



Association of New Jersey Recyclers

120 Finderne Avenue, Bridgewater, New Jersey 08807
908-722-7575 – 908-722-0280(f)
anjr@verizon.net

March 3, 2008

Leslie W. Ledogar, Esq.
Attention: DEP Docket Number: 28-07-11/588
Office of Legal Affairs
NJ Department of Environmental Protection
401 State Street, Fourth Floor
PO Box 402
Trenton, NJ 08625-0402

Dear Ms. Ledogar:

The Association of New Jersey Recyclers (ANJR) a non-profit, non-partisan network whose mission is to serve as the voice of recycling in New Jersey through education, advocacy, and the promotion of professional standards is pleased to be able to provide our member's comments on the proposed amendment to N.J.A.C. 7:26A.

In many aspects we agree that the proposal does successfully reflect current recycling technologies and increases administrative flexibility, and provide avenues to increase compliance with recycling rules. However, ANJR was disappointed to find no language throughout the impact statements or the text that mentioned the proposal's likelihood of increasing the recycling rate in New Jersey. Increasing the recycling rate is of the utmost importance to ANJR.

In the impact statement the Department of Environmental Protection noted that the recycling industry in NJ employs approximately 27,000 people; however, ANJR believes that data is outdated and the numbers are now much larger.

ANJR also takes issue with the Department's statement that the proposed rules will encourage the development of new facilities for the recycling of solid waste to meet the established goals, which could result in new employment opportunities. Class B recycling accounts for an enormous amount of recycled tons in New Jersey; and, this proposal with its clean fill and uncontaminated language may in fact severely decrease the recycling in New Jersey.

The Department's apparent departure from its policy of bundling local concerns into the ultimate permit approval language will make it more difficult to site Class B recycling facilities. The Department mentions that it finds that the general public supports recycling, but is unsure how it should be achieved. ANJR agrees with this statement; and, frequently sees a public outcry that a recycling center not be located in "their back yard"; however, when those same people are asked about their support of recycling, they applaud the concept. It is because of this very situation that long ago the Department took the approval, regulation and monitoring of recycling centers out of the local domain. The Department created a system where public comment (to the Department) is requested and encouraged. Then the Department is the lead who sorts it all out



and addresses the substantive concerns as they do their technical review. ANJR embraces keeping that format especially since a municipality that would undertake the application review process would have to bear the burden of hiring and paying for the professionals to review the technical application. The professionals such as licensed planners, attorneys and engineers would all perform their review at the municipality's cost.

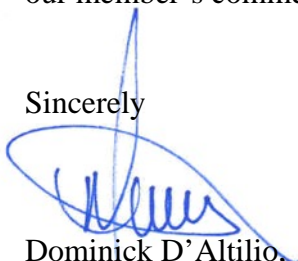
As a general comment on the penalty structure, recyclers recognize that monetary penalties are a necessary evil, and at times a great incentive - a threat being an incentive. ANJR applauds the Department for including grace periods in the penalty structure, although we encourage the Department to include an education component in the grace period. It has been a long standing ANJR tenet that the Department should work with the regulated community, whenever possible and whenever there is no eminent environmental risk, to bring the regulated community in to compliance as opposed to penalizing the regulated community and promoting an adversarial relationship. Penalties should be imposed only after the business has had at least a very short time to comply and has been given the necessary information to complete compliance. However, a review of the various penalties shows that several substantial financial penalties have been categorized as non-minor violations, and hence have no grace period; but, appear to be of no grave environmental harm. The minor and non-minor categorization should be closely re-examined.

The Association of New Jersey Recyclers certainly embraces the language that no vehicle or transport unit used for the transportation of recyclable materials shall be used in a manner where littering, spillage, or emissions of recyclable materials will occur. However to print in the impact statement that it has come to the Department's attention that many transport units and vehicles that are used to transport recyclable materials are in poor condition, allowing release of their materials to the environment during transit seems unfair considering that so many recyclers are extremely attentive to their vehicles. To further elaborate that *"such releases can endanger the health and safety of those transporting or working with these materials and the general public and could cause environmental harm should they contain contaminants that then enter the ground or surface waters of the State"* is incredibly detrimental to recycling, especially in light of the issues that the Class B recyclers are currently facing regarding the backlash from the unregulated, poorly monitored sites such as Ford Motor Co.

