administrative and technical justification. The Statewide Sludge Management Plan which will be available for public comment in the near future contains additional administrative and technical changes. In addition, the Federal Environmental Protection Agency has recently proposed regulations for Statewide Sludge Management Programs (40 CFR 501). As a result of voluminous research evaluated by the Department and the Federal Environmental Protection Agency, many areas of restriction and prohibition may be relaxed because laboratory and mathematically determined limitations for sludge constituents have been determined to be unnecessarily restrictive based upon actual field data. The Department, in addition to soliciting comment on a Statewide Sludge Management Plan, intends to propose additional sludge management rules on which the public will be asked to comment.

COMMENT: The proposed rulemaking was supported by several commenters as a positive step which would eliminate unnecessarily duplicative bureaucracy.

RESPONSE: The Department concurs with this evaluation. It is the fundamental reason for the proposed rulemaking.

COMMENT: The rulemaking should be expanded to specifically provide for exemption of other modes of sludge management specifically compost processing and distribution, phragmites reed beds, sludge storage tanks, sand drying beds, wet air oxidation facilities, oil emulsion dehydration facilities, sludge incinerators, digestors, and dewatering equipment. All of these sludge management facilities and operation are regulated through the New Jersey Pollutant Discharge Elimination System and/or the Treatment Works Approval Program, and should be clearly exempted from duplicative regulation through Solid Waste Registration.

RESPONSE: The Department generally concurs with this recommendation and intends to propose rules to exclude those sludge management facilities and operations which it believes to be sufficiently regulated through the NJPDES and TWA programs so that they may be exempted from Solid Waste registration.

COMMENT: The Department should reconsider this rulemaking in light of the recent decision of the U.S. Court of Appeals reinstating the Solid Waste Disclosure Laws, N.J.S.A. 13:1E-126 *et seq.*

RESPONSE: The Department agrees with the intent of the comment, which is to require disclosure and review prior to licensing land application operators. Such a requirement would have to be the subject of future rulemaking, so that anyone who might be affected thereby will have notice and the opportunity to comment on the proposal. At this time, operators seem to fall into two categories: solid waste transporters who are required to provide a disclosure statement and undergo review, pursuant to N.J.A.C. 7:26-16; and municipalities, which are exempt from the process.

COMMENT: The Department should address the impacts of this rulemaking with respect to the Board of Public Utilities regulation of these activities.

RESPONSE: The Board of Public Utilities has not regulated land application of residuals, therefore the rulemaking has no effect on BPU regulation.

COMMENT: The rulemaking would eliminate the public participation provisions afforded through N.J.S.A. 13:1E-5.1 and the Department has not justified this.

RESPONSE: The public participation provisions afforded through N.J.S.A. 13:1E-5.1 would be essentially duplicative of the extensive notice and hearing provisions applicable to these facilities and operations pursuant to N.J.S.A. 7:14A-2.1, 7:14A-7.1 and 7:14A-8.1 under the Water Pollution Control Act.

**Full text of the adoption follows:**

7:26-1.8 Exemption from registration—land application

(a) The following class of solid waste operations is hereby exempted from registration as required under N.J.S.A. 13:1E-4 and N.J.A.C. 7:26-2.2:

i. Operations for the land application of non-hazardous solid waste (including wastewater and potable water treatment sludges) and storage facilities for such non-hazardous solid waste which receive:

i. A temporary emergency or final New Jersey Pollutant Discharge Elimination System (NJPDES) permit issued pursuant to N.J.A.C. 7:14A; and

ii. An approval of the assessment of the environmental impact of the proposed operation which may be included in the NJPDES permit.

OAL NOTE: The current text of 7:26-1.8 is recodified as 7:26-1.9, without change.

(a)

**DIVISION OF WASTE MANAGEMENT**

**Sanitary Landfills, Resource Recovery Facilities and Transfer Stations; Records**

**Notice of Correction: N.J.A.C. 7:26-2.13**

**Take notice** the rules published in the New Jersey Administrative Code at N.J.A.C. 7:26-2.13(a) (concerning sanitary landfills, resource recovery facilities and transfer stations; records) did not include the following text which was duly filed and adopted as part of the rules (see 16 N.J.R. 930(a) and 16 N.J.R. 1497(a)):

7:26-2.13 Sanitary landfills, resource recovery facilities and transfer stations; records

(a) Sanitary landfills, resource recovery facilities and transfer stations shall maintain a daily record of wastes received. The record shall include:

1.-7. (No change in text.)

(b)-(i) (No change in text.)

(b)

**DIVISION OF WASTE MANAGEMENT**

**BOARD OF PUBLIC UTILITIES**

**Interdistrict and Intradistrict Solid Waste Flow**

**Joint Adopted Amendment: N.J.A.C. 7:26-6.5**

Proposed: November 4, 1985 at 17 N.J.R. 2590(a).

Adopted: February 27, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection, and Barbara A. Curran, President, Board of Public Utilities.

Filed: April 14, 1986 as R.1986 d.159, **with substantive and technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23, and 48:13A-1 et seq.

Effective Date: May 5, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 058-85-10.

**Summary of Public Comments and Agency Responses:**

One written comment raising two issues was submitted during the comment period, which closed December 4, 1985.

COMMENT: Southern Ocean Landfill (SOLF) had anticipated that it would serve as a backup facility to the resource recovery facility being proposed by Ocean County.

RESPONSE: On November 28, 1984 the Ocean County Freeholders adopted amendments to the Ocean County District Solid Waste Management Plan. As part of these amendments, the freeholders designated the Ocean County Landfill to be the backup facility to the planned resource recovery facility. The DEP, by virtue of this waste flow adoption, is merely codifying a decision already made by the county freeholders.

COMMENT: As an alternative to selecting the SOLF as the residual landfill, it is submitted that SOLF ought to be able to continue to serve its present customers at least until the resource recovery facility is operational.

RESPONSE: The SOLF is located within the Pinelands. As such, it must cease operations by August 8, 1990 pursuant to the Pinelands regulations. The decision to authorize operation beyond that date may only be made by the Pinelands Commission. This waste flow adoption does provide for the continued operation of the SOLF until a resource recovery facility is operating if a waiver from the Pinelands Commission is obtained.

**Summary of Changes Subsequent to Proposal:**

For clarification purposes, the text found in N.J.A.C. 7:26-6.5(p)6.ii. is being added to N.J.A.C. 7:26-6.5(p)5. as a subparagraph i. By doing so, the rule more clearly indicates that waste flows from either regional landfill will automatically be directed to the proposed resource recovery facility.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*).

7:26-6.5 District waste flow planning requirements and disposal facility designations.

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designating specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, described in this section.

(a)-(o) (No change.)

(p) Waste flows within, into and out of the Ocean County District:

1.-4. (No change.)

5. All waste types 10, 13, 23, 25 and 27 generated from within the Ocean County municipalities of Brick, Dover, Jackson, Lakehurst, Plumsted, Seaside Heights, Seaside Park and those portions of Berkeley Township in Holiday City, Silver Ridge Park and South Seaside Park shall be disposed of at the Ocean County Landfill Corporation landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey.

\*i. The November 28, 1984 Ocean County Solid Waste Management Plan amendments state that it is expected that, in 1992, the planned resource recovery facility will be operable for the disposal of a substantial portion of the solid waste generated in the county. At that time, waste flows shall be redirected to the resource recovery facility in quantities sufficient to meet the design capacity.\*

6. All waste types 10, 13, 23, 25, and 27 generated from within the Ocean County municipalities of Barnegat, Barnegat Light, Beach Haven, Eagleswood, Harvey Cedars, Lacey, Ocean Township, Ocean Gate, Pine Beach and those portions of Berkeley Township not in Holiday City, Silver Ridge Park and South Seaside Park shall be disposed of at the Southern Ocean Landfill, Inc. landfill, facility number 1520A, located in Ocean Township, Ocean County, New Jersey.

i. Upon closure of the Southern Ocean Landfill, facility number 1520A, (mandated in 1990 by regulations of the Pinelands Commission), wastes going to this facility shall be disposed of at the Ocean County Landfill Corporation Landfill, facility number 1518B, located in Manchester Township, Ocean County, New Jersey. In the event that the Southern Ocean Landfill obtains a waiver from the Pinelands Commission to operate after 1990, waste flow to this landfill shall continue, pursuant to the terms of the waiver, until the proposed resource recovery facility for Ocean County is operational, at which time waste flow shall be redirected to that facility.

ii. The November 28, 1984 Ocean County Solid Waste Management Plan amendments state that it is expected that, in 1992, the planned resource recovery facility will be operable for the disposal of a substantial portion of the solid waste generated in the County. At that time, waste flows shall be redirected to the resource recovery facility in quantities sufficient to meet the design capacity.

7.-8. (No change.)

(q)-(v) (No change.)

(c)

**Interdistrict and Intradistrict Solid Waste Flow**

**Joint Adopted Amendment: N.J.A.C. 7:26-6.5**

Proposed: November 4, 1985 at 17 N.J.R. 2591(a).

Adopted: February 27, 1986 by Richard T. Dewling,

Commissioner, Department of Environmental Protection, and Barbara A. Curran, President, Board of Public Utilities.

Filed: April 14, 1986 as R.1986 d.164, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23, and 48:13A-1 et seq.

Effective Date: May 5, 1986.

Expiration Date: November 4, 1990.

DEP Docket No. 057-85-10.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

7:26-6.5 District waste flow planning requirements and disposal facility designations

Due to the lack of adequate disposal capacity within certain solid waste districts, and pursuant to a finding by the BPU that the public interest will be best served by designating specific disposal facilities as the ultimate destination of specific waste streams, it is necessary to direct waste flows, as described in this section.



(a)-(c) (No change.)

(d) Waste flows within, into and out of the Camden County District.  
1.-2. (No change.)

3. All waste types 10, 13, 23, and 27 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

i. All waste type 25 generated from within the Camden County municipalities of Audubon Borough, Cherry Hill Township, Haddonfield Borough, Haddon Township, Lindenwold Borough, Merchantville Borough, Pennsauken Township, Tavistock Borough, and Voorhees Township shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, Deptford Township, Gloucester County, New Jersey. This redirection is meant to reflect the order of the Superior Court in Borough of Glassboro v. Gloucester County Board of Chosen Freeholders, No. L-070476-84 PW (N.J. Super., Law Division 1984) (order for preliminary injunction) and shall maintain November 1984 waste flow levels until such time as Kinsley's Landfill is closed. At such time, the solid waste shall be redirected to another solid waste facility.

4. All waste types 10, 23, 25, and 27 generated from within the Camden County municipality of Camden City shall be disposed of at the Kinsley's Landfill, Inc., facility number 0802B, located in Deptford Township, Gloucester County, New Jersey. This redirection is meant to reflect the order of the Superior Court in Borough of Glassboro v. Gloucester County Board of Chosen Freeholders, No. L-070476-84 PW (N.J. Super., Law Division, 1984) order for preliminary injunction) and shall maintain November 1984 waste flow levels until such time as Kinsley's Landfill is closed. At such time, the solid waste shall be redirected to another solid waste facility.

i. All waste type 13, generated from within the Camden County municipality of Camden City shall be disposed of at the Pennsauken Township Sanitary Landfill, facility number 0427D, located in Pennsauken Township, Camden County, New Jersey.

5. (No change in text.)

(e)-(v) (No change.)

## HEALTH

### (a)

#### DIVISION OF HEALTH FACILITIES EVALUATION

##### Standards for Licensure of Hospital Facilities

##### Obstetric and Newborn Services

##### Adopted Amendment: N.J.A.C. 8:43B-8.16

Proposed: September 16, 1985 at 17 N.J.R. 2213(a).

Adopted: April 11, 1986 by J. Richard Goldstein, M.D.,

Commissioner of Health, with the approval of the Health Care Administration Board.

Filed: April 14, 1986 as R.1986 d.167, **without change**.

Authority: N.J.S.A. 26:2H-1, N.J.S.A. 26:2H-5b.

Effective Date: May 5, 1986.

Expiration Date: January 21, 1991.

##### Summary of Public Comments and Agency Responses.

**No comments received.****Full text of the adopted amendment follows.**

8:43B-8.16 Policies and procedures for the obstetric service

(a) Policies and procedures for the obstetric service shall include those for the obstetric and newborn services, in addition to the following:

1.-9. (No change.)

10. Policies and procedures for the care of patients during labor and delivery. These shall include, but not be limited to, the following:

i. (No change.)

ii. The obstetrical staff in conjunction with nursing staff, shall develop and approve a protocol for the use of pitocin for induction and stimulation of labor. The protocol shall address how the patient will be assessed prior to the drug's use; monitoring of the status of the mother and fetus during its use; indications for discontinuance of the drug; methods of drug administration; and staff training concerning the drug's use. An ob-

stetrically-qualified physician must be in the institution when pitocin is being administered. The protocol shall be kept at the nurses station in the labor and delivery unit, and available to staff at all times;

iii. The obstetrical staff in conjunction with nursing staff, and in consultation with their referral Level III Perinatal Center shall develop and approve a protocol for the antepartum use of intravenous tocolytic drugs for the termination of premature labor. This protocol shall address criteria for drug use; patient assessment prior to intravenous drug administration; monitoring of the status of the mother and fetus during therapy; procedures for managing known complications of therapy; indications for discontinuance of the drug; procedures for maternal and infant transfer to the appropriate level of care; and staff training concerning the drug's use. An obstetrically-qualified physician must be present for evaluation of the patient and for initiation and stabilization of drug therapy;

Renumber existing iii.-ix. as iv.-x. (No change in text.)

11.-19. (No change.)

### (b)

#### Interchangeable Drug Products

##### Adopted Amendment: N.J.A.C. 8:71

Proposed: December 2, 1985 at 17 N.J.R. 2842(a).

Adopted: March 11, 1986 by the Drug Utilization Review

Council, James Perhach, Ph.D., Chairman.

Filed: April 7, 1986 as R.1986 d.150, **with portions** of the proposal **not adopted, and portions** of the proposal not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 5, 1986.

Expiration Date: April 2, 1989.

##### Summary of Public Comments and Agency Responses.

Regarding Nystatin/triamcinolone creams:

Squibb noted that two ingredients in the vehicles of the generics (not present in the brand, Mycolog II) have caused clinical problems in some patients. The Council had deferred action pending receipt of verifying data from Squibb, rebuttals from the generic manufacturers, and a review of the list of ingredients in the generics.

Squibb did not supply the requested information. In addition, attorneys for the generic manufacturers pointed out that Squibb's old formulation, which contained the two ingredients to which Squibb now objects, did not inform prescribers in its labelling that the two ingredients could cause clinical problems. Data from the FDA show fewer than 35 reports (out of a usage of many millions) linking the old Mycolog formula to skin problems possibly caused by the ingredients proposed to be problematical.

Finally, the generic formulations are in the process of being changed to totally eliminate the two "problem" ingredients. Thus the Council adopted the proposed generics.