Additional specific comments and concerns are contained in the attachment.

On behalf of the Association of New Jersey Recyclers, we appreciate the opportunity to submit our member's comments on the proposed rules.

Sincerely



Dominick D'Altilio,
President

SUBCHAPTER 1. SCOPE & AUTHORITY

7.26A-1.3 Definitions –

“Architectural salvage item” means any component removed from a building that is scheduled for or is undergoing demolition or renovation for the purpose of reinstallation in any building. Architectural salvage items are not solid waste.

Comments: ANJR commends NJDEP for considering Architectural Salvage Items as recyclables, but urges the Department to expand the definition to include items such as decorative outside trim, decorative fascia stone, etc. by adding the word on the building instead of just in the building. We suggest that the definition for Architectural Salvage Item be slightly modified to read as follows, “...any component removed from a building that is scheduled for or is undergoing demolition or renovation for the purpose of reinstallation in or on any building. Architectural salvage items are not solid waste.”

“Class B recyclable material” means a source separated recyclable material which is subject to Department approval prior to receipt, storage, processing or transfer at a recycling center in accordance with N.J.S.A. 13:1E-99.34b, and which includes, but is not limited to the following:

1. Source separated, non-putrescible, uncontaminated waste concrete, brick, block, wood waste; and source separated asphalt and asphalt based roofing scrap.

Comments: ANJR objects to the Department’s inclusion of the word uncontaminated when the class B recyclers are unable to visually inspect incoming loads of raw product and guarantee that the load has met all of the criteria for being uncontaminated. How is a facility to determine visually if a piece of concrete or a stump was ever at a site where there was any groundwater contamination or if there was vehicle lubricant leakage onto the concrete or stump? This is impossible to determine with a visual inspection. It is likely that most loads meet or exceed the benchmarks for being uncontaminated; but, to guarantee that by visual inspection is impossible. Even material that is considered “uncontaminated” under the departments standard has the potential to test above the established limits for Residential clean fill due to the presence of asphalt which can contain reading of PAH’s but has been proven as a product not to leach.

“Clean fill” means an uncontaminated nonwater-soluble, nondecomposable, inert solid such as concrete, glass and/or clay or ceramic products that has not been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and its implementing rules, and has no visible staining (not including staining resulting from normal vehicular use and dripping of small amounts of vehicular lubricant), odor, or other sensory nuisance resulting from chemical contaminants associated with the material. Nondecomposable means that the material does not contain putrescible material that could cause nuisance odors or water pollution. Clean fill does not mean processed or unprocessed mixed construction and demolition debris including, but not limited to, wallboard, plastic, wood, or metal. The nonwater soluble, noncomposable inert products generated from an approved Class B recycling, limited Class B recycling center or a facility acting in accordance with the requirements at N.J.A.C. 7:26A-1.4(a) for activities exempt from obtaining a general or limited approval, are considered

clean fill if the products are uncontaminated and have not been blended or otherwise diluted to qualify as uncontaminated, unless approved by the Department.

“Uncontaminated” means that a material contains levels of Department-recognized contaminants below the levels recognized by the Department’s codified criteria and standards, including but not limited to, the applicable remediation standard as defined under the Technical requirements for Site Remediation rules, N.J.A.C. 7:26E, the Radiation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:0:9B

Comments: The amended definition for clean fill and uncontaminated material is, as written, impossible to use in the real recycling world. For instance, nobody can visually inspect a load of concrete and determine if it came from a site where there was groundwater contamination. Hence all NJ recyclable concrete will be considered contaminated and must be sent to a landfill. That would mean sending annually 4,636,375 million tons of concrete to a landfill.

In the cited definition, the Department fully defines clean fill; and, it is ANJR’s position that the majority of crushed concrete purchasers are going to determine whether they “buy recycled” based upon whether the crushed concrete can meet this clean fill definition. The New Jersey purchasers are already seeking a safety net to be protected from instances such as Ford Motor Co, etc.; and, those purchasers are already asking the New Jersey Class B recyclers for proof that their recycled product is clean and uncontaminated. With this definition of clean fill we now have a standard for clean; but, can any Class B recycler definitively confirm in writing (as many purchasers are asking the recycler to do) that their recycled finished product has met that standard for clean and uncontaminated? It is the Association of New Jersey Recyclers’ position that the answer is no. Although most, if not all, of the Class B recycled product coming out of the regulated NJ plants could meet the standard for clean and uncontaminated if tested ANJR sees no practical way to perform the tests required by the definition of clean fill.

Class B recyclers depend heavily on their recycled product being marketable. That means that the recyclers exhaustively scrutinize their incoming feedstock. A high quality feedstock contributes positively to a high quality finished product. But even with the most ambitious inspection at the front gates of our recycling plants, it will be extremely difficult for staff to visually determine if any staining results from normal vehicular use and allow only dripping of small amounts of vehicular lubricants and nothing else. Furthermore, ANJR questions how even the most rigorous visual inspection at the recycling plant gate could determine if a piece of concrete within a truckload of concrete had ever been affected by release within the meaning of the Spill Compensation and Control Act, N.J.S.A. 58-10.11 et seq.

In this definition the Department writes that material is to be considered clean fill if it is not contaminated, which indicates to ANJR that class B recycled material must either meet the clean fill definition or be considered contaminated. As mentioned above, logistically and realistically, it may be very difficult for a Class B NJ recycler to guarantee that the concrete which he is seeing for the first time at his front gate has never been affected by a release under the SCCA or whether the concrete's staining is from a small amount of vehicular lubricant or otherwise. ANJR urges the Department to modify this definition so that a Class B recycler can realistically determine if their product meets the definition of clean and uncontaminated. Possibly the definition of aggregate substitute (see N.J.A.C. 7:26A-1.1 (C) could be expanded so that there would be an additional uncontaminated category of crushed concrete other than just clean fill and contaminated material.

As a further complication to this definition, the section defining the word uncontaminated is even more problematic to a recycler than the definition of clean. In this definition the Department is asking a recycler, who is seeing the load of raw product for the first time at his plant gate, to determine whether the load of concrete contains levels of Department recognized contaminants above the levels recognized by the Department's codified criteria and standards, including but not limited to the applicable remediation standard as defined under the Technical Requirements for Site Remediation rules, N.J.A.C. 7:26E, the Remediation Cleanup Standards at N.J.A.C. 7:28, Ground Water Criteria at N.J.A.C. 7:9C and the Surface Water Quality Standards at N.J.A.C. 7:9B. And the recycling plant would need to determine by visual inspection that the concrete load meets these benchmarks. It is ANJR's position that such a visual inspection is impossible.

So this all brings us back to the question of if a fully regulated, in compliance, Class B recycler is unable to visually inspect an incoming load of concrete and deem it uncontaminated and clean, then it is ANJR's understanding that the load of concrete must be considered contaminated; and, as a contaminated load of recyclable concrete the load must be considered solid waste and disposed of appropriately. It is ANJR's position that this definition alone has the ability to completely stop the recycling of concrete in New Jersey. Furthermore, the prior purchasers of crushed concrete would begin exclusively purchasing from the quarries. However quarried material has no requirement for meeting these clean fill benchmarks, so the clean fill definition may in fact result in preventing recycled products to be used while allowing potentially contaminated quarry material to be spread in its place.

The members of The Association of New Jersey Recyclers are the regulated recycling community endeavoring daily to operate in total compliance with the Department rules; and this recycling community is currently facing a crisis that has grossly limited the Class B recyclers' ability to market their recycled product. New Jersey Class B recyclers have the technology and the expertise to make

products such as crushed concrete that meet or exceed the performance of quarried material. However, the Class B recyclers are finding it increasingly difficult to sell this high quality recycled product because of the growing mindset among purchasers and their engineers that recycled products are contaminated and un-clean (which they are not).

Lastly, the Department writes that the proposed amendment regarding “clean fill” will have a positive social impact helping to prevent the misuse of materials in the construction industry. The Department is also proposing to qualify that clean fill may include materials generated from Class B recycling center, but only if the material is uncontaminated to prevent any spread of contamination to sites using recycled products from Class B facilities. It is ANJR’s position that the bulk of the regulated Class B recycling community in New Jersey is in compliance with the rules; and, is certainly committed to making a very high quality product. They have to make a high quality product, it is how the legitimate recyclers make their income and stay in business. Misuse of materials in the construction industry can only happen when a non-regulated or poorly monitored facility produces those undesirable products. The Association of New Jersey Recyclers requests that the Department refine this definition so that it can enhance and promote recycling and be applied under practical circumstances.