The following products and their respective manufacturers were **adopted**:

Nystatin 100000 U/triamcinolone 1 mg/g cream  
Nystatin 100000 U/triamcinolone 1 mg/g cream  
Trifluoperazine HCl tabs 1, 2, 5, 10 mg  
Methyldopa 250/hydrochlorothiazine 15 mg tabs  
Allopurinol tabs 100, 300 mg  
Betamethasone valerate lotion 0.1%  
Betamethasone valerate lotion 0.1%  
Desonide 0.5 mg/g cream  
Diazepam tabs 2, 5, 10 mg  
Diazepam tabs 2, 5, 10 mg  
Diazepam tabs 2, 5, 10 mg  
Erythromycin ethylsuccinate susp. 200, 400 mg/5 ml  
Furosemide tabs 20, 40 mg  
Hydroflumethiazide tabs 50 mg  
Ibuprofen tabs 600 mg  
Indomethacin caps 50 mg  
Metoclopramide tabs 10 mg  
Metoclopramide tabs 10 mg  
Procainamide tabs slow-release 250, 500 mg  
Procainamide tabs slow-release 500 mg  
Propfanolol tabs 10, 20, 40 mg  
Sulfamethoxazole/trimethoprim tabs 400/80,  
800/160

Clay-Park  
NMC  
Zenith  
Cord  
Par  
Lemmon  
NPC  
DermProd/Owen  
P-D  
Chelsea  
Lederle  
Pharmafair  
Danbury  
Par  
Barr  
P-D  
Danbury  
Purepac  
Sidmak  
Danbury  
Duramed  
Sidmak

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

**Spirolactone 25/hydrochlorothiazide 25 mg tabs**  
**Thioridazine HCl tabs 150, 200 mg**  
**Thioradazine tabs, 10, 25, 50 mg**  
**Tolazamide tabs 100, 250, 500 mg**  
**Tolazamide tabs 100, 250, 500 mg**

**Barr**  
**Danbury**  
**Superpharm**  
**Danbury**  
**Chelsea**

The following products and their respective manufacturers were not adopted:

Trimethoprim tabs 100 mg Danbury

The following products were not adopted but are still **pending**:

Chlorothalidone tabs 25, 50 mg Sidmak  
 Ibuprofen tabs 200, 400, 600 mg Danbury  
 Procainamide tabs slow-release 250, 750 mg Danbury  
 Tolbutamide tabs 500 mg Purepac  
 Hydralazine/Hydrochlorothiazide caps 25/25, 50/50 Superpharm  
 Isosorbide dinitrate oral tabs 5, 10, 20 mg Superpharm  
 Indomethacin caps 25, 50 mg Superpharm  
 Spirolactone tabs 25mg/hydrochlorothiazide 25mg Superpharm

Chlorpheniramine maleate 8 mg/pseudoephedrine HCl 120 mg caps, slow-release

Indomethacin capsules, 25, 50 mg Graham  
 Procainamide HCl tabs, slow-release, 500 mg Duramed  
 Temazepam caps 15, 30 mg Copley  
 Dipyrindamole tabs 25, 50, 75 mg PharmBasic  
 Chlorothalidone tabs 25, 50 mg Duramed  
 Indomethacin caps 25 P-D  
 Spirolactone tabs 25 mg P-D  
 Spirolactone 25mg/hydrochlorothiazide 25mg tabs P-D

Diazepam tabs 2, 5, 10 mg Par

Sulfapyrazone tabs 100 mg & caps 200 mg Par

Methyldopa 250/hydrochlorothiazide 25 mg tabs Cord

Methyldopa 500/hydrochlorothiazide 50 mg tabs Cord

Methyldopa 500/hydrochlorothiazide 30 mg tabs Cord

Ibuprofen tabs 400, 600 mg Danbury

Ibuprofen tabs 400 Barr

Propoxyphene napsylate/APAP 50/325, 100/650 mg Barr

Quinidine sulfate tabs 200 mg Superpharm

Ergoloid mesylates oral tablet 1 mg Superpharm

Ergoloid mesylates SL tabs 0.5, 1.0 mg Superpharm

Diazepam tabs 2, 5, 10 mg Superpharm

Metoclopramide tabs 10 mg Chelsea

Disopyramide caps 100, 150 mg Chelsea

Carbamazepine tabs 200 mg PharmBasic

Betamethasone dipropionate lotion 0.05% NPC,

Quinidine sulfate tabs 200 mg Pharmaderm,

Methyldopa tabs 250, 500 mg Fougere,

Diazepam tabs 2, 5, 10 mg Savage

Disopyramide phosphate caps 100, 150 mg PFI

Flurazepam caps 15, 30 mg Cord

Nalidixic acid tabs 250, 500, 1000 mg Barr

Oxytriphylline tabs 100, 200 mg Barr

Phenylbutazone caps 100 mg & tabs 100 mg Barr

Propranolol tabs 10, 20, 40, 60, 80 mg Barr

Tolazamide tabs 100, 250, 500 mg Barr

Ibuprofen tabs 400 mg Ohm

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notice of Adoption appears at 18 N.J.R. 417(a).

(a)

**DRUG UTILIZATION REVIEW COUNCIL****Interchangeable Drug Products****Adopted Amendment: N.J.A.C. 8:71**

Proposed: July 15, 1985 at 17 N.J.R. 1733(a).

Adopted: March 11, 1986 by the Drug Utilization Review Council, James Perhach, Chairman.

Filed: April 7, 1986 as R.1986 d.151, with portions of the proposal not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 5, 1986.

Expiration Date: April 2, 1989.

**Summary of Public Comments and Agency Responses.**

**No comments received.**

The following products and their respective manufacturers were adopted:

<b>Tolazamide tablets 250, 500 mg</b>	<b>Pharm Basics</b>
<b>Dipyridamole tabs 25, 50, 75 mg</b>	<b>Danbury</b>
<b>Disopyramide phosphate caps 100, 150 mg</b>	<b>Zenith</b>

The following products were not adopted but are still **pending**:

Ethaverine Hcl tabs 100 mg	Sidmak
Isometheptene mucate 65mg, dichloralphenazone 100mg, acetaminophen 325mg caps	Central
Phenylephrine HCl ophth soln 2.5%	Pharmafair
Phenylephrine HCl ophth soln 10% (viscous)	Pharmafair
Phentermine HCL caps 30 mg	Duramed
Dipyridamole tabs 25, 50, 75 mg	Zenith
Thioridazine HCL tabs 10, 15, 25, 50 mg	Cord
Deserpidine/methyclothiazide tabs 0.5/5 mg	Zenith
Fluphenazine HCl tabs 5 mg	Zenith
Ibuprofen tabs 300, 600 mg	Zenith
Meprobamate 200 mg with aspirin 325 mg tabs	Zenith
Methyldopa 250 mg/HCTZ 15 mg and 250 mg/25 mg tabs	Mylan
Methyldopa tabs 250, 500 mg	Zenith
Propranolol HCl tabs 10, 20, 40, 60, 80, 90 mg	Zenith
Propranolol HCl tabs 40 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption appear at 17 N.J.R. 2557(a), 17 N.J.R. 2796(b), 18 N.J.R. 183(a), 18 N.J.R. 418(a).

**HUMAN SERVICES**

(b)

**DIVISION OF PUBLIC WELFARE****Medicaid Only Manual****Resource Eligibility****Adopted New Rule: N.J.A.C. 10:94-4.1**

Proposed: October 21, 1985 at 17 N.J.R. 2524(a).

Adopted: April 9, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: April 14, 1986 as R.1986 d.165, without change.

Authority: N.J.S.A. 44:7-87.

Effective Date: May 5, 1986.

Operative Date: June 2, 1986.

Expiration Date: January 6, 1991.

**Summary of Public Comments and Agency Responses.**

COMMENT: The Department received one letter of comment on the proposed rule from the New Jersey Association of Health Care Facilities. The Association objected to the proposal for two reasons. First, concern was expressed that requiring persons to be resource eligible as of the first moment of the first day of each month in order to establish eligibility for that month would accelerate the "spend down" of resources of persons residing in nursing homes. Second, it was observed that some nursing home patients whose countable resources are only slightly in excess of the allowable limits on the first of the month would be ineligible for the

entire month, with the consequence that their resources would not be sufficient to meet the cost of care in the facility for that month. This is foreseen to be undue fiscal hardship on the facilities which provide care in circumstances in which there are no available means of compensation. It is maintained that the enactment of ACS-1829, which precludes private pay contracts for Medicaid eligibles, will further intensify this problem.

**RESPONSE:** The Department, in the Medicaid Only program for the aged, blind, and disabled, is required by Federal law to apply the same rules and policies used to determine eligibility for the Supplemental Security Income program as administered by the Social Security Administration. The policy of determining resource eligibility as of the first moment of the first day of the month is one such policy. The Department has no option as to the implementation of this rule. Concerning the observation of anticipated additional fiscal hardship on nursing home facilities in light of this rule as it relates to the enactment of ACS-1829, the prohibition on private pay contracts applies only to persons who are Medicaid eligible. Persons who are resource ineligible at the first moment of the month are ineligible for Medicaid and not subject to the provisions of the new law.

**Full text** of the adoption follows.

10:94-4.1 Financial eligibility standards; resources

(a)-(d) (No change.)

(e) Resource eligibility: Resource eligibility is determined as of the first moment of the first day of each month. If an individual or couple is resource ineligible as of the first moment of the first day of the month, subsequent changes within that month in the amount of countable resources will not affect the original determination of ineligibility. If resource eligibility is established as of the first moment of the first day of the month, resource eligibility is established for the entire month regardless of any increase in the amount of countable resources.

1. This policy applies equally to individuals and couples in the month of application. Regardless of the date of application, resource eligibility is determined as of the first moment of the first day of that month.

2. If, prior to the first moment of the first day of the month, the applicant or recipient has drawn a check (or equivalent instrument) on a checking or similar account, the amount of such check shall reduce the value of the account. The value of such accounts shall not be reduced by any unpaid obligations for which funds have not already been committed by the drafting of a check.

i. When checks have been drawn on an account, the CWA shall review the appropriate account registers or check stubs to ascertain the actual balance as of the first moment of the first day of the month. Full documentation of such circumstances is required.

## LABOR/HEALTH

### (a)

#### DIVISION OF WORKPLACE STANDARDS OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

#### Asbestos Licenses and Permits

**Joint Adoption: N.J.A.C. 12:120 and 8:60-1.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 5.2, 5.4, 5.5, 5.6, 5.7, 6.1, 6.3, 6.11, and 7.1**

Proposed: January 21, 1986 at 18 N.J.R. 156(a).

Adopted: April 7, 1986 by George M. Krause, Acting Commissioner, Department of Labor, and John T. Rutledge, Acting Commissioner, Department of Health.

Filed: April 7, 1986 as R.1986 d.149, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:5A-39.

Effective Date: May 5, 1986.

Expiration Date: May 3, 1990.

#### Summary of Public Comments and Agency Responses:

The Department of Labor and the Department of Health held a comment period until February 20, 1986. The Department of Labor also solicited comments from a Subcommittee of the New Jersey State Indus-

trial Safety Committee. No negative comments were received from either the Proposal Notice in the New Jersey Register or the Committee. The Department of Labor and the Department of Health wish to make additional changes upon adoption not previously proposed.

N.J.A.C. 12:120 and 8:60-4.2(e). It is more appropriate to fix the six month period of time during which the employer cannot resubmit an application for a license from the date of the denial of the application rather than the date of his application. The review process for a license is complex and the time that elapses from the date of application to the date of a denial could exceed or render meaningless the six month requirement. Further, the appeal process under a denial could also exceed or render meaningless the six month requirement.

N.J.A.C. 12:120 and 8:60-4.3(a)4i and ii. The applicant for a license must be able to show ownership of respiratory protective equipment and other equipment. By eliminating the words "or availability" the employer cannot say he has leased equipment. The Department of Labor has found that the copies of the lease agreements submitted by the applicants have dubious authenticity. The purchase and ownership of the equipment does not present an economic burden to the employer.

N.J.A.C. 12:120 and 8:60-4.5(d). This requirement was amended to make the cost of the duplicate license equivalent to the other proposed fee changes.

N.J.A.C. 12:120 and 8:60-4.6(a)1, 2, and 3. The references to the Federal OSHA standards are removed because their content is outside the scope of these rules. This rule is establishing the quality of the work of the employer and the employee.

N.J.A.C. 12:120 and 8:60-4.7(d). The expiration date of the license had to be revised to recognize the new biennial renewal of the license.

N.J.A.C. 12:120 and 8:60-4.8(e). This is an editorial error, since the section is addressing "licenses" and not "permits".

N.J.A.C. 12:120 and 8:60-5.4(b)5. The date of November 1, 1985 has no meaning after the first year of operation of this rule. An experienced asbestos worker can apply for a permit at anytime.

N.J.A.C. 12:120 and 8:60-5.5(b). This is an editorial change and more clearly states that there are two Commissioners of two State Agencies involved.

N.J.A.C. 12:120 and 8:60-5.6. The expiration date of the permit had to be revised to recognize the new biennial renewal of the permit.

N.J.A.C. 12:120 and 8:60-1.1(a)1, 2, and 3. Since these OSHA standards are not now referenced in the rules, there is no need to state their availability.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

12:120-1.1 and 8:60-1.1 Title and citation

(a) This chapter, as a Department of Labor rule, shall be known and may be cited as N.J.A.C. 12:120, Asbestos Licenses and Permits.

(b) This chapter, as a Department of Health rule, shall be known as and may be cited as N.J.A.C. 8:60, Asbestos Licenses and Permits.

(c) These rules are a joint adoption of the Department of Labor and the Department of Health.

12:120-4.2 and 8:60-4.2 Application for License

(a)-(d) (No change.)

(e) Applicants denied licenses shall not be permitted to resubmit an application for six months from the date of the \*[original application.]\* **\*denial of the application.\***

(f)-(i) (No change.)

(j) The application fee for a biennial license shall be \$200.00

(k)-(m) (No change.)

12:120-4.3 and 8:60-4.3 Eligibility for license

(a) The applicant to be eligible for a license as an employer shall:

1.-3. (No change.)

4. Disclose and attach all information in the application form supplied by the Department of Labor including but not limited to i. through ix. below and such information shall demonstrate reliability and responsibility:

i. (No change.)

ii. A listing of respiratory protective equipment including serial numbers and proof of purchase \*[or availability]\*;

iii. A list of all other equipment and its location specific to asbestos abatement including serial numbers and proof of purchase \*[or availability]\*;

iv.-ix. (No change.)

5. (No change.)



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## 2:120-4.4 and 8:60-4.4 Granting of license

- (a) (No change.)
- (b) The license for an employer shall:
  - 1.-4. (No change.)
  - 5. Be valid for two years from date of issuance: and
  - 6. (No change.)
- (c) (No change.)

## 2:120-4.5 and 8:60-4.5 Identification of licensee

- (a)-(c) (No change.)
- (d) The employer shall have a duplicate of the original license available at more than one job site. This duplicate of the original license shall be available at a cost of \*[\$5.00]\* **\*\$10.00.\***
- (e) (No change.)

## 2:120-4.6 and 8:60-4.6 Quality of work

- (a) Every licensee shall assure that work performed conforms to the following \*[standards]\*:
  - 1. \*[Section 1910.1001 Asbestos of 29 CFR Part 1910;
  - 2. Section 19.20 Access to Employee Exposure and Medical Records of 29 CFR 1910;
  - 3. Subpart E, Personal Protective Equipment of 29 CFR 1926, Construction Industry Standards;]\* **\*Accepted engineering practice. "Accepted engineering practice" means that which conforms to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.\***

\*[4.]\*2.\* Subparts A and B of 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants;

\*[5.]\*3.\* N.J.A.C. 7:26, Non-Hazardous Waste Regulations; and

\*[6.]\*4.\* N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities.

- (b)-(c) (No change.)

## 2:120-4.7 and 8:60-4.7 Suspension or revocation of license

- (a)-(c) (No change.)
- (d) All licenses shall expire unless renewed on or before the anniversary month of the \*[original]\* **\*one year or biennial\*** license.
- (e)-(f) (No change.)

## 2:120-4.8 and 8:60-4.8 Renewal of license

- (a) When applying for the biennial renewal of a license, it shall be necessary to submit a fee of \$200.00.
- (b)-(d) (No change.)
- (e) A duplicate, altered, defaced, mutilated or lost \*[permit]\* **\*license\*** shall be replaced at a cost of \$10.00 only after review by the Commissioner. Photostats, photographs or reproduction of a license shall have no status, and shall not be recognized.

## 2:120-5.2 and 8:60-5.2 Application for permit

- (a)-(g) (No change.)
- (h) The applicable fee for a biennial permit shall be \$20.00.
- (i) (No change.)
- (j) The applicant shall provide two recent, recognizable, identical, passport photographs with the applicant's face being not less than three-quarters of an inch wide. The photograph shall be cropped to not more than three inches by three inches. One photograph shall be attached to the space provided on the application. The second photograph shall be laminated on the permit, if a permit is issued by the Department of Labor.
- (k) The fee for a permit shall be a check or money order made payable to the order of the Commissioner of Labor.
- (l) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the fee.

## 2:120-5.4 and 8:60-5.4 Granting a permit

- (a) (No change.)
- (b) A permit shall be granted to an experienced asbestos worker without examination provided the asbestos employee:
  - 1.-3. (No change.)
  - 4. Submits the application in accordance with N.J.A.C. 12:120-5.2 and 8:60-5.2 **\*[and]\* \***
  - \*[5. Submits the application on or before November 1, 1985.]\***
- (c) (No change.)
- (d) The permit shall be valid for two years from the date of issuance.

## 2:120-5.5 and 8:60-5.5 Identification of permittee

- (a) (No change.)
- (b) The permit shall be available for examination by the **\*[Commissioners of Labor and Health,]\* \*Commissioner of Labor or the Commissioner of Health\*** as the case may be, the contracting agency, owner and employee's representative.