“Total municipal solid waste stream” means the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus the total number of tons recycled.

Comments: Add the following underlined wording to: “Total municipal solid waste stream – means the sum of the municipal solid waste stream disposed of as solid waste, as measured in tons, plus total number of tons of municipal solid waste recycled.”

7:26A-1.4(a)liii Activities exempt from general or limited approval

Concrete manufacturing plants that utilize uncontaminated source separated recyclable off-specification or surplus concrete and/or block manufactured on site as raw material in their concrete or aggregate manufacturing process. For the purpose of this exemption, recyclable concrete may be used either as aggregate in a fresh concrete mix by the original concrete manufacturer or as sub-base products, but only if the recyclable concrete qualifies as exempt from solid waste regulation pursuant to N.J.A.C. 7:26-1.1(a)1

Comments: Although ANJR questions the need for this exemption, since it is rare or never that one sees a functioning New Jersey concrete plant that currently utilizes recyclable concrete in its manufacturing process, ANJR nevertheless applauds the Department being bold when new recycling technologies are in their infancy. But this exemption as written appears to include both the concrete manufacturing process as exempt and appears to exempt an aggregate manufacturing process that the concrete manufacturer may wish to do as well. ANJR objects to a concrete recycling facility being exempt just because it is located next to a concrete manufacturing plant and there may be joint ownership of the two manufacturing processes. The potential for exploitation of the recycling

regulations is too great if an exemption is granted. It is ANJR's belief that to properly protect the environment it is necessary to limit recycling activities to properly licensed and managed Class B recycling facilities.

7:26A-1.4(a) 24 Activities exempt from general or limited approval

The receipt and storage of architectural salvage items at a commercial enterprise

Comments: ANJR supports the exemption of the receipt and storage of architectural salvage items at a commercial enterprise; but, ANJR recommends that the parameters of this exemption be more thoroughly explained. For instance does the commercial enterprise have to be in the business of selling or rehabilitating the architectural salvage pieces? Can the storage be outside (and considering the size of these pieces it would often have to be outside) with the Department's exemption pre-empting local outside storage laws?

7:26A-1.4 (b) 4. With the exception of the exempted activities set forth at (a)5, 7, 8, 14, 15, 16, 17, 19 and 22 above, tonnage reports shall be submitted in accordance with N.J.A.C. 7:26A 4.4(b);

Comment: Every type of exempted facility should submit a tonnage report to the NJDEP. The report should include the final market that the material was sent to so that double-counting of recyclables can be avoided. Requiring of reports will help to ensure that the exempted operations are complying with regulations.

7:26A -1.4 (b)5 No change

Comment: This section exempts Small quantity handlers from providing written notice of operation to NJDEP, and the Host County and municipality. Small quantity handlers should be required to provide written notice so they can be inspected to make sure they are operating under the guidelines of the exemption.

7:26A-1.4(b) 6 Exemption from the requirement of a general or limited approval pursuant to (a) above shall not constitute an exemption from applicable county or municipal laws, including local zoning and site plan ordinances, or regulations
and

7:26A-4.1(a) 11 The operation and related activities of all classes of recycling centers shall be in conformance with municipal ordinances, including, but not limited to ordinances concerning ingress and egress, traffic patterns, parking, signage, operational hours, noise, dust, and structure height.

Comments For recyclers to be productive the existing approval hierarchy must remain in place. The recycler makes application to the Department and copies the local authorities. The local authorities make comment to DEP and DEP addresses their concerns in the permit parameters. Without this hierarchy in place, pandemonium will ensue. This failure on the part of the Department to recognize their pre-emption of local zoning is tremendously detrimental to the recycling

industry. The recyclers want very much to comply with the local objectives; however, the recyclers are best equipped to receive that directive through NJDEP. Since these are specific items- ingress and egress, traffic patterns, parking, signage, operational hours, noise, dust, and structure height- are dealt with in the Department's approval of a recycling center, and since the Department accepts and encourages comment from the local authority on these issues, ANJR is unable to understand why the Department would not pre-empt local rule and incorporate their concerns in the general or limited approval.

Furthermore, in this time of municipal budgetary constraints, it seems burdensome for municipalities to bear the financial burden of hiring engineers, planners, attorneys and other professionals to review the recycling applications.

Allowing a recycler to incur the time and expense associated with obtaining an approval only to be shut down by a change to local ordinance would be an injustice. The municipalities should be allowed and encouraged to participate in the approval process but final and impartial jurisdiction must remain with the Department.

This exemption (7:26A-1.4 (a)2) addresses the recycling of recyclables generated, processed and reused as a product at the point of generation. This is an exemption that the Association supports; however, the exemption can only be applied when all applicable county and municipal approvals have been obtained. ANJR is unaware of what county and municipal approvals would apply to the activities under this exemption. If no local approvals are required, then this language should be deleted from the exemption.

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

7:26A-3.2(a)18 A description of the leachate and storm Water run-off and drainage control measures that will be used to meet the applicable provisions of the Stormwater Management rules at N.J.A.C. 7:8-5 and 6 and the Pollutant Discharge Elimination System rules at N.J.A.C. 7:14A-24 and 25.

Comments: ANJR's understanding of this rule, as proposed, that some recycling activities would not warrant a stormwater permit depending upon their leachate, stormwater run-off and drainage control data. If that is true, the allowable limits for being stormwater permit exempt should be published.

7:26A-3.7 Application procedure for limited Class B recycling center approval to operate a recycling center for the storage, processing or transfer of Class B recyclable material

Comments: It is ANJR's position that numerous Class B limited approval recycling sites have operated throughout the State over the past years; and, they have increased the

State's recycling rate and provided a service to the contractors in their area. It is often the case that limited approval sites have been located in an area where no other recycling facilities (general or limited) have been located. So due to the financial constraints of hauling recyclables a long distance (time in fact is money), if it were not for the limited approval sites many recyclables would have been landfilled. Therefore ANJR encourages the Department to retain the existing Class B limited approval parameters with one exception; and, that exception is that no limited approvals be granted for sites within 25 miles of a general approval recycling site. This modification would allow for the maximum recycling of Class B materials, which is the common goal of ANJR and the Department. The general approval sites will handle the recyclable material within a 25 mile radius of its facility; and, limited approval sites would step in to handle material outside of the 25 mile radius which without the limited approval site would likely not be recycled.

The proposal to amend the limited approval to only allow the processing of material generated on site, and to ban the operator from taking recyclables from neighboring projects flies in the face of recycling. It is ANJR's position that this limitation should be lifted. Additionally the limitation that material generated at a limited recycling approval site must be used on site is equally as detrimental to recycling in that recyclers are having a difficult enough time selling their recycled product without the Department disallowing a recycler from selling product to a jobsite next door to their recycling site.

The rule section that prevents a property owner from applying for a limited recycling approval just because there was once a limited approval on his neighbor's property is exceptionally limiting to recycling. ANJR fails to see the environmental harm generated by dropping this limitation on limited recycling approvals.

7:26A-3.9(b) Failure of recycling center to ensure that unprocessed Class B and Class D recyclable material is not stored in excess of one year from the date of receipt. Fine \$4,500, NM

Comments: ANJR supports the concept of processing incoming material within a year; but, how can a recycler prove that all of his loads are processed in a year unless he marks each item in a load. For instance the concrete load painted pink came in on 2/6/08 so it must be processed by 2/6/09.

The issue with this violation is in the recycler's ability to prove to the Department what raw product has been on site for less than a year and what has been there more than a year (and hence subject to a penalty.) Practically speaking all recycling plants have a site plan and a designated area in which to dump their raw recyclable product. As raw material is dumping in that pile, simultaneously a loader is taking material from the pile to send through the recycling process. The pile is ever changing. Unless the loads of incoming material were marked in

some way, it is ANJR's position that it would be impossible to distinguish one load of concrete or stumps or tires from another.