## 12:120-5.6 and 8:60-5.6 Suspension or revocation of permit

- (a)-(c) (No change.)
- (d) All permits shall expire unless renewed on or before the anniversary month of the \*[original]\* **\*one year or biennial\*** permit.
- (e)-(f) (No change.)

## 12:120-5.7 and 8:60-5.7 Renewal of permit

- (a) When applying for the biennial renewal of a permit, the permittee shall:
  - 1. Enclose the fee of \$20.00; and
  - 2. (No change.)
- (b) (No change in text.)
- (c) An application for a renewal of an expired permit shall be approved provided:
  - 1. A fee of \$20.00 is enclosed for two years;
  - 2.-3. (No change.)
  - (d) (No change.)

(e) An altered, defaced, mutilated or lost permit shall be replaced at a cost of \$20.00, only after review by the commissioner. Photostats, photographs or reproductions of a permit shall have no status, and shall not be recognized.

## 12:120-6.1 and 8:60-6.1 Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain certification from the Commissioner of Health for training courses on asbestos abatement as provided for in the Act.

## 12:120-6.3 and 8:60-6.3 Application for certification of training courses

- (a) An applicant for certification of an asbestos abatement training course shall submit the following information to the Department of Health:

- 1.-7. (No change.)
- 8. A list of the types, brand names and quantities of respirators to be used to demonstrate fit test or flow test;
- 9.-13. (No change.)

## 12:120-6.11 and 8:60-6.11 Hearing for applicants when certification has been denied, revoked or suspended

- (a)-(c) (No change in text.)

## 12:120-7.1 and 8:60-7.1 Documents referred to by reference

- (a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:
  - \*[1. 29 CFR Part 1910, General Industry Standards;
  - 2. 29 CFR Part 1926, Construction Industry Standards;]\*
  - \*[3.]\*1.\* 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants;
  - \*[4.]\*2.\* N.J.A.C. 1:1, Uniform Administrative Rules of Practice;
  - \*[5.]\*3.\* N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code;
  - \*[6.]\*4.\* N.J.A.C. 7:26, Non-Hazardous Waste Regulations;
  - \*[7.]\*5.\* N.J.S.A. 34:5A-32 et seq., Asbestos Control and Licensing Act; and
  - \*[8.]\*6.\* N.J.S.A. 52:14B-1 et seq., Administrative Procedures Act.

**LABOR****(a)****DIVISION OF WORKERS' COMPENSATION****Practice and Procedure Before the Division of Workers' Compensation****Adopted Repeal and New Rules: N.J.A.C. 12:235**

Proposed: September 3, 1985 at 17 N.J.R. 2081(a).

Adopted: March 31, 1986 by George Krause, Acting Commissioner, Department of Labor.

Filed: April 2, 1986 as R.1986 d.144, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1A-3(e), 34:1A-12(b) and (c), and 34:15-64.

Effective Date: May 5, 1986

Expiration Date: May 5, 1991.

**Summary of Public Comments and Agency Responses:**

COMMENT: Representatives of the Workers' Compensation Bench, the Bar, and industry expressed concern that the rules should include a general construction provision to clarify the general proposition of law

that under appropriate circumstances any specific rule may be relaxed to avoid injustice.

RESPONSE: The Department agrees with the comment and has clarified the question by adding a new rule concerning the standard "relaxation" provision at 12:235-1.5.

COMMENT: Members of the Workers' Compensation bench suggested clarification of the provisions concerning avoiding potential conflicts of interest in handling workers' compensation cases and disqualification.

RESPONSE: Language has been added in 12:235-3.5(a) and (b) to define more clearly the term "relative" to provide a specific guideline for hearing officials. Language has also been added to make explicit the generally accepted proposition that judges should disqualify themselves from any matter in which the judge cannot conduct a fair hearing.

COMMENT: Members of the Workers' Compensation bench inquired as to prohibition concerning political activities under the proposed rules.

RESPONSE: Clarifying language was added to 12:235-3.7(b) and (c) to make clear that judges of compensation may not attend political functions.

COMMENT: The Attorney General commented that the provision concerning removal proceedings for judges should explicitly state that the proceedings must be prosecuted by the Attorney General unless the Attorney General consents to the Commissioner's designation of another attorney.

RESPONSE: The Department agrees with the comment and has modified the language of 12:235-3.15 to make it clear that the Attorney General shall prosecute such proceedings unless the Commissioner, with the express consent of the Attorney General, designates another attorney.

COMMENT: Members of the Workers' Compensation bench questioned the types of documentary proof required to establish a prima facie case on a motion for temporary and medical benefits.

RESPONSE: Clarifying language has been added to 12:235-5.2 to define such documents to include affidavits and certifications predicated on personal knowledge of appropriate persons.

COMMENT: Members of the Workers' Compensation bench suggested that the rules contain a provision making explicit the existing practice that all medical reports be exchanged by the parties prior to discussion of the merits of the pending claim.

RESPONSE: Language has been added to 12:235-5.9 to make explicit the existing requirement of full exchange of medical reports by the parties in a timely fashion.

COMMENT: Representatives of the Workers' Compensation bench, the bar, and industry expressed concerns about the proposed procedure for the handling of Second Injury Fund cases, in particular with respect to the type of order to be entered at the conclusion of the first hearing and with respect to the employer's right to reimbursement at the conclusion of all proceedings in appropriate cases.

RESPONSE: To clarify the rule additional language has been inserted in 12:235-7.3(a) to make clear that the order entered at the conclusion of the first hearing is an interlocutory order—the term "interim order" is utilized. Language has also been added in this provision to make clear that an employer is entitled to reimbursement from the Fund if the ultimate assessment of employer liability is less than the employer actually paid per the terms of the "interim order."

Full text of the adopted new rules follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

## SUBCHAPTER 1. GENERAL PROVISIONS

### 12:235-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:235, Workers' Compensation Procedures.

### 12:235-1.2 Authority

These rules are promulgated pursuant to the authority of Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

### 12:235-1.3 Purpose

The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

### 12:235-1.4 Scope

This chapter shall apply to all persons subject to Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

### **\*12:235-1.5 Construction**

The rules contained in this chapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the

elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with if strict adherence would cause an injustice.\*

### **\*[12:235-1.5]\* \*12:235-1.6\* Workers' compensation benefit rates**

(a) In accordance with the provision of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being **\*[\$269.00]\* \*\$284.00\*** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year of **\*[1985]\* \*1986\***.

### **\*[12:235-1.6]\* \*12:235-1.7\* Documents referred to by reference**

The availability of documents referred to in this chapter is explained in N.J.A.C. 12:235-11.

### **\*[12:235-1.7]\* \*12:235-1.8\* Validity**

Should any section, paragraph, sentence or word of this chapter be declared invalid, it shall not affect the remaining portions of this chapter.

## SUBCHAPTER 2. DEFINITIONS

### 12:235-2.1 Definitions

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

"Act" means Workers' Compensation Law, N.J.S.A. 34:15-1 et seq., 43:21-30 and 43:21-41.

"Division" means the Division of Workers' Compensation, CN 381, Trenton, New Jersey 08625-0381.

"Commissioner" means Commissioner of Labor.

"Director" means director of the division.

"N.J.A.C." means New Jersey Administrative Code.

"N.J.S.A." means New Jersey Statutes Annotated.

"Office of Safety Compliance" means the Office of Safety Compliance, in the Division of Workplace Standards, New Jersey Department of Labor, CN 386, Trenton, New Jersey 08625-0386.

"Respondent," "employer" or "insurance carrier" are used interchangeably.

"Shall" means a mandatory requirement.

## SUBCHAPTER 3. CONDUCT OF JUDGES OF COMPENSATION

### 12:235-3.1 Promptness

(a) A judge of compensation shall be prompt in the performance of all his duties, including:

1. Convening hearings at the time scheduled by the director;
2. Completing final disposition of cases; and
3. Completing and forwarding to the director at regular intervals a performance record in a manner established by the director.

### 12:235-3.2 Courtesy and civility

(a) A judge of compensation shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) The judge of compensation shall require, so far as his power extends, that those individuals assisting him in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a judge of compensation shall be free from impropriety and the appearance of impropriety. His personal demeanor, not only on the bench and in the performance of his judicial duties, but also in his everyday life, shall be beyond reproach. He shall be temperate, attentive, patient, and impartial.

### 12:235-3.3 Conduct of attorneys

(a) A judge of compensation shall require professional conduct by attorneys.

(b) A judge of compensation shall report all instances of unethical or illegal practices by attorneys to the supervising judge and the director.

### 12:235-3.4 Conduct of witnesses and others having business with the court

A judge of compensation shall have the duty to report all instances of unethical or illegal practices by any law, professional or expert witness, interpreter, court reporter, or party before him to the supervising judge and the director.

### 12:235-3.5 Kinship or influence\*: **disqualification\***

(a) A judge of compensation shall not act upon or hear a controversy, or a portion thereof where a relative **\*of himself or his spouse within the third degree of relationship to either\*** is a party before him.

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(b) If a relative **\*of himself or his spouse within the third degree of relationship to either,\*** former partner, business associate, or personal friend is scheduled to appear before a judge of compensation, the judge shall conditionally disqualify himself to hear the matter and promptly notify his supervising judge and the director for rescheduling of the matter.

**\*(c) A judge of compensation shall disqualify himself from all other matters in which he is unable to conduct a fair and unbiased hearing.\***

#### 2:235-3.6 Conflict of interest

(a) A judge of compensation shall not:

1. Engage in any activity which requires the performance of duties inconsistent with his position of authority; or
2. Incur any obligations, pecuniary or otherwise, which would in any way interfere or appear to interfere with his duty to effectuate the proper administration of his official functions.

#### 2:235-3.7 Partisan politics

(a) A judge of compensation shall be entitled to entertain his personal views of political questions, and, while he is not required to surrender his rights or opinions as a citizen, it is inevitable that suspicions of being influenced by political bias will attach to an individual who becomes an active promoter of the interests of a political party.

(b) A judge of compensation shall not:

1. Hold any elective office;
2. Be a candidate for any elective office;
3. Make political speeches on behalf of any candidate seeking political office;
4. Solicit contributions for party funds;
5. Make public endorsements of candidates for political office;
6. Participate in party conventions of any level **\*or attend political functions\*;** or
7. Accept or retain any position on a party committee, or subdivision.

#### 2:235-3.8 Self interest

A judge of compensation shall abstain from performing or taking part in an official act by which his personal interests would be affected.

#### 2:235-3.9 Gifts and favors

A judge of compensation shall not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses regularly appearing before the division; or
2. Insurance carriers, self-insureds, or their agents, servants, or employees.

#### 2:235-3.10 Medical reports

Any judge of compensation who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or representative of an insurance carrier or self-insured shall notify the director.

#### 2:235-3.11 Physical capacity to preside

(a) A judge of compensation shall necessarily be in good health to execute the rigorous duties of his office.

(b) When a judge of compensation is unable to carry out the duties of his office for an indefinite period because of a severe, incapacitating disease; or a severe, incapacitating injury; then the commissioner may grant an indefinite leave, with or without pay, until the individual is capable of resuming his duties.

#### 2:235-3.12 Mental competency to preside

(a) A judge of compensation shall be of sound mind in order to execute the duties of his office.

(b) In the event that a complaint made in an affidavit is filed with the division alleging mental incompetency to perform the duties of the office, the director upon finding good cause, shall have the power to order the judge in question to submit to an examination.

(c) The examination shall be by two psychiatrists selected by the commissioner.

(d) The psychiatric examination shall be to determine whether or not the judge is afflicted with any severe neuroses or mental illness that would significantly impair that individual from performing the duties of his office.

#### 2:235-3.13 Removal from office

(a) A judge of compensation shall be removed from office if it is found beyond a reasonable doubt that:

1. He has violated any provision of this subchapter;
2. He has been convicted for the commission of a crime **\*of the second degree or higher\*;** or

3. He has been found to be incompetent to execute the duties of his office.

#### 12:235-3.14 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the commissioner by the director.

#### 12:235-3.15 Prosecution of removal proceeding

**\*[An attorney designated by the commissioner shall prosecute the complaint.]\* **\*The Attorney General or his representative shall prosecute the proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.\*****

#### 12:235-3.16 Suspension pending determination

(a) The commissioner may suspend a judge of compensation from office, with or without pay upon receipt of a misconduct complaint, pending the determination of the proceeding.

(b) If the judge is reinstated to the position, and had been denied salary during suspension, then full restitution for the period of the suspension shall be made.

#### 12:235-3.17 Right to counsel, production of witnesses and evidence

(a) The accused in a hearing for removal shall be given a reasonable time to prepare his defense and he shall be entitled to counsel retained and paid for by the accused.

(b) The prosecuting attorney and the accused shall have the right to compulsory process to compel the attendance of witnesses and the production of evidence deemed necessary for the hearing.

#### 12:235-3.18 Formal hearing for suspension or removal

(a) A formal hearing shall be conducted before the commissioner or a representative designated by the commissioner.

(b) The hearing shall commence within 30 days of the filing of such a complaint and shall be tried on a continuous basis to a conclusion.

### SUBCHAPTER 4. SUPERVISION OF JUDGES OF COMPENSATION

#### 12:235-4.1 Assignment to supervisory positions

(a) It shall be within the power of the director to ascertain the need to assign judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts he may designate.

(b) The director in his discretion may:

1. Determine the number of judges needed to provide the necessary supervision; and
2. Appoint judges of compensation to supervisory positions in which the judges shall serve at the pleasure of the director.

#### 12:235-4.2 Personnel functions

(a) The supervising judge of a particular district shall be directly responsible for the general conduct and performance of each judge of compensation in his district. The supervising judge shall be prepared to give a periodic performance evaluation of each judge at the request of the director.

(b) The supervising judge of a particular district shall be responsible for the orderly and prompt flow of work in his district.

(c) Subject to the approval of the director, the supervising judge shall determine the composition of the daily calendar and shall designate the judge of compensation to be responsible for each calendar list. The supervising judge shall be responsible for all daily changes of scheduling for all hearing personnel within his district and be available to discuss particular scheduling problems with attorneys.

(d) Each supervising judge shall furnish statistical reports as required by the director.

### SUBCHAPTER 5. FORMAL CLAIMS

#### 12:235-5.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The formal hearing process shall be initiated by the filing of a claim petition in duplicate with the central office of the division within the time prescribed by law on a form prescribed by the division.

2. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition, there shall be a reduction of 15 percent of any fee that may be awarded, except as provided in N.J.A.C. 12:235-5.2(c).

3. If the petition is returned to the attorney more than once for additional information, there shall be a reduction of 25 percent of any fee that may be awarded.

(b) Answers to a claim petition shall be subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the division. It shall be filed with the assignment clerk at the office to which the claim is assigned within 30 days of the date of service of the petition. A copy of the answer shall be served on the



petitioner's attorney simultaneously. The filing and service of the answer may be made by first-class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his certification of its contents without the necessity of an affidavit.

2. If the answer is not filed as specified in (b)1 above, the judge of compensation to whom the case is assigned may, on motion, either suppress the defenses and permit petitioner to prove his case, or permit the filing of the answer on such terms as may be fixed in the discretion of the judge of compensation.

3. If the respondent knowingly files an incomplete or inaccurate answer or unnecessarily delays filing an answer, such circumstances shall be considered in the apportionment of any counsel fee awarded.

#### 12:235-5.2 Motions for temporary disability or medical benefits

(a) In all motions by the petitioner for temporary disability or medical benefits, the original notice of motion shall be filed with the district office to which the case is assigned, and a copy of the notice of motion and claim petition served on all other parties.

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the division and shall contain:

1. A detailed account of compensable lost time claimed by the petitioner, indicating any period paid by the respondent;

2. **[A]\* \*Affidavits or\* certification\*s made in personal knowledge\*** by petitioner, **[or]\* \*his\* attorney \*or the treating physicians\*** describing the medical diagnosis and the specific type of treatment for which payment is sought, and if available an itemized bill and report of the treating physicians, or institutions or both for whose services past, present and future, petitioner is seeking payment and such other evidence as shall relate to petitioner's claim for temporary disability or medical treatment.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary or medical benefits, he shall be assessed a penalty of \$50.00 which shall be deducted from any fee he may be awarded for his services.

(d) When the division has received a notice of motion for temporary disability or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a judge of compensation peremptorily within 30 days.

(e) **[Certification]\* \*Affidavits, certifications\*** and medical reports in support of the motion shall constitute a prima facie case, and unless rebutted by reports or testimony or **[a certificate]\* \*affidavits or certifications\*** by the respondent or his attorney setting forth the factual or legal basis of the denial, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought.

(f) Examination, if required by respondent, shall be completed within 30 days of receipt of the motion and shall not delay the start of the hearing of the motion.

(g) On conclusion of the hearing on the motion for temporary or medical benefits, the judge of compensation shall, within 15 days, render his final decision on the motion and notify the respective counsel of his decision via first class mail. In computing the 15 days time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the judge, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

#### 12:235-5.3 Other motions

(a) All other motions shall be in the form of a notice of motion, the original of which shall be filed with the district office to which the case is assigned with copies served on all parties. Every notice of motion shall include the factual and legal basis for the relief requested and a proposed form of order.

(b) The form of order shall have appended to the foot of the order, a check list, to be completed by the judge of compensation, indicating whether, and by what party, answering or reply papers have been filed.

(c) If the motion or response relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence, to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

(d) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 shall be listed for hearing. All other motions shall be disposed of on the papers, unless a judge of compensation directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the judge of compensation shall render his decision and enter an appropriate order.

#### 12:235-5.4 Third party joinder by respondent

(a) A respondent who alleges that another employer or insurance carrier may be liable for all or part of the benefits claimed by the petitioner may move to join such employer or insurance carrier as a responding party to the original claim petition by notice of motion which shall be supported by a definitive statement setting forth the factual and legal basis for the relief sought.

(b) A copy of the motion and supporting statement with a copy of the original claim petition shall be served upon the party sought to be joined and all other parties.

(c) Such motion shall be granted only where the moving party has satisfied the judge of compensation that there exists a substantial likelihood that the party to be joined may be liable for compensation benefits.

(d) If the order sought is granted, the order shall be served upon the party joined forthwith who shall file an answer within 30 days of the date of service of the order.

(e) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the judge of compensation may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(f) If a respondent knowingly files an incomplete inaccurate or frivolous motion for third party joinder, such circumstances shall be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed \$100.00 to opposing counsel.

#### 12:235-5.5 Conditions allowable for discovery

(a) Discovery, except a deposition for preservation of testimony, may be allowed in those contested cases where there are issues in dispute in addition to the nature and extent of petitioner's temporary or permanent disability.

(b) All discovery shall be concluded not less than 10 days prior to the first listed date for plenary trial.

#### 12:235-5.6 Interrogatories

(a) Interrogatories shall be allowed without motion in fatal cases.

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where the medical information is not available to the worker. The employer shall be required to furnish or make available for inspection and copying all records of medical treatment, examinations and diagnostic studies in its possession. The respondent shall have the same right when the worker is treated by his or her own physician.

(c) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish his adversary with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(d) Interrogatories shall be allowed without motion in occupational disease cases on standard form interrogatories as set forth in N.J.A.C. 12:235-11.2.

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A judge of compensation upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) Interrogatories may be allowed in other cases upon motion in extraordinary circumstances.

#### 12:235-5.7 Testimony of injured or ill employee by depositions

(a) An employee seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a judge of compensation upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier. A deposition for this purpose may also be taken by consent of all the parties.

(d) A report from a physician shall be attached to the application to take depositions stating the medical basis upon which the deposition is sought.

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## 12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or his attorney shall prior to the first hearing date, furnish to all other parties a written certification as to the existence or non-existence of any condition pre-existing the last claimed compensable episode.

(b) The certification shall include the names and addresses of physicians and institutions furnishing treatment or examinations for any such pre-existing conditions.

(c) The petitioner may in lieu of furnishing actual records or reports, furnish executed authorizations for the records and reports of each such physician and institution.

(d) Copies of all records and reports so obtained by respondent shall be furnished to the petitioner or his attorney within 10 days of receipt.

## 12:235-5.9 Pre-trial conference

(a) In any formal proceeding, the division shall where practicable, direct the parties or their attorneys to appear at a specific time and place for a pre-trial conference where the following must be accomplished:

1. Disposition by judgment, order approving settlement or discontinuance; dismissal, order approving settlement and dismissal under N.J.S.A. 34:15-20.

2. **\*All medical reports shall be exchanged; a decision before a hearing official shall be held to limit issues; and a\*[A]\* pre-trial memorandum on a form prescribed by the division shall be executed or;**

3. Adjournment upon good cause shown.

(b) Any case set down for pre-trial on more than one occasion, if not ready because of failure of respondent to comply with this section, shall be placed on the trial list, and in the event an award is made, such failure shall be considered in the apportionment of the counsel fee. This provision shall not apply in any case in which the failure to have medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked, "not moved."

(c) Any case listed pre-emptorily, in which no appearance is made on behalf of petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the judge of compensation may for good cause and on his own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the official presiding for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit himself for a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the official presiding.

## 12:235-5.10 Conduct of formal hearings

(a) Attorneys representing both petitioners and respondents shall provide sufficient personnel to handle all lists expeditiously.

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing. No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity.

(c) Hearings shall be scheduled by the director or his designated representative.

(d) The judge of compensation shall, at the commencement of the day, call the list of cases in open court. No adjournments shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) Trials shall continue, without interruption or adjournment, except where the judge of compensation, upon his own motion, or upon application of either party, shall for good cause continue the hearing to an adjourned date. All formal hearings or applications shall be conducted in open court, except when the supervising judge of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a full stenographic record shall be made.

1. Bifurcation of any trial may be permitted by the judge of compensation. The order of proof shall be determined by the judge of compensation to whom the case is assigned.

(f) All formal hearings, including motions where a record is required, shall be recorded stenographically by a certified shorthand reporter subject to such limitation as provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter may be assessed at the discretion of the judge of compensation. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

(g) When two or more formal proceedings, involving a common question of law or fact, arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures to causes of occupational disease, are pending in the division, the judge of compensation or the director may, on motion, or on his own initiative, order a joint hearing of any or all matters in issue in the proceedings. He may order all such proceedings consolidated, and he may make such orders concerning proceedings as may tend to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

(h) Upon the commencement of a formal hearing, counsel for the parties may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearings.

(i) Counsel may make both closing statements or file trial briefs. Trial briefs, if required or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or directed.

(j) Prior to the testimony of an expert witness, the producing party shall provide the judge of compensation and opposing counsel a written curriculum vitae, of the witness.

(k) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the judge of compensation in his discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the judge of compensation, opposing counsel, the witness and the stenographer, and may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

(l) When a medical expert is on vacation or extended absence for more than 30 days during a period other than when the division is closed for the trial of former cases, it shall be the duty of the party for whom such medical expert witness is to appear to arrange for the examination of the petitioner by another medical expert and the appearance of such medical expert at the trial of the case.

1. The absence of the original examining physician shall not constitute a good and valid reason for adjournment.

(m) All exhibits shall be marked with an identifying number, the date of submission and initials of the stenographer. Exhibits other than medical reports may be returned to respective counsel at the close of the hearing for retention during passage of time for appeal.

1. All medical reports submitted into evidence are to be forwarded to the division for microfilming and storage. All other exhibits not claimed by respective counsel within thirty days following the expiration of the appeal period shall be destroyed.

(n) When a deposition has been taken to preserve the testimony of an injured or ill petitioner the introduction into evidence of such deposition shall be limited to those cases where the deponent cannot appear because of medical inability to appear or death or where all parties consent to the introduction of the deposition into evidence.

(o) Judges of compensation may refer petitioner to the Division of Vocational Rehabilitation when warranted.

(p) Prior to testifying, witness shall be administered the oath by the judge of compensation or by a certified shorthand reporter qualified to administer oaths. Because of religious belief, a witness may affirm in place of an oath.

(q) Forms of subpoena, bearing the seal of the department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the judge of compensation assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

(r) All reserved decisions shall be rendered by the judge of compensation within 15 days from completion of the last day of hearing, or within 15 days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the director.

(s) The judge of compensation shall notify all parties by letter of his decision, detailing its terms and the name of the reporter and the certified shorthand reporting firm to whom it has been dictated.

## SUBCHAPTER 6. INFORMAL HEARINGS

### 12:235-6.1 Purpose of informal hearing

(a) The informal hearing process is a service provided by the division to effectuate the amicable adjustment of controversies between injured or disabled workers and their employers involving their respective rights under the Act.

(b) The informal hearing procedure is not expressly contained within the provisions of the Act.

(c) The filing of an application for an informal hearing will not toll the time limitation periods for the filing of a formal claim petition or a dependency claim petition as provided by the Act.

### 12:235-6.2 Filing of an application of an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the division.

(b) The filing for informal hearing may be made by any party of interest including the injured or disabled worker, his attorney, the employer, the employer's representative or insurance carrier, or the division.

(c) The application shall be filed within the time periods prescribed for the filing of a formal claim petition.

### 12:235-6.3 Contents of the application

(a) The application for an informal hearing shall contain:

1. The worker's name, address, age, and social security number;
2. The employer's name and address;
3. The name of the employer's insurance carrier, if any;
4. The date of the accident;
5. A brief description of how the accident occurred;
6. A brief description of the injury.

### 12:235-6.4 Scheduling of informal hearings

(a) Upon receipt of the completed application the division shall schedule the matter as soon as practicable.

(b) The division shall give written notice of the time, place and name of the assigned judge of compensation to all parties involved in the controversy.

### 12:235-6.5 Attendance at hearing

The worker's attorney, employer, insurance carrier, or self-insured shall provide sufficient personnel to insure prompt attendance at the scheduled time and place of the hearing to expeditiously handle all listed cases.

### 12:235-6.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the judge of compensation at the time of the hearing.

### 12:235-6.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the director for distribution to all judges of compensation a list of each individual who will represent them at informal hearings.

(b) Each employer, carrier, or self-insured shall indicate that such individuals shall have the authority to represent and agree to settle on behalf of the respondent at informal proceedings.

### 12:235-6.8 Representation of claimant

(a) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney for a worker in any informal hearing.

(b) Deviation from (a) above shall only be permitted by consent of the director.

### 12:235-6.9 Solicitation of compensation claims

No attorney nor any other person at the instance of an attorney shall solicit or cause to be solicited any compensation, **\*claim,\*** nor shall he pay any referral fee to anyone not an attorney.

### 12:235-6.10 Appearance by persons convicted of crime

No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity at an informal hearing.

### 12:235-6.11 Procedure where employer has no insurance

Where it is brought to the attention of the judge of compensation that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the director for appropriate action.

### 12:235-6.12 Allowance of attorney fees

(a) A judge of compensation conducting informal hearings may allow counsel a fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) The fee in (a) above shall be payable by the worker.

### 12:235-6.13 Commencement of informal hearings

(a) Hearings shall be conducted by a judge of compensation designated by the director.

(b) Hearings shall commence promptly at the time and place designated in the notice of informal hearing by a call of the daily court to ascertain the presence of all parties to the controversy and to identify those cases ready for disposition.

(c) Upon completion of the daily call, the judge of compensation shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments he feels are warranted.

### 12:235-6.14 Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the judge of compensation shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to his present complaints, the judge of compensation shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the judge of compensation shall require either party to provide such information and shall adjourn the hearing until such time as the information is available.

### 12:235-6.15 Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the judge of compensation, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the division.

(b) The claimant shall be fully advised of his rights under the Act.

(c) The "Statement of Award" shall be signed by the claimant, the employer or his representative, and by the judge of compensation.

### 12:235-6.16 Fee for services of physician

A judge of compensation conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

### 12:235-6.17 Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the judge of compensation, the claimant shall be made aware of his statutory rights, including his right to obtain counsel to file a formal claim petition, and the applicable time periods within which he must file.

### 12:235-6.18 Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the judge of compensation shall inform the worker of:

1. The procedure and time limit relating to rescheduling for a rehearing;
2. The approximate date of rescheduling; and
3. The worker's statutory rights as stated above.

### 12:235-6.19 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the judge of compensation shall be promptly informed so that he may have an opportunity to notify the parties and arrange for rescheduling.

## SUBCHAPTER 7. SECOND INJURY FUND CASES

### 12:235-7.1 General procedure

(a) No hearing upon an application for benefits payable from the Second Injury Fund pursuant to N.J.S.A. 34:15-95 shall be conducted until the claim petitions for benefits under this chapter from the previous employers have been adjudicated and the petitioner is determined to be totally disabled and the judge of compensation making such determination shall be satisfied that there is a reason basis to believe that the disabled worker is a person who has suffered from a prior existing disability permanent in quality and partial in character and is now totally disabled as a result of experiencing a subsequent permanent injury under conditions entitling such person to compensation therefor each of which, severally, causes permanent partial disability, but which in conjunction result in permanent total disability.

(b) Where a verified petition for fund benefits has been filed prior to the commencement of the hearing for workers' compensation benefits there shall be one settlement conference before a judge of compensation



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where representatives of the employee, employer(s) and the fund are noticed to attend.

#### 12:235-7.2 Hearing

The hearing upon the application for second injury fund benefits shall be upon the transcript of the hearing for benefits from the previous employer\*<sup>s</sup> supplemented by oral and documentary evidence \*[presented on behalf of the second injury fund]\* and by such cross-examination \*[by the second injury fund,]\* as may be required in the discretion of the judge of compensation for a full and true disclosure of the facts\*[.] \* **as to second injury fund responsibility and where applicable, as to an appointment of responsibility between employers and the second injury fund.\***

#### 12:235-7.3 Payment of benefits

(a) \*[The employer in the workers' compensation award shall continue to make payments at the applicable rate for permanent total disability.]\* **\*Pending determination of the application for second injury benefits, the previous employer shall continue to make payments at the applicable rate for permanent total disability for such period as set forth in an interim order which shall be entered at the time the claim petitions against the previous employers are adjudicated.\***

(b) Upon approval of an application for benefits, the judge of compensation shall enter an order compelling payment from the fund from the date when the final payment of compensation by the employer is or was payable for the injury or injuries sustained in the employment wherein the employee became totally and permanently disabled. No payment from such fund shall be made for any period prior to the date of filing of application for benefits.

(c) The payment from the fund may be made to the employer as reimbursement for a period where the payments have been made by the employer to the employee beyond the time period for which the employer is determined to be liable.

(d) Such payments shall be made from the fund directly to the employee for such periods to which the employee may be entitled subject to the provisions of N.J.S.A. 34:15-12(b).

(e) When the application for benefits from the fund is denied by a judge of compensation, the employer shall continue to make payments as provided in N.J.S.A. 34:15-12.

#### 12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which petitioner alleges his eligibility for second injury fund benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or his attorney.

(b) The verified petition shall also include the following:

1. Name and address of petitioner;
2. Social security number of petitioner;
3. Age and date of birth of petitioner;
4. Marital status and educational background of petitioner;
5. A summary of petitioner's employment history;
6. A description of disabilities which existed prior to the date of the last compensable injury, and the date of onset of each;
7. The last compensable injury, indicating the date and a description of the occurrence; a description of the injury; brief description of the medical treatment for the injury; a description of permanent injury; name and address of employer and its insurance carrier; petitioner's wages and compensation rate; and a listing of all compensation paid to date for this injury;
8. An indication as to whether a third party tort claim has been made as to the last compensable injury, stating the name and address of the third party and the status of the claim;
9. A copy of all reports which are in the possession or control of the party filing the applications from all proposed expert witnesses and all treating physicians;
10. A description of all wage replacements presently being received by the petitioner;
11. References to all prior allowances and awards in workers' compensation matters concerning the petitioner, including the date of the accident and the extent of the allowance or award.

### SUBCHAPTER 8. COMMUTATION OF AWARD

#### 12:235-8.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the director.

(b) Applications for commutation of compensation shall be made only after the entry of an award.

#### 12:235-8.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the division which shall include:

1. The applicant's name, address, and social security number;
2. The name and address of the employer;
3. The name, address, and file number of the employer's insurance carrier;
4. The date of award;
5. The judge of compensation and the place wherein the award was rendered;
6. The amount of the award;
7. The amount of balance due on the award;
8. The amount requested for commutation; applicant's marital, employment, and economic status; and
9. Such other information as prescribed by the director.

(b) The application for commutation shall be under oath or affirmation of the applicant.

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in his application.

#### 12:235-8.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the division shall conduct an investigation and, if it is determined by the director that commutation is advisable and for the best interest of the petitioner, the director shall enter an order approving the commutation.

(b) The disbursement of all funds commuted shall be under the supervision of the director.