SUBCHAPTER 4. DESIGN AND OPERATIONAL STANDARDS AND GENERAL RULES FOR RECYCLING CENTERS WHICH RECEIVE, STORE, PROCESS OR TRANSFER CLASS A, CLASS B, CLASS C AND CLASS D RECYCLABLE MATERIAL[; RIGHT OF ENTRY AND INSPECTION]

7:26A-4.1(a) 10 Penalties

Failure of recycling center operator to ensure that traffic associated with the operation of the center does not result in a degradation of a level of service of any major intersection or public roadway within a half-mile radius. \$4,500, NM

Comments: The aspects of this offense are vague as written, for instance what is traffic associated with the operation? What activities amount to a degradation of a level of service? What is a major intersection? Are recycling facilities now to inspect trucks? It is ANJR's position that this violation may need improved explanation and absolutely needs a grace period to provide the recycler the ability to comply, especially since the offending vehicles likely have no common ownership with the facility. It is ANJR's position that this violation is a glaring example of when a grace period should be provided to the recycler.

7.26-4.1 (a) 11. The operation and related activities of all classes of recycling centers shall be in conformance with municipal ordinances, including, but not limited to ordinances concerning ingress and egress, traffic patterns, parking, signage, operational hours, noise, dust, and structure height;

Comment: NJDEP should clarify this regulation to list by facility type, the parameters that the NJDEP pre-empts versus the parameters that are within municipal or county control. For example, currently the county sets the operational hours for Class B facilities during the plan inclusion process. The NJDEP then sets its own operational hours for the facility, which may provide for less (but not more) operating hours than provided for by the county. Does this new section mean that a municipality can decide to place even more stringent hours for that facility? If so, there is a potential for a municipality to set such stringent parameters for recycling facilities that the outcome is that no facility can feasibly operate within that municipality.

SUBCHAPTER 9. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:26A-9.4(g)8. The violations of N.J.A.C. 7:26A-10, standards for Generators of Source Separated Recyclable materials, the type of violation as minor (M) or non-minor (NM), the

applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are set forth in the following table.

Comments: The rule references in the penalty table seem to be incorrect:

- 1) 7:26A-10.1(a) would make more sense if it was 10.2.
- 2) 7:26A-10.3(a)1. does not exist and should probably be 10.4(a)1.
- 3) 7:26A-10.3(a)2. does not exist and should probably be 10.4(a)2.
- 4) 7:26A-10.3(a)3. does not exist and should probably be 10.4(b).

7:26A-9.4(g)9. The violations of N.J.A.C. 7:26A-11, Standards for Municipalities, the type of violation as minor(m) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation are as set forth in the following table.

Comments: A rule references in the penalty table are incorrect:

- 1) 7:26A-11.3(a) does not exist and should probably be 11.3.
- 2) 7:26A-11.5(a)6 would make more sense if it was 11.5(a)7.

7:26A-9.4(g) and

7:26A-11.5(a)1-5 Failure of municipality to issue recycling exemption to generator without ensuring adequate alternating recycling will be achieved. \$3,000, M

Comments: This does not say what it means. It has a double negative that implies the municipality ought to be issuing an exemption without ensuring adequate alternate recycling will be achieved. Also, they do not mean "alternating" recycling, but rather "alternate" or "alternative." It should read "Failure of municipality to ensure adequate alternative recycling will be achieved before issuing a recycling source-separation exemption"

7:26A-9.4(g) and

7:26A-11.5(a)6 Failure of municipality to revoke exemption to generator upon failure to meet requirements. \$4,500, NM

Comments: This should not be a non-minor penalty. It is often impossible for a recycling coordinator to stay current on what a business is doing with its recyclables. Unless the haulers and licensed MRF/transfer stations notify the coordinator whenever they lose an exempt customer, how is the coordinator going to be aware that the business is no longer complying with the exemption requirements? No exempt business has ever notified me that it has changed its arrangements and is no longer eligible for an exemption. Even if a coordinator were to inspect every business annually, a business might change its haulers at any time and be out of compliance for as much as a year before the next inspection.

There should be a grace period during which the coordinator can revoke the exemption after being notified by the DEP that the business has been violating its conditions.

SUBCHAPTER 10. STANDARDS FOR GENERATORS OF SOURCE SEPARATED MATERIALS

7:26A-10.2 Generators of solid waste and recyclable materials shall keep all materials designated for source separation in the municipal recycling ordinance stored separately from solid waste and shall place these specified recyclable materials for collection in the manner provided by the ordinance.