### SUBCHAPTER 9. DISCRIMINATION COMPLAINTS

#### 12:235-9.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the director.

#### 12:235-9.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the complainant, and shall be on a form prescribed by the division.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, social security number, and claim petition number, if he has filed a claim for formal hearing;
2. The name and address of the insurance carrier for the employer;
3. The date of complainant's accident;
4. Complainant's occupation and wages;
5. Complainant's current employment and wages;
6. Complainant's occupational duties and indication as to whether he or she is able to perform those duties;
7. The date and reason for complainant's termination of employment;
8. The factual and legal reasons for alleging discrimination;
9. Such other information as requested by the director.

#### 12:235-9.3 Attachments to discrimination complaint

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in his application.

#### 12:235-9.4 Investigation of discrimination complaint

Upon receipt of a complaint for discrimination the division shall conduct an investigation and forward the complaint and results of investigation to the commissioner within 30 days.

#### 12:235-9.5 Action by the commissioner

Upon receipt of the complaint and results of investigation from the division, the commissioner may take such action pursuant to N.J.S.A. 34:15-39.1 as he deems appropriate.

### SUBCHAPTER 10. ACCIDENT REPORTS

#### 12:235-10.1 Employer's first report of accidental injury or occupational disease

(a) The employer's first report of accidental injury or occupational disease shall be filed by all employers no later than the start of the second work day after the injury occurred when:

1. The injury causes a loss of time from regular duties beyond the working day or shift on which the accident occurred; or
2. Medical treatment beyond ordinary first aid is required; or
3. Occupational disease exists whether or not time is lost.

(b) The form for the first report of accidental injury or occupational disease shall be Form L&I 1 and its amendments.

(c) The first report of accidental injury or occupational disease shall be filed with the Division of Workers' Compensation of the Department of Labor, with the first copy being forwarded to the insurance carrier and the second copy being retained by the employer.

(d) In the event of a serious injury which requires hospitalization or the event of a fatality, the form shall be filed immediately with the Office of Safety Compliance and notice of the injury shall be given immediately to the Office of Safety Compliance by telephone or telegram.

#### 12:235-10.2 Employer's report of accidental injury or occupational disease

(a) The employer shall report to the division all accidental injuries causing disability beyond seven days or permanent injury or occupational disease. The form for this report shall be as contained in Form WC-1, Employer's First Report of Accidental Injury or Occupational Illness.

(b) The employer's report to the division of an accidental injury or occupational disease shall be filed with the division, with a copy being forwarded to the insurance carrier and a copy retained by the employer, as soon as it is reasonably known or expected that such disability, permanent injury, or occupational disease has occurred.

#### 12:235-10.3 Insurer's initial notice of accident

(a) The insurance carrier of self-insured shall, within 21 days after the happening of an accidental injury or knowledge of an occupational disease, file an initial notice of accident, statement of wages, and agreement to care for case.

(b) The notice shall be as contained in Form WC-2 Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case. The original of the insurer's initial notice of accident shall be filed via regular mail with the division, with a copy retained by the carrier.

#### 12:235-10.4 Insurer's final report of accident

(a) A final report of accident shall be filed by the insurance carrier or the self-insured at the close of the temporary disability, or as soon thereafter as the extent of permanent injury can be determined, whichever is later.

(b) The final report of accident shall be as in:

1. Form WC-3, Final Report of Accident;
2. Form WC-4, Final Report of Accident;
3. Form WC-5, Final Report of Accident;
4. Form WC-6, Final Report of Accident.

(c) The final report of accident shall be filed with the division, with a copy to be sent to the employer, employee, and insurance carrier or self-insured.

#### 12:235-10.5 Report of death

In the event that death results due to an accidental injury subsequent to the filing of a final report of accident, a report of death, as contained in Form WC-3A, Report of Death, shall be filed with the division and a copy sent to those recipients as named in N.J.A.C. 12:235-10.4

#### 12:235-10.6 Compliance with N.J.S.A. 34:15-96 through N.J.S.A. 34:15-102

The filing of the reports as required by this subchapter shall constitute compliance with N.J.S.A. 34:15-96 through N.J.S.A. 34:15-102.

### SUBCHAPTER 11. STANDARD FORMS

#### 12:235-11.1 Listing of forms

(a) Listed below are the titles and numerical designations of the standard forms utilized for workers' compensation:

1. Employee Claim Petition, WC4-1;
2. Dependency Claim Petition, WC4-2;
3. Application for Review or Modification of Formal Award, WC4-14;
4. Notice of Motion for Temporary and Medical Benefits;
5. Respondent's Answer to Claim Petition, WCC-70;
6. Respondent's Answer to Dependency Claim Petition, WCS-4-4;
7. Answer to Application for Review or Modification of Formal Award, WCC-77;
8. Answering Statement to Motion for Temporary and Medical Benefits, WCS-4-12;
9. Standard Respondent's Interrogatories: Occupational Diseases;
10. Standard Respondent's Interrogatories: Occupational Diseases;
11. Pre-Trial Memorandum, WCS-4-13;
12. Order Approving Settlement, WC(DO)-370;
13. No Insurance Case, WC(DO)-399;
14. Bench Referral from Division of Workers' Compensation to New Jersey Division of Vocational Rehabilitation Services;

15. Application for Informal Hearing, WC(CF)-66;
16. Central Office Record of Informal Proceedings, WC(CF)-11;
17. Second Injury Fund Application and Verified Petition;
18. Decision of Eligibility, WC-48;
19. Application for Commutation, WC(1)-60;
20. Decision of Dismissal, WC-47;
21. Discrimination Complaint, WCS-9;
22. Employer's First Report of Accidental Injury or Occupational Illness, WC-1;
23. Employer's First Report to Division of Workers' Compensation of Accidental Injury or Occupational Disease, WC-1;
24. Insurer's Initial Notice of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case, WC-2;
25. Report of Death, WC-3A;
26. Final Report of Accident, WC-5;
27. Final Report of Accident, WC-3;
28. Final Report of Accident, WC-6;
29. Final Report of Accident, WC-4.

#### 12:235-11.2 Sample forms

Samples of the standard forms listed in N.J.A.C. 12:235-11.1 follow:  
**OFFICE OF ADMINISTRATIVE LAW NOTE:** The Division of Workers' Compensation submitted 29 sample forms as part of the adoption. These forms are not reproduced herein but may be inspected at the Office of Administrative Law, Building 9, Quakerbridge Plaza, Quakerbridge Road, Trenton, New Jersey 08625, and the Department of Labor, Division of Workers' Compensation, Room 1203, John Fitch Plaza, Trenton, New Jersey 08625.

### SUBCHAPTER 12. DOCUMENTS REFERRED TO IN THIS CHAPTER

#### 12:235-12.1 Documents referred to by reference

(a) The titles of the documents, except forms, referred to in this chapter, are as follows:

1. N.J.S.A. 34:1A et seq., Department of Labor.
2. N.J.S.A. 34:15-1 et seq., Workers' Compensation Law.
3. N.J.S.A. 43:21-30, Nonduplication of benefits.
4. N.J.S.A. 43:21-41, Requirements for entitlement.

#### 12:235-12.2 Availability of documents for inspection

A copy of each of the documents referred to in this chapter is on file and can be inspected at the following office of the Division of Workers' Compensation between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor  
Division of Workers' Compensation  
Labor and Industry Building  
Room 1203  
John Fitch Plaza  
Trenton, New Jersey

#### 12:235-12.3 Availability of documents from issuing agency

Copies of the documents referred to in this chapter may be obtained from the agency listed below. The abbreviation preceding these documents has the following meaning and is the organization issuing the documents listed in N.J.A.C.12:235-12.1.

NJSA—  
New Jersey Statutes Annotated  
Copies available from:  
Division of Workers' Compensation  
New Jersey Department of Labor  
CN 381  
Trenton, N.J. 08625-0381

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF MOTOR VEHICLES

##### Enforcement Service

##### Standards and Procedures for Licensed Reinspection Centers

##### Glazing

##### Adopted Amendment: N.J.A.C. 13:20-33.6

Proposed: April 15, 1985 at 17 N.J.R. 894(a).

Adopted: June 13, 1985 by Robert S. Kline, Acting Director,  
Division of Motor Vehicles.

Filed: April 14, 1986 as R.1986 d.166, **without change**.

Authority: N.J.S.A. 39:3-43, 39:3-75, and 39:8-2 et seq.,  
specifically 39:8-4.1 and 39:8-23.

Effective Date: May 5, 1986.

Expiration Date: December 18, 1990.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text of the adoption follows.**

##### 13:20-33.6 Glazing; Classes I and II licensees

(a)-(c) (No change.)

(d) A vehicle shall not be certified which has tinted spray or plastic material added to previously approved glazing in the front windshield or windows, vents or deflectors to the immediate right or left of the driver because such condition changes the vision and light transmission properties of the glazing in areas where driver visibility shall not be obscured or obstructed.

(e)-(f) (No change.)

(g) Any vehicle may have the rear window and/or side windows to the rear of the driver tinted or covered in some manner so as to partially obscure the drivers view and any motor vehicle registered for commercial purposes and constructed on a truck chassis (including Code 15) may have the rear window and/or side windows to the rear of the driver painted, tinted or constructed in some manner so as to obstruct or obscure the drivers view, provided that the vehicle is equipped with an exterior mirror on each side of the vehicle. If glazing material remains in any of the window openings mentioned above, it must be possible to read the approval markings.

(h) A vehicle shall not be certified which has mirror-type material on any window.

### (b)

#### STATE BOARD OF DENTISTRY

##### General Provisions

##### Fee Schedules

##### Adopted Amendments: N.J.A.C. 13:30-2.2, 2.3, 2.18 and 8.1

Proposed: February 18, 1986 at 18 N.J.R. 398(a).

Adopted: April 3, 1986 by Richard VanSciver, D.D.S., President,  
New Jersey Board of Dentistry.

Filed: April 15, 1986 as R.1986 d.168, **with technical changes** not  
requiring additional public notice and comment (see N.J.A.C.  
1:30-4.3).

Authority: N.J.S.A. 45:6-1 et seq. and N.J.S.A. 45:1-3.2.

Effective Date: May 5, 1986.

Expiration Date: April 15, 1990.

##### Summary of Public Comments and Agency Responses:

**No comments received.**

OAL NOTE: A printing error in N.J.A.C. 13:30-8.1(b)(3) was corrected  
to read "Registered Dental Assistants" instead of ["Registration] Dental  
Assistants."

**Full text of the adoption follows.**

##### 13:30-2.2 Application procedure

(a)-(d) (No change.)

(e) The examination fee for the Northeast Regional Board examination is established by and payable to the N.E.R.B. The fee for the simultaneous examination and licensure in New Jersey is \$25.00. The fee for simultaneous reexamination is \$10.00. The simultaneous examination, reexamination and licensure fee is payable to the State of New Jersey, in care of the New Jersey State Board of Dentistry.

##### 13:30-2.3 Qualifying certificate

(a) A New Jersey qualifying certificate must accompany the application. The certificate is procured from the Department of Education, Office of Teacher Certification and Academic Credentials, 3535 Quakerbridge Road, CN 503, Trenton, NJ 08625-0503. The applicant shall request his high school to send an official transcript of his record directly to the Office of Teacher Certification and Academic Credentials. The applicant shall send a fee \$30.00 (certified check or money order) to the Bureau, as required by N.J.S.A. 18A:6-41, made payable to the Commissioner of Education, with a letter stating that the record will be sent directly by the high school.

(b)-(c) (No change.)

##### 13:30-2.18 Application fee

(a) The application fee charged by the State Board of Dentistry shall be:

1. (No change.)
2. Registered dental assistants: \$15.00.

##### 13:30-8.1 Fee schedules

(a) The Biennial Registration fees charged by the Board of Dentistry shall be the following:

1. Dentists:
  - i. Active registration ..... \$75.00
  - ii. Inactive registration ..... \$30.00
  - iii. Branch office ..... \$20.00
2. Dental Hygienists:
  - i. Active registration ..... \$20.00
  - ii. Branch office ..... \$10.00
3. Registered Dental Assistants:
  - i. Active registration ..... \$20.00

(b) Registrations submitted after due dates shall have the following late fees assessed:

1. Dentists:
  - i. Active registration ..... \$25.00
  - ii. Inactive registration ..... \$25.00
2. Dental Hygienists:
  - i. Active registration ..... \$25.00
3. Registered Dental Assistants:
  - i. Active registration ..... \$25.00

(c) Except for the fee herein established, other fees prescribed by statute shall continue to be assessed by the Board in the lawful amount.



## TRANSPORTATION

### TRANSPORTATION OPERATIONS

#### (a)

#### Speed Limits

**Routes 18 in Middlesex County, 23 in Sussex County, U.S. 30 in Atlantic County, 94 in Sussex County, and 49 in Salem County**

**Adopted Amendments: N.J.A.C. 16:28-1.23, 1.25, 1.57, 1.79 and 1.81.**

Proposed: March 3, 1986, at 18 N.J.R. 463(b).

Adopted: April 4, 1986, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: April 9, 1986 as R.1986 d.155, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: May 5, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28-1.23 Route 18

(a) The rate of speed designated for the certain parts of State highway Route 18 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1.-5. (No change.)

6. Zone 4:

(1) City of New Brunswick: Forty-five miles per hour between 400 feet south of Paulus Boulevard and Route 27 (Milepost 40.78 to 42.21).

7. Zone 5:

(1) City of New Brunswick and Piscataway Township: Fifty-five miles per hour between Route 27 and River Road (Route 514 Spur) (Milepost 42.21 to 43.77).

OFFICE OF ADMINISTRATIVE LAW NOTE: The text at N.J.A.C. 16:28-1.23(b) and (c) was repealed by R.1983 d.232 and should not appear in the New Jersey Administrative Code. See: 15 N.J.R. 519(a), 15 N.J.R. 1036(a).

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1.-3. (No change.)

4. For both directions of traffic:

i.-ix. (No change.)

x. Zone eight: 50 mph to a point 1,350 feet north of the center line of the southerly intersection of County Road 519 (Milepost 45.2); thence

(1) In Wantage Township, Sussex County, 35 mph School Speed Limit in section d, zone eight within the Wantage School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

xi.-xiv. (No change.)

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-viii. (No change.)

ix. 40 miles per hour between Fairview Avenue and Central Avenue, Town of Hammonton, Atlantic County (Milepost 29.59 to 27.60); thence

x. 50 miles per hour between Central Avenue and Mullica Township line in the Town of Hammonton, Atlantic County (Milepost 27.60 to 26.05); thence

xi.-xxiii. (No change.)

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. In Sussex County:

(1) (No change.)

(2) Sparta Township:

(A)-(B) (No change.)

(C) 35 miles per hour School speed Zone in zone 12 within the Sussex County Vocational School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

(3) (No change.)

xiv.-xxi. (No change.)

16:28-1.81 Route 49

(a) The rate of speed designated for the certain parts of State highway Route 49 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i.-vii. (No change.)

viii. Zone eight:

(1) City of Salem: 35 miles per hour between Keasbey Street and the City of Salem-Township of Quinton Corporate Line (Milepost 9.8 to 10.11); thence

(2) Quinton Township: 45 miles per hour between the Township of Quinton-City of Salem Corporate Line and 1,300 feet east of Sherron Avenue (Milepost 10.11 to 11.00); thence

ix.-xii. (No change.)

(b) The rate of speed designated for the certain parts of State highway Route 49 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. (No change.)

#### (b)

#### Speed Limits

**Routes U.S. 9 in Ocean County, 55 in Gloucester County and 36 in Monmouth County**

**Adopted Amendments: N.J.A.C. 16:28-1.41, 1.51 and 1.75**

Proposed: March 3, 1986 at 18 N.J.R. 465(a).

Adopted: April 4, 1986, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.

Filed: April 9, 1986 as R.1986 d.154, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: May 5, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28-1.41 Route U.S. 9 including Parts of Route 35 and 444

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. (No change.)

(b) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. (No change.)

(c) The rate of speed designated for State highway Route U.S. 9, including parts of Route 444 (and excluding Garden State Parkway Authority sections) described in this section shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1.-25. (No change.)

26. 35 miles per hour to Seventh Avenue, Lakewood Township, Ocean County (Milepost 102.04); thence

i. 25 miles per hour School Speed zone within the Cheder Elementary School zone in Lakewood Township, Ocean County during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours.

27.-36. (No change.)

16:28-1.51 Route 55

(a) The rate of speed designated for State highway Route 55 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic in Maurice River Township, City of Millville, City of Vineland, Cumberland County; Pittsgrove Township, Salem County and the Townships of Franklin, Elk, Harrison, Mantua, Washington and Deptford and Glassboro Borough, Gloucester County:

i. 50 miles per hour between Route 47 and the beginning of the center median (approximately 3,700 feet north of Route 47) (Milepost 20.00 to 20.80).

ii. 55 miles per hour between the beginning of the center median (approximately 3,700 feet north of Route 47) and Route 42 (Milepost 20.80 to 60.09).

16:28-1.75 Route 36

(a) The rate of speed designated for the certain parts of State highway Route 36 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic in Monmouth County:

i.-ii. (No change.)

iii. Zone 3:

(1) (No change.)

(2) Long Branch City: 35 miles per hour between the West Long Branch Borough-Long Branch City corporate line and 250 feet north of Clifton Avenue-James Street (intersection of Joline Avenue and Route 36) except 25 miles per hour in the Gregory Elementary School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (Milepost 3.90 to 5.80).

(3) Long Branch City: 45 miles per hour between 250 feet north of Clifton Avenue-James Street (intersection of Joline Avenue and Route 36) and Long Branch City-Monmouth Beach Borough corporate line (Milepost 5.80 to 6.50).

iv.-x. (No change.)

(a)

**Restricted Parking and Stopping  
Routes 4 in Bergen County, U.S. 9 in Monmouth  
County, and 173 in Hunterdon County**

**Adopted Amendments: N.J.A.C. 16:28A-1.4, 1.7 and  
1.52**

Proposed: March 3, 1986 at 18 N.J.R. 466(a).

Adopted: April 4, 1986, John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.

Filed: April 9, 1986 as R.1986 d.152, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and  
39:4-199.

Effective Date: May 5, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

16:28A-1.4 Route 4

(a) The certain parts of State highway Route 4 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-3. (No change.)

(b) The certain parts of State highway Route 4 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-16. (No change.)

17. Along the westbound (northerly) side in Englewood City, Bergen County:

i. Near side bus stop:

(1) Exit ramp to Grand Avenue (Route 93)—Beginning at the easterly curb line of the exit ramp to Grand Avenue (Route 93) and extending 135 feet easterly therefrom.

18. Along the eastbound (southerly) side in Englewood City, Bergen County:

i. Near side bus stop:

(1) Kenwood Street—Beginning at the westerly curb line of Kenwood Street and extending 105 feet westerly therefrom.

ii. Mid-block bus stop:

(1) Grand Avenue—Beginning 775 feet west of the westerly curb line of Grand Avenue and extending 135 feet westerly thereof.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-38. (No change.)

39. (See adoption at 18 N.J.R. 704(b)).

40. Along the northbound (easterly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1) Strickland Road—Beginning at the southerly curb line of Strickland Road and extending 105 feet southerly therefrom.

(2) Casino Drive—Bergerville Road—Beginning at the southerly curb line of Casino Drive—Bergerville Road and extending 105 feet southerly therefrom.

(3) West Farms Road—Beginning at the southerly curb line of West Farms Road and extending 105 feet southerly therefrom.

(4) Northwoods Place—Stanley Boulevard—Beginning at the southerly curb line of Northwoods Place—Stanley Boulevard and extending 105 feet southerly therefrom.

ii. Mid-block bus stop:

(1) Jug handle between Casino Drive and West Farms Road—Beginning at the northerly curb line of the jug handle and extending 135 feet northerly therefrom.

iii. Far side bus stops:

(1) Sunnyside Road—Beginning at the northerly curb line of E. Fifth Street and extending 100 feet northerly therefrom.

(2) E. Fifth Street—Beginning at the northerly curb line of E. Fifth Street and extending 100 feet northerly therefrom.

(3) Georgia Tavern Road—Hulses Road—Beginning at the northerly curb line of Georgia Tavern Road—Hulses Road and extending 130 feet northerly therefrom.

41. Along the southbound (westerly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1) Strickland Road—Beginning at the northerly curb line of Strickland Road and extending 105 feet northerly therefrom.

(2) Hulses Road—Georgia Tavern Road—Beginning at the northerly curb line of Hulses Road—Georgia Tavern Road and extending 180 feet northerly therefrom.

ii. Mid-block bus stops:

(1) Bergerville Road—Casino Drive—Beginning at the southerly curb line of Bergerville Road—Casino Drive and extending 135 feet southerly therefrom.

(2) Jug handle between Casino Drive and West Farms Road—Beginning at the southerly curb line of the jug handle and extending 135 feet southerly therefrom.

(3) West Farms Road—Beginning 150 feet south of the southerly curb line of West Farms Road and extending 135 feet southerly therefrom.

iii. Far side bus stops:

(1) Sunnyside Road—Beginning at the southerly curb line of Sunnyside Road and extending 100 feet southerly therefrom.

(2) W. Fifth Street—Beginning at the southerly curb line of W. Fifth Street and extending 100 feet southerly therefrom.

16:28A-1.52 Route 173

(a) The certain parts of State highway Route 173 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

5. No stopping or standing in Union Township, Hunterdon County:

i. Along both sides:

(1) From a point 500 feet east of the easterly curb line of County Road 635 (Jutland-Norton Road) to a point 500 feet west of the westerly curb line of County Road 635.

(CITE 18 N.J.R. 998)  
TRANSPORTATION

ADOPTIONS

(b) The certain parts of State highway Route 173 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

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**(a)**

**Turns**

**Route 35 in Monmouth County**

**Adopted Amendment: N.J.A.C. 16:31-1.4**

Proposed: March 3, 1986 at 18 N.J.R. 467(a).

Adopted: April 4, 1986, John F. Dunn, Jr., Assistant Chief  
Engineer, Traffic and Local Road Design.

Filed: April 9, 1986 as R.1986 d.153, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6 and 39:4-199.1.

Effective Date: May 5, 1986.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

16:31-1.4 Route 35

(a) Turning movements of traffic on the certain parts of State highway Route 35 described in this section are regulated as follows:

1. No left turn:
  - i.-x. (No change.)

xi. From the exit of Shrewsbury Office Plaza to north on Route 35 in Shrewsbury Borough, Monmouth County.

2. (No change.)

3. No "U" turn in Shrewsbury Borough, Monmouth County:

- i. Between a point 200 feet north of White Street and a point 400 feet south of Obre Place.

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**(b)**

**DIVISION OF AERONAUTICS**

**Licensing of Aeronautical Facilities**

**Readoption: N.J.A.C. 16:54**

Proposed: February 18, 1986 at 18 N.J.R. 403(a).

Adopted: March 24, 1986 by James A. Crawford, Assistant  
Commissioner, Transportation Services and Planning.

Filed: April 7, 1986 as R.1986 d.146, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.

Effective Date: April 7, 1986.

Expiration Date: April 7, 1991.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 16:54.

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# EMERGENCY ADOPTION

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Gross Income Tax Act

#### Extension of Time to File Residential Property Tax Credit Application

#### Adopted Emergency New Rule: N.J.A.C. 18:35-1.19

Emergency New Rule Adopted: April 15, 1986 by John R.

Baldwin, Director, Division of Taxation.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): April 15, 1986.

Emergency New Rule Filed: April 15, 1986 as R.1986 d.169.

Authority: N.J.S.A. 54A:8-1b, 54A:9-17 and 54A:3A-14.

Emergency New Rule Effective Date: April 15, 1986.

Emergency New Rule Expiration Date: May 15, 1986.

The agency emergency adoption follows:

#### Summary

The emergency new rule has been adopted to ensure that approximately 300,000 persons be given additional time to file an Application for Residential Property Tax Credit. Without this emergency adoption, these persons would forfeit their right to this credit. This additional time is given to people who for some reason did not file their application prior to April 15, 1986.

On April 15, 1986, John R. Baldwin, Director of the Division of Taxation in the Department of the Treasury, pursuant to the authority of N.J.S.A. 54A:8-1b., 54A:9-17 and 54A:3A-14 and the applicable provisions of the Administrative Procedure Act, and upon certification by the Governor of the State of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-4(c)), adopted an emergency new rule, N.J.A.C. 18:35-1.19, concerning an extension of time to file a Residential Property Tax Credit Application.

#### Social Impact

This Emergency Rule will only affect approximately 300,000 property owners or tenants who failed to file a timely application for residential property tax credit.

#### Economic Impact

The economic impact upon the State of New Jersey will approximate 300,000 applications. The total amount of money involved is approximately \$13 million.

Full text of the emergency adoption follows:

18:35-1.19 Extension of time to file a residential property tax credit application

The time for property owners and tenants to file an application for a residential property tax credit (Form NJ 1040H) payable in 1986 pursuant to P.L.1985, c.304 is extended to May 15, 1986.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### OFFICE OF THE COMMISSIONER

#### Condemnation of Shellfish Beds Dangerous to Health

##### Public Notice

Pursuant to statutory authority granted the Department of Environmental Protection appearing at N.J.S.A. 58:24-1 et seq. and because contaminated shellfish are being relocated to waters previously classified as approved for the purposes of establishing a hard clam spawner sanctuary, but which may render the taking of shellfish therefrom dangerous to health, the department hereby condemns and prohibits the taking of all shellfish from those State waters previously classified as approved including specifically those waters of Parker Cove in Little Egg Harbor bounded by latitude 39 degrees 26.49 minutes N, longitude 74 degrees 17.11 minutes W; latitude 39 degrees 36.49 minutes N, longitude 74 degrees 17.04 minutes W; latitude 39 degrees 36.42 minutes N, longitude 74 degrees 17.11 minutes W. The Department will endeavor to maintain corner markers at these locations. Sanctuary areas will also be identified on the Department's annual Shellfish Growing Water Classification Charts.

This hard clam sanctuary site (hereinafter known as Hard Clam sanctuary site 1) will be used in a cooperative program of the Department; Rutgers, the State University; and the shellfish industry to reestablish shellfish populations in areas which previously supported natural populations.

(b)

### DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

#### Notice of Closure of State Waters to Sea Clam Harvest

Authority: N.J.S.A. 50:2-6.1 and 50:2-6.3

Take notice that the harvest of an additional 100,000 bushels of sea clams, as authorized by the Notice of Increase of Sea Clam Quota published in the New Jersey Register on April 7, 1986, has been achieved. Therefore, in accordance with the aforementioned notice, the State waters will be closed to further sea clam harvest, effective 6:00 P.M. (1800 hours) on April 12, 1986.

(c)

### DIVISION OF ENVIRONMENTAL QUALITY

#### New Jersey Radiological Emergency Response Plan Public Notice

Take notice that pursuant to the "Radiation Accident Response Act of 1981", N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection in cooperation with the Division of State Police will hold a public hearing on:

Thursday, June 5, 1986  
7:30 p.m.-10:00 p.m.  
Greenwich Fire Department  
2nd Floor Meeting Room  
Ye Great Street  
Greenwich, New Jersey

The purpose of the hearing will be to receive public comment on the adequacy and effectiveness of the NJ Radiological Emergency Response Plan (RERP).

Invited speakers include the Director of the Office of Emergency Management, Division of State Police and Bureau Chiefs from the Department of Environmental Protection, Bureau of Radiation Protection and Bureau of Emergency Response Coordination.

Copies of the Plan are available at the Office of Emergency Management, State Police Headquarters, West Trenton, NJ.

For additional information contact:

NJ Department of Environmental Protection  
c/o Wanda Cristali, Nuclear Engineer  
Bureau of Radiation Protection  
380 Scotch Rd.  
Trenton, NJ 08628  
Telephone: (609) 530-4022

(d)

### DIVISION OF WATER RESOURCES

#### Amendment to Lower Raritan/Middlesex County Water Quality Management Plan

##### Public Notice

Take notice that on March 17, 1986 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan which will allow sewage treatment service to be provided to the Linpro Company: Multi-Family Section 2 located in Plainboro Township, was adopted by the Department.

## TREASURY-GENERAL

(e)

### DIVISION OF BUILDING AND CONSTRUCTION

#### Architect-Engineer Selection Notice of Assignments: April 3, 1986

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated March 4, 1986.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
A482	Review of Artifacts Storage Facility State House Annex Renovations Trenton, NJ	Stone & Webster Engineering Corp.	\$ 1,500 Services
P490	Exterior Repairs & Painting Ringwood Manor Ringwood State Park	Mylan Architectural Group	\$ 50,000
P493	Breeching & Dewatering Union Lake Dam Millville, NJ	PRC Engineering	\$1,500,000
A504	Doctors Apartments Employee Housing Trenton Psychiatric Hospital Trenton, NJ	Maitra Associates, Inc.	\$ 48,000
J010	Facility Consultant Dept. of Corrections	Franklin B. Spiegle, AIA	\$ 10,000 Services
D010	Facility Consultant Dept. of Corrections	Frank R. Holtaway & Son, Inc.	\$ 15,000 Services
P498	Site & Sanitary Rehabilitation Liberty State Park Jersey City, NJ	Becker, Bendixen, Murphy & Herbst	\$1,440,000
M905	Power House Improvements Glen Gardner Center for Geriatrics Glen Gardner, NJ	H. V. Weeks, Inc.	\$ 300,000
COMPETITIVE PROPOSALS			
	H. V. Weeks, Inc.	6.817%	
	M. Benton & Associates	8.34%	
	London, Kantor, Umland & Associates	8.90%	
P484	Bathroom Complex Renovations Parvin State Park Pittsgrove Township Salem, County, NJ	Manders-Merighi Associates	\$ 250,000

COMPETITIVE PROPOSALS			
M600-01	Manders-Merighi Associates	11.45%	
	Kolbe & Poponi, PA	13.42%	
	Lamney & Giorgio, PA	17.80%	
	Soils Engineering Services	Melick-Tully &	\$ 2,450
	Phases II & III	Associates, Inc.	Services
	Veterans Nursing Facility		
	Paramus, NJ		
COMPETITIVE PROPOSALS			
P479	Melick-Tully & Associates, Inc.	\$2,450 Upset Amount	
	Johnson Soils Engineering	\$2,500 Upset Amount	
	SSR Consulting Engineers, Inc.	\$6,250 Upset Amount	
	Old Mine Road Study	Keller-Kirkpatrick/Post,	\$ 26,500
	Worthington State Forest	Buckley, Schuh &	Services
	Pahaquarry Township	Jernigan, Inc. (JV)	
	Warren County		
COMPETITIVE PROPOSALS			
A509	Keller-Kirkpatrick/Post		
	Buckley, Schuh Jernigan, Inc. (JV)	\$26,500 Lump Sum	
	James P. Purcell Associates, Inc.	\$36,950 Lump Sum	
	Goodkind & O'Dea, Inc.	\$70,000 Lump Sum	
	Professional Consulting Services	Edward J. Galto, PE	\$ 60,000
	Labor & Industry Building		
	Department of Labor		
	Trenton, NJ		
COMPETITIVE PROPOSALS			
C303	Edward J. Galto, PE	Average Hourly Rate	
	Zywotow & Eckert	for Three Years	
	Lisiewski Group	\$71.67	
	Mostoller-Travisano	72.00	
	New Electrical & TV Outlets for	75.00	
	Inmate Cells	No Proposal Submitted	
	Riverfront State Prison	Barnickel Engineering	\$ 500,000
	Camden, NJ	Corp.	
COMPETITIVE PROPOSALS			
T184	Barnickel Engineering Corp.	6.90%	
	Borda Engineers & Energy Consultants	9.00%	
	JLS Engineering Co.	9.80%	
	Renovation of Main Office Building	Armstrong, Jordan,	\$4,500,000
	DOT, Fernwood Complex	Pease, AIA	
	Trenton, NJ		
COMPETITIVE PROPOSALS			
	Armstrong, Jordan, Pease, AIA	6.0%	
	Scrimenti, Shive, Spinelli,		
	Perantoni, AIA	6.84%	
	The Hillier Group, PA	8.8%	

## COMMUNITY AFFAIRS

### (a)

#### NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

#### Public Hearing

#### Proposed New Procedural Rules: N.J.A.C. 5:91

Take notice that the specific location of a public hearing concerning the proposed procedural rules of the New Jersey Council on Affordable Housing published in the April 21, 1986 issue of the New Jersey Register at 18 N.J.R. 821 will be held on:

May 8, 1986 at  
1:30 P.M. to 4:30 P.M. and  
6:00 P.M. to 8:00 P.M. at  
Somerset County College  
Welp Theatre  
Route 28  
North Branch, New Jersey

This notice is published as a matter of public information.



## EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

### OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/15/90
1:2	5/15/90
1:6A	1/1/88
1:7	8/9/90
1:10	3/4/90
1:10A	9/16/90
1:11	3/4/90
1:20	8/1/88
1:21	7/15/90
1:30	3/3/91
1:31	8/12/87

N.J.A.C.	Expiration Date
3:17	6/18/86
3:19	3/17/91
3:21	11/2/86
(Except for 3:21-1 which expired 2/2/84)	
3:22	5/21/89
3:23	5/3/87
3:24	8/20/89
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	9/7/87
3:41	10/16/90

### AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
(Except for 2:2-9 which expired 6/11/84)	
2:3	6/18/89
(Except for 2:3-4 which expired 1/8/86)	
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:16	5/7/90
2:22	1/18/87
2:23	6/6/88
2:24	2/11/90
2:32	2/3/91
2:48	11/27/90
2:50	7/15/87
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

### CIVIL SERVICE—TITLE 4

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/7/86
4:5	12/7/86
4:6	5/16/88

### COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	1/1/86
5:26	4/1/86
5:27	6/1/90
5:28	12/20/90
5:29	7/1/86
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	8/16/87
5:71	3/1/90
5:80	5/20/90
5:100	5/7/89

### BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
(Except for 3:6-8 which expired 4/9/85)	
3:7	9/16/90
3:11	3/19/89
(Except for 3:11-2 which expired 6/3/85)	

### DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
6:2	3/1/89
6:3	8/18/88
6:8	1/1/87
6:11	12/12/90
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	6/1/86
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	1/1/87
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	12/1/86
6:53	9/1/87
6:64	5/1/88
6:68	4/12/90
6:70	1/25/90
6:79	2/1/88

**N.J.A.C.**

(Except for 7:25-1 which  
expired 9/17/85;  
7:25-9 which expired 9/17/85;  
7:25-19 which expired 8/22/85)

7:25A	5/6/90
7:26	11/4/90
(Except for 7:26-5 which expired 10/7/85)	
7:27	Exempt
7:27A	Expired 10/7/85
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87
7:30	12/6/87
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Expired 3/30/84
7:38	9/18/90
7:45	Expired 1/11/85

**Expiration Date****ENVIRONMENTAL PROTECTION—TITLE 7**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
7:1 (Except for 7:1-3 which expired 3/5/87)	9/16/90
7:1A	6/7/87
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	3/27/87 (Governor's Waiver)
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
(Except for 7:11-5 which expired 12/31/83)	
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
(Except for 7:14-5 which expired 6/23/85)	
7:14A	6/4/89
7:15	4/2/89
7:17	4/7/91
7:18	8/6/86
7:19	4/15/90
(Except for 7:19-3 which expired 8/1/85)	
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:21-4	Expired 4/10/84
7:22	12/7/86
7:23	6/18/89
7:24	3/12/86
7:25	2/18/91

**HEALTH—TITLE 8**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	8/2/87
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
(Except for 8:21-1 which expired 5/15/85; 8:21-4 which expired 7/21/83; 8:21-6 which expired 9/18/85)	
8:21A	4/1/90
8:22	5/4/86
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
(Except for 8:31B-1 which expired 7/19/84)	
8:32	Expired 3/12/85
8:33	1/3/89
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	2/4/90
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	11/2/86
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:42	3/18/90
8:42A	6/12/86
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	1/17/88
8:43F	3/18/90
8:44	11/7/88

(CITE 18 N.J.R. 1004)

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

N.J.A.C.	Expiration Date
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:53	Expired 7/19/84
8:57	6/18/90
8:58	Expired 5/1/84
8:59	10/1/89
8:60	5/3/90
8:65	12/2/90
(Except for 8:65-11 which expired 7/17/85)	
8:70	9/17/88
8:71	4/2/89

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
(Except for 9:2-14 which expired 12/30/85)	
9:3	10/17/88
9:4	11/2/86
9:5	1/21/91
9:6	5/20/90
9:7	4/13/88
9:8	11/4/90
9:9	10/3/88
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88
9:16	Expired 7/9/85

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	5/6/88
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:37	11/4/90
10:38	5/28/86
10:40	3/15/89
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	9/10/86
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/9/86
10:69A	4/26/88

N.J.A.C.	Expiration Date
10:69B	11/21/88
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/3/90
10:87	3/1/89
10:89	9/11/90
10:90	11/15/87
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:98	7/12/87
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	Expired 2/17/84
10:120	9/26/88
10:121	3/13/89
10:121A	8/6/86
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	7/19/87
10:125	7/16/89
10:127	9/19/88
10:129	10/11/89
10:130	9/19/88
10:131	9/20/87
10:132	11/16/86
10:140	12/31/86
10:141	2/21/89

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:70	Exempt
10A:71	4/15/90

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
(Except for 11:4-15 which expired 5/22/83)	
11:5	11/7/88
11:10	7/15/90
11:12	11/2/86
11:13	12/6/87
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	8/1/86



NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

(CITE 18 N.J.R. 1005)

N.J.A.C.	Expiration Date
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	9/5/87
12:195	9/6/88
12:200	8/5/90
12:235	12/31/86

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/21/86
13:32	11/1/87
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44A	Expired 5/17/84
13:44B	5/3/87
13:45A	12/16/90
13:46	6/3/90
13:47A	8/16/87
(Except for 13:47A-25 which expired 8/14/83)	
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	6/21/87
13:58	9/7/89
13:59	9/16/90
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	2/1/87
14:17	5/7/89
14:18	7/29/90

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
(Except for 14A:3-10 which expired 9/1/85)	
14A:4	10/19/88
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:9	Expired 4/27/84
14A:11	9/20/89
14A:12	2/7/88
14A:13	11/2/86
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	5/20/86
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	6/4/86
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	11/15/87
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:53	3/19/89
16:53A	4/15/90

(CITE 18 N.J.R. 1006)

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

N.J.A.C.	Expiration Date
16:53B	Expired 8/21/84
16:53C	9/19/88
16:53D	5/7/89
16:54	6/4/86
16:55	11/7/88
16:56	6/4/89
16:60	11/7/88
16:61	11/7/88
16:62	4/15/90
16:72	5/1/86
16:73	2/16/87
16:75	6/6/88
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
(Except for 17:16-35 which expired 1/17/84; and 17:16-41 which expired 10/10/85)	
17:19	3/18/90
17:19A	Expired 2/1/84
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90

**TREASURY-TAXATION—TITLE 18**

N.J.A.C.	Expiration Date
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89

N.J.A.C.	Expiration Date
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88
18:16	8/12/88
18:17	8/12/88
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	8/12/88
18:25	1/6/91
18:26	8/12/88
18:30	4/2/89
18:35	8/12/88
18:36	2/4/90
18:37	8/5/90

**OTHER AGENCIES—TITLE 19**

N.J.A.C.	Expiration Date
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/21/86
19:16	8/21/86
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	11/2/86
19:52	Exempt
19:53	5/4/88
19:54	4/15/88
19:75	1/17/89

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 3, 1986 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1986 d.100 means the one hundredth rule adopted in 1986.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: FEBRUARY 18, 1986.**

**NEXT UPDATE WILL BE DATED MARCH 17, 1986.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.



## N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1, 1:2-1:21	Pre-proposal: Administrative hearings	18 N.J.R. 728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-14.6	Consolidated cases involving exempt agencies	18 N.J.R. 130(a)	R.1986 d.79	18 N.J.R. 634(a)
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)	R.1986 d.85	18 N.J.R. 634(b)
1:6A-5.4	Special education hearings: stay of decision implementation	18 N.J.R. 584(a)		
1:30	Agency rulemaking	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 469(a)
1:30	Agency rulemaking: correction	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 938(a)

(TRANSMITTAL 18, dated February 18, 1986)

<b>AGRICULTURE—TITLE 2</b>				
2:5-3	Avian influenza	18 N.J.R. 488(a)	R.1986 d.148	18 N.J.R. 938(b)
2:22-3.1	Africanized honeybee control	18 N.J.R. 585(a)		
2:24-1	Shipment of bees into State	18 N.J.R. 586(a)		
2:32-2	Sire Stakes Program	18 N.J.R. 236(a)	R.1986 d.84	18 N.J.R. 635(a)
2:53-3	Milk sales below cost by stores	17 N.J.R. 3014(a)	R.1986 d.43	18 N.J.R. 476(a)
2:69-1.11	Commercial values of fertilizers	18 N.J.R. 588(a)		
2:71-2.2-2.7	"Jersey Fresh" Quality Grading Program	18 N.J.R. 588(b)		
2:71-2.28, 2.29, 2.31	Fees for inspection and grading of fruit and vegetables	18 N.J.R. 448(a)	R.1986 d.147	18 N.J.R. 938(c)
2:76-3.12	Farmland preservation programs: deed restrictions	18 N.J.R. 508(a)		
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)		
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(a)		
2:90-1.5, 1.14	Soil conservation plan certifications: minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
2:90-2.15, 2.17, 2.18, 2.24	Soil and water conservation projects	18 N.J.R. 131(a)	R.1986 d.105	18 N.J.R. 638(a)
2:90-3.6, 3.9	Time extensions to complete conservation projects	18 N.J.R. 449(a)		

(TRANSMITTAL 37, dated February 18, 1986)

<b>BANKING—TITLE 3</b>				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:1-15	Availability of funds deposited in individual accounts: written disclosure	18 N.J.R. 13(a)	R.1986 d.73	18 N.J.R. 553(a)
3:6-10	Savings banks: unsecured days funds transactions	17 N.J.R. 2936(a)	R.1986 d.48	18 N.J.R. 477(a)
3:6-11	Short-term investments for trust cash	17 N.J.R. 2937(a)	R.1986 d.49	18 N.J.R. 477(b)
3:11-10	Savings banks: credit card services	18 N.J.R. 241(a)	R.1986 d.93	18 N.J.R. 639(a)
3:11-11	Leeway investments	18 N.J.R. 132(a)		

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

(CITE 18 N.J.R. 1009)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:19-1	Home repair financing	18 N.J.R. 15(a)	R.1986 d.72	18 N.J.R. 555(a)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		

(TRANSMITTAL 31, dated February 18, 1986)

**CIVIL SERVICE—TITLE 4**

4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-10.1, 10.2	Noncompetitive and labor appointments	17 N.J.R. 2937(b)	R.1986 d.117	18 N.J.R. 639(b)
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)	R.1986 d.126	18 N.J.R. 640(a)
4:6	Overtime compensation	18 N.J.R. 515(a)	R.1986 d.170	18 N.J.R. 939(a)

(TRANSMITTAL 28, dated January 21, 1986)

**COMMUNITY AFFAIRS—TITLE 5**

5:10-24.4	Parking for handicapped residents of multiple dwellings	18 N.J.R. 16(a)	R.1986 d.61	18 N.J.R. 555(b)
5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)	R.1986 d.142	18 N.J.R. 945(a)
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)		
5:23-5.11	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)		
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:23-8	Asbestos hazard abatement subcode	18 N.J.R. 378(a)	R.1986 d.143	18 N.J.R. 949(a)
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)	R.1986 d.141	18 N.J.R. 959(a)
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:26	Planned real estate full disclosure	18 N.J.R. 392(a)	R.1986 d.129	18 N.J.R. 841(a)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)		
5:91	Council on Affordable Housing: procedural rules	18 N.J.R. 821(a)		

(TRANSMITTAL 38, dated February 18, 1986)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:11-2.1	Duties of State Board of Examiners	18 N.J.R. 595(a)		
6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)	R.1986 d.158	18 N.J.R. 973(a)
6:20-2.13	Local districts: overexpenditure of funds	17 N.J.R. 2939(b)	R.1986 d.118	18 N.J.R. 643(a)
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)		
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)		
6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)	R.1986 d.156	18 N.J.R. 975(a)
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)		
6:24	Controversies and disputes under school law	18 N.J.R. 404(b)	R.1986 d.157	18 N.J.R. 976(a)
6:43-1.3	Vocational and technical education: schools designated "other than full-time day"	17 N.J.R. 2940(a)	R.1986 d.119	18 N.J.R. 644(a)
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)		
6:68-6	Institutional library services	18 N.J.R. 597(a)		
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)		

(TRANSMITTAL 38, dated January 21, 1986)

(CITE 18 N.J.R. 1010)

NEW JERSEY REGISTER, MONDAY, MAY 5, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1-3	Interim Environmental Cleanup Responsibility Act rules	18 N.J.R. 242(a)	R.1986 d.87	18 N.J.R. 645(a)
7:1-3.20	ECRA review process: exempt industrial categories	18 N.J.R. 529(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)		
7:1E-2.3	Discharge of hazardous substances: department response	18 N.J.R. 456(a)	R.1986 d.161	18 N.J.R. 980(a)
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)		
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)	R.1986 d.124	18 N.J.R. 645(a)
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)		
7:12-1.2-1.6, 1.8, 2.1, 2.15	Shellfish-growing water classification	18 N.J.R. 784(a)		
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)	R.1986 d.50	18 N.J.R. 477(c)
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(b)	R.1986 d.123	18 N.J.R. 652(a)
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)	R.1986 d.125	18 N.J.R. 652(b)
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)	R.1986 d.122	18 N.J.R. 651(a)
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)	R.1986 d.51	18 N.J.R. 477(d)
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)	R.1986 d.120	18 N.J.R. 650(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 140(a)	R.1986 d.83	18 N.J.R. 657(a)
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 141(a)	R.1986 d.82	18 N.J.R. 653(a)
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)		
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:24	Dam restoration grants	18 N.J.R. 395(a)		
7:25-4.17	Status of indigenous nongame wildlife	18 N.J.R. 601(a)		
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)		
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)		
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)		
7:25-12.1	Sea clam quota			18 N.J.R. 711(b)
7:25-18	Marine fisheries	18 N.J.R. 102(a)	R.1985 d.121	18 N.J.R. 657(b)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)	R.1986 d.160	18 N.J.R. 981(a)
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)	R.1986 d.162	18 N.J.R. 982(a)
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.13	Resource recovery facilities and transfer stations: recordkeeping			18 N.J.R. 983(a)
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)	R.1986 d.159	18 N.J.R. 983(b)
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)	R.1986 d.164	18 N.J.R. 983(c)
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)	R.1986 d.135	18 N.J.R. 841(b)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)		
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>HEALTH—TITLE 8</b>				
8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:21-10	Designated fluid milk products	18 N.J.R. 59(b)	R.1986 d.96	18 N.J.R. 660(a)
8:31-16.1	Hospital long-range strategic plans	18 N.J.R. 148(a)	R.1986 d.112	18 N.J.R. 675(a)
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31A-7.4, 7.5, 7.14	SHARE: Medicaid rates and transfer of ownership	18 N.J.R. 150(a)	R.1986 d.140	18 N.J.R. 843(a)
8:31B-3.5, 3.22, 3.54	Hospital reimbursement: "efficiency standard"	17 N.J.R. 2946(a)	R.1986 d.114	18 N.J.R. 676(a)
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		
8:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)		
8:31B-3.31, 3.51	Hospital reimbursement: graduate medical education	17 N.J.R. 2947(a)	R.1986 d.138	18 N.J.R. 843(b)
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33B-1.3, 1.12	Extracorporeal shock wave lithotripsy services	18 N.J.R. 798(a)		
8:33F-1.2, 1.6, App. B	Renal disease: regional end-stage services	17 N.J.R. 2948(a)	R.1986 d.113	18 N.J.R. 677(a)
8:34-1.8	Nursing home administrators: limitations on responsibility	18 N.J.R. 74(a)	R.1986 d.88	18 N.J.R. 678(a)
8:34-1.9	Reexamination for Nursing Home Administrator's License	18 N.J.R. 75(a)	R.1986 d.89	18 N.J.R. 678(b)
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)		
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)	R.1986 d.167	18 N.J.R. 984(a)
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)		
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)	R.1986 d.65	18 N.J.R. 555(c)
8:65-10.1	Temporary placement of Meperidine analogs MPPP and PEPAP into Schedule I	17 N.J.R. 2950(a)	R.1986 d.66	18 N.J.R. 559(a)
8:65-10.1	Controlled dangerous substances: analogs of fentanyl	18 N.J.R. 254(b)		
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a), 18 N.J.R. 182(a))	17 N.J.R. 1043(a)	R.1986 d.139	18 N.J.R. 845(a)
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a))	17 N.J.R. 1733(a)	R.1986 d.151	18 N.J.R. 985(a)
8:71	Generic drug list additions (see 18 N.J.R. 417(a))	17 N.J.R. 2842(a)	R.1986 d.150	18 N.J.R. 984(b)
8:71	Generic drug list additions: public hearing	18 N.J.R. 537(a)		

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<b>HIGHER EDUCATION—TITLE 9</b>				
9:2-2	Fund for Improvement of Collegiate Education: policies and procedures	17 N.J.R. 2724(a)	R.1986 d.99	18 N.J.R. 679(a)
9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)	R.1986 d.103	18 N.J.R. 679(b)
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)		
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)		
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:7-3.1	Tuition Aid Grant Program: 1986-87 Award Table	18 N.J.R. 19(b)	R.1986 d.106	18 N.J.R. 680(a)
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)	R.1986 d.108	18 N.J.R. 680(b)
9:9-1.6	Guaranteed Student Loans and payment of insurance fee	17 N.J.R. 2727(a)	R.1986 d.102	18 N.J.R. 681(a)
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)	R.1986 d.101	18 N.J.R. 682(a)
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)	R.1986 d.100	18 N.J.R. 682(b)
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)	R.1986 d.107	18 N.J.R. 682(c)
9:12-1.4, 1.5	EOF program rules: correction	17 N.J.R. 2214(b)	R.1986 d.107	18 N.J.R. 682(c)
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 30, dated January 21, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
<b>HUMAN SERVICES—TITLE 10</b>				
10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:38	Interim assistance procedures for discharged clients of State hospitals	18 N.J.R. 802(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)	R.1986 d.137	18 N.J.R. 845(c)
10:49-1.1, 1.2, 1.4	Medically Needy program	18 N.J.R. 803(a)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:50-1.5, 2.3	Medically Needy program	18 N.J.R. 803(a)		
10:51-1, App. B, D, E	Pharmaceutical Services Manual	18 N.J.R. 255(a)	R.1986 d.136	18 N.J.R. 846(a)
10:51-1.2, 1.14, 3.1	Medically Needy program	18 N.J.R. 803(a)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)	R.1986 d.127	18 N.J.R. 847(a)
10:52-1.2, 1.3, 1.6, 1.8, 1.19	Medically Needy program	18 N.J.R. 803(a)		
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)	R.1985 d.704	18 N.J.R. 560(a)
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:53-1.2, 1.3, 1.5, 1.7, 1.15	Medically Needy program	18 N.J.R. 803(a)		
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:54-1.2, 1.4, 1.7, 1.9, 1.10	Medically Needy program	18 N.J.R. 803(a)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:55-2.2	Medically Needy program	18 N.J.R. 803(a)		
10:56-1.12, 2.1	Medically Needy program	18 N.J.R. 803(a)		
10:56-3	Dental Services: procedure codes and descriptions	18 N.J.R. 154(a)	R.1986 d.128	18 N.J.R. 847(b)
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:57-1.3, 1.7, 1.13, 2.3	Medically Needy program	18 N.J.R. 803(a)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:59-2.3	Medically Needy program	18 N.J.R. 803(a)		
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:61-2.2	Medically Needy program	18 N.J.R. 803(a)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:62-1.4, 3.3	Medically Needy program	18 N.J.R. 803(a)		
10:62-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)	R.1986 d.90	18 N.J.R. 689(a)
10:63-1.16, 2.1	Medically Needy program	18 N.J.R. 803(a)		
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)	R.1986 d.69	18 N.J.R. 561(a)
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:65-1.2, 2.5	Medically Needy program	18 N.J.R. 803(a)		
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)	R.1986 d.59	18 N.J.R. 559(b)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-1.6	Medically Needy program	18 N.J.R. 803(a)		
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)	R.1986 d.52	18 N.J.R. 478(a)
10:67-2.3	Medically Needy program	18 N.J.R. 803(a)		
10:68-1.2	Medically Needy program	18 N.J.R. 803(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:70	Medically Needy supplement	18 N.J.R. 831(a)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support paternity	17 N.J.R. 2845(a)	R.1986 d.55	18 N.J.R. 480(a)
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)	R.1986 d.62	18 N.J.R. 562(a)
10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, 5.10	ASH: conformity with Federal regulations	18 N.J.R. 260(a)		
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)	R.1986 d.54	18 N.J.R. 481(a)
10:82-3.9, 3.11, 3.14, 4.13	ASH: evaluation of legally responsible relatives in AFDC	18 N.J.R. 20(b)	R.1986 d.115	18 N.J.R. 689(b)
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:82-5.10	ASH: emergency assistance	Emergency	R.1986 d.130	18 N.J.R. 849(a)
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)	R.1986 d.57	18 N.J.R. 482(a)
10:85-3.3	General Assistance rate for residential health care			18 N.J.R. 712(b)
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)	R.1986 d.47	18 N.J.R. 483(a)
10:85-3.4	GAM: disposal of assets	17 N.J.R. 2952(a)	R.1986 d.98	18 N.J.R. 690(a)
10:85-3.4	GAM: parent-sponsored aliens	18 N.J.R. 21(a)	R.1986 d.76	18 N.J.R. 563(a)
10:85-4.6	GAM: emergency grants	Emergency	R.1986 d.131	18 N.J.R. 850(a)
10:85-5.3	GAM: nursing home bed-hold payments	17 N.J.R. 2953(a)	R.1986 d.70	18 N.J.R. 564(a)
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)	R.1986 d.56	18 N.J.R. 483(b)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)	R.1986 d.71	18 N.J.R. 564(b)
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)	R.1986 d.165	18 N.J.R. 985(b)
10:94-4.1	Medicaid Only: availability of resources in third-party situations	17 N.J.R. 2954(a)	R.1986 d.97	18 N.J.R. 691(a)
10:94-4.2, 4.3	Medicaid eligibility and nonliquid resources	18 N.J.R. 542(a)		
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	18 N.J.R. 215(a)	R.1986 d.74	18 N.J.R. 565(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)	R.1986 d.53	18 N.J.R. 484(a)
10:100-App. A	Supplemental Security Income payment levels	18 N.J.R. 216(a)	R.1986 d.75	18 N.J.R. 566(a)
10:109	Public Assistance Staff Development Program	18 N.J.R. 22(a)	R.1986 d.116	18 N.J.R. 691(b)
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:122-4.4	Child care centers: staff qualification	18 N.J.R. 155(a)	R.1986 d.109	18 N.J.R. 692(a)

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**CORRECTIONS—TITLE 10A**

10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:4	Inmate discipline: public hearing	18 N.J.R. 544(a)		
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:31-6	Work Release Program	18 N.J.R. 604(a)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		

(TRANSMITTAL 12, dated December 16, 1985)

**INSURANCE—TITLE 11**

11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20, 22	Commercial policies: cancellation and nonrenewal	18 N.J.R. 457(b)		
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)	R.1986 d.111	18 N.J.R. 692(b)
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)	Expired	
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-15	Health insurance: benefits concerning treatment of alcoholism	18 N.J.R. 607(a)		
11:4-16.6	Daily hospital room and board coverage	18 N.J.R. 608(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)	R.1986 d.91	18 N.J.R. 699(a)



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11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)	R.1986 d.63	18 N.J.R. 566(b)
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

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12:20-4.8	Temporary appointment to Unemployment Compensation Board of Review	18 N.J.R. 544(b)		
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:100-4.2, 12	Public employee exposure to asbestos	18 N.J.R. 811(b)		
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12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 987(a)

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13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)	R.1986 d.166	18 N.J.R. 995(a)
13:21-7	Student driver permits	18 N.J.R. 48(a)	R.1986 d.81	18 N.J.R. 703(c)
13:21-8.2	Photo IDs and driver license application procedure	18 N.J.R. 49(a)	R.1986 d.68	18 N.J.R. 567(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:29-1.14	Board of Accounting licenses: notification requirement concerning convictions	18 N.J.R. 264(a)		
13:30-2.2, 2.3, 2.18, 8.1	Board of Dentistry registration fees	18 N.J.R. 398(a)	R.1986 d.168	18 N.J.R. 995(b)
13:30-8.4, 8.8	Announcement of specialty in dentistry; patient records	18 N.J.R. 816(a)		
13:31-1.11	Fees for electrical contractor's license	18 N.J.R. 462(a)		
13:35-3.11	Licensure of foreign medical school graduates	18 N.J.R. 50(a)	R.1986 d.67	18 N.J.R. 568(a)
13:35-4.2	Termination of pregnancy	18 N.J.R. 614(a)		
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
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13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
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13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
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13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
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13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
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(CITE 18 N.J.R. 1015)

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13:70-12.1, 12.2	Thoroughbred racing: claiming privileges	18 N.J.R. 546(a)		
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13:71-5.1	Harness racing: policy requirements	18 N.J.R. 820(a)		
13:71-6.24	Harness racing: Coggins test	18 N.J.R. 402(b)		

(TRANSMITTAL 39, dated February 18, 1986)

**PUBLIC UTILITIES—TITLE 14**

14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:3-7.15	Discontinuance of residential service: notice to local fire officials	18 N.J.R. 463(a)		
14:6-1.1	Intrastate transportation of natural gas	17 N.J.R. 2740(a)	R.1986 d.46	18 N.J.R. 486(a)
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012(a)		
14:18-1.2, 3.9	Cable TV: Service outages	18 N.J.R. 619(a)		
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 26, dated December 16, 1985)

**ENERGY—TITLE 14A**

(TRANSMITTAL 18, dated February 18, 1986)

**STATE—TITLE 15**

15:3	State and local records retention	18 N.J.R. 820(b)		
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(TRANSMITTAL 16, dated February 18, 1986)

**PUBLIC ADVOCATE—TITLE 15A**

(TRANSMITTAL 1, dated March 20, 1978)

**TRANSPORTATION—TITLE 16**

16:28-1.2	Temporary speed rate on portion of I-80	18 N.J.R. 546(b)		
16:28-1.2, 1.3, 1.79	Speed rates along I-80, I-287, and Route 94	18 N.J.R. 621(a)		
16:28-1.23, 1.25, 1.57, 1.79, 1.81	Speed rates on Routes 18, 23, U.S. 30, 94, and 49	18 N.J.R. 463(b)	R.1986 d.155	18 N.J.R. 996(a)
16:28-1.25	Wantage school zone along Route 23 in Sussex County	18 N.J.R. 547(a)	Withdrawn	18 N.J.R. 820(c)
16:28-1.41, 1.51, 1.75	Speed rates on U.S. 9 in Lakewood, Route 36 in Long Branch, and Route 55 in Cumberland, Salem and Gloucester counties	18 N.J.R. 465(a)	R.1986 d.154	18 N.J.R. 996(b)
16:28A-1.4, 1.7, 1.52	No parking zones on Route 4 in Englewood, U.S. 9 in Howell and Route 173 in Hunterdon County	18 N.J.R. 466(a)	R.1986 d.152	18 N.J.R. 997(a)
16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39, 1.40	Bus stop zones in Atlantic, Bergen, Camden, Gloucester, Ocean and Salem counties	18 N.J.R. 158(b)	R.1986 d.94	18 N.J.R. 704(b)
16:28A-1.7, 1.18, 1.25, 1.33	Parking along U.S. 9, Routes 27, 35, and 47	18 N.J.R. 622(a)		
16:28A-1.13, 1.21, 1.23, 1.26, 1.42	No parking zones along U.S. 22 in Phillipsburg, U.S. 30 in Galloway Twp., Routes 33, 36 and 79 in Monmouth county	18 N.J.R. 547(b)		
16:28A-1.23, 1.34	No parking zones along Routes 33 in Hightstown and 49 in Pennsville	18 N.J.R. 549(a)		
16:28A-1.46	No parking zone along U.S. 130 in Salem county	18 N.J.R. 549(b)		
16:28A-1.71	Bus stops along Route 67 in Fort Lee	17 N.J.R. 2967(a)	R.1986 d.44	18 N.J.R. 487(a)
16:29-1.6, 1.7, 1.52-1.56	No passing zones along Routes 34, 36, 181, 70, U.S. 30, 57 and 77	18 N.J.R. 550(a)		
16:29-1.49, 1.50, 1.51	No passing zones on Routes 26, 91 and 35	17 N.J.R. 2967(b)	R.1986 d.45	18 N.J.R. 487(b)
16:29-1.51, 1.57	No passing zones along Routes 35 and 28	18 N.J.R. 623(a)		
16:30-1.6	One-way traffic along Route 35 in Shrewsbury	18 N.J.R. 551(a)		
16:30-2.10	Elmwood Park: stop intersection at Columbia and Parkview	18 N.J.R. 551(b)		
16:30-3.1	Left turns on Route 35 in Shrewsbury	18 N.J.R. 552(a)		
16:30-3.5	Bus and carpool lane on I-95 approach to GWB	18 N.J.R. 624(a)		
16:31-1.3, 1.18	Left turns on U.S. 46 and Route 31	18 N.J.R. 625(a)		
16:31-1.4	Turns on Route 35 in Shrewsbury	18 N.J.R. 467(a)	R.1986 d.153	18 N.J.R. 998(a)
16:41-8.9	Outdoor advertising permit fees for vegetation control	18 N.J.R. 625(b)		
16:51	Pre-proposal: Practice before Office of Regulatory Affairs	17 N.J.R. 2867(a)		
16:53-9.1	Autobuses: public liability insurance	18 N.J.R. 626(a)		
16:54	Licensing of aeronautical facilities	18 N.J.R. 403(a)	R.1986 d.146	18 N.J.R. 998(b)
16:72	NJ TRANSIT: procurement policies and procedures	18 N.J.R. 404(a)	R.1986 d.134	18 N.J.R. 847(c)

(TRANSMITTAL 37, dated February 18, 1986)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
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17:1-1.3	Due date for quarterly pension transmittals	18 N.J.R. 59(a)	R.1986 d.86	18 N.J.R. 706(a)
17:1-2.3	Alternate Benefit Program: salary reduction and deduction	17 N.J.R. 2350(b)		
17:1-12.7	Enrollment in Police and Firemen's Retirement System	18 N.J.R. 626(b)		
17:4-1.4	Police and firemen's retirement system: election of member-trustee	18 N.J.R. 468(a)		
17:5-5.12	State Police disability retirant rule	17 N.J.R. 2746(b)		
17:12-2.11	Out-of-state vendors: reciprocal action in public contracts	18 N.J.R. 264(b)	R.1986 d.132	18 N.J.R. 848(a)
17:12-5.1, 5.2	Cooperative purchasing and independent schools of higher education	18 N.J.R. 265(a)	R.1986 d.133	18 N.J.R. 848(b)

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18:12-7.12	Homestead rebate claim: filing extension	18 N.J.R. 107(a)	R.1986 d.64	18 N.J.R. 568(b)
18:35-1.19	Residential property tax credit: filing extension	Emergency	R.1986 d.169	18 N.J.R. 999(a)

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19:4-6.28	Meadowlands: official zoning map change	17 N.J.R. 1872(a)		
19:25-9.2	Designation of joint campaign fund (Form SR-1): filing liability	18 N.J.R. 630(a)		
19:25-10.6	Reporting of contributions received prior to an election	18 N.J.R. 630(b)		
19:25-15.48—15.51	Inaugural event contributions	18 N.J.R. 631(a)		
19:25-17.1	Failure to answer complaint of the commission	18 N.J.R. 632(a)		

(TRANSMITTAL 30, dated February 18, 1986)

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION**

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19:45-1.1, 1.25	Acceptance by casinos of checks issued by other casinos	17 N.J.R. 2245(a)	R.1986 d.77	18 N.J.R. 706(b)
19:45-1.11	Casino licensee's organization and surveillance personnel	17 N.J.R. 2969(a)		
19:45-1.11A	Jobs compendium submission	17 N.J.R. 2747(a)		
19:46-1.27	Aisle space and slot machines	17 N.J.R. 2533(a)		
19:50-1.6	Purchasing and dispensing of wine	18 N.J.R. 160(a)		
19:54-3	Investment tax credit: deferral of obligation	18 N.J.R. 108(a)	R.1986 d.78	18 N.J.R. 708(a)
19:65	Casino Reinvestment Development Authority: urban redevelopment program	Emergency	R.1986 d.145	18 N.J.R. 852(a)

(TRANSMITTAL 21, dated February 18, 1986)



## NOTES

## NOTES

## NOTES



(CITE 18 N.J.R. 1018)

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