Comments: Should also mention the county plan. The following wording should be added: "Generators...shall keep all materials designated for source separation in the applicable district recycling plan and in the municipal recycling ordinance..."

Also, says "... and shall place these specified recyclable material for collection in the manner provided by the ordinance." Ordinances are usually not detailed to encompass how materials are to be handling by all sectors. Is this now required in municipal ordinances?

SUBCHAPTER 11. STANDARDS FOR MUNICIPALITIES

7:26A-11.1(a)1. The coordinator shall maintain and report recycling tonnage, as required by N.J.S.A. 13:1E-88.16e. The report shall contain the same information as is required for an application for a recycling Tonnage Grant, codified at N.J.A.C. 7.26-15.5.

Comments; This section makes reference to N.J.A.C. 7:26-15.5 which contains a formula at 7:26-15.5(e)1. for how to pay a grant to each municipality. The DEP currently pays different amounts on different materials, but this formula does not seem to account for that. From where does the ability come to pay different amounts on different material categories? Further, how will this existing formula be affected by the new Recycling Enhancement Act's requirement ensuring that a municipality which paid directly into the fund will be guaranteed to recoup at least that amount?

7:26A-11.1(a) Each municipality in this State shall designate one or more persons as the municipal recycling coordinator, and shall set forth in writing the duties of the municipal recycling coordinator.

and

7:26A-11.1(a)3. The municipality shall ensure that the appointed municipal recycling coordinator has sufficient educational background, employment experience and training to enable him/her to perform his/her duties in such a manner as to ensure the municipality's compliance with the requirements of N.J.S.A. 13:1E-99 et seq., the provisions of the county recycling plan, and the municipal recycling ordinance passed pursuant to N.J.S.A. 13:E1-99.11 et seq.

and

7:26A11-1(a)3ii Within three years of appointment, the coordinator shall be enrolled in the New Jersey Recycling Certification Series offered by the Cook College Office of Continuing Professional Education, or other such program approved by the Department. Within ten years of appointment, the coordinator shall have achieved certification.

Comments: P.L. 2008, c 311 (N.J.S.A 13:1E-99.16) requires that each municipality designate “within 24 months” one or more persons a “municipal certified recycling coordinator”

Please clarify what is meant by the last sentence “Within 10 years of appointment, the coordinator shall have achieved certification.” It could be understood that this sentence, if taken on its own, can mean that after 10 years of on-the-job experience (without enrolling in the course), a coordinator shall become certified just by job experience.

Please clarify if it is instead meant that “Within 10 years of appointment, the coordinator shall have achieved certification through an approved certification program.”

Also the “certification” committee, that includes DEP staff, has met and plans are in place to offer courses to obtain certification with in a two years period.

Allowing 10, or even 5 years, would give municipalities and persons the opportunity to circumvent the requirements of the Recycling Enhancement Act and the proposed requirements of 7:26A-11.1(a) 3.i. Therefore we suggest that the 10 year language be changed to “Within two years of appointment, the coordinator shall be enrolled in the New Jersey Recycling Certification Series offered by the Cook College Office of Continuing Professional Education, or other such program approved by the Department” and “Within two years of appointment, the coordinator shall have achieved certification.”

There is a civil service title for Municipal Recycling Coordinator. Are these requirements going to be incorporated into the civil service definition of the job title? What is the relationship between these requirements and the civil service requirements?

7:26A-11.1(a)3iii The municipality shall maintain detailed records of this training, specifying names of personnel trained, the dates when training occurred and the type and extent of training provided. The training documentation shall be maintained at the facility for three years from the date of the training occurred.

Comments: If the requirement is to keep records for three years, how would a municipality show that the coordinator was certified 7 years ago? A suggestion is for the coordinator to be required to send a copy of its certification to the state when they become certified.

7:26A-11.1(b)1 The ordinance shall require persons generating municipal solid waste within the municipal boundaries to source separate from the municipal solid waste stream, in addition to leaves, the recyclable materials designated in the district solid waste plan, and may designate additional recyclable materials for which markets have been secured.

Comments: Why specify municipal solid waste here? It is suggested that the word municipal be deleted.

7:26A-11.1(b)2 The ordinance shall provide for a collection system for leaves generated from residential premises and shall require residents that source separate leaves from solid waste, and, unless the leaves are stored or recycled for composting or mulching by the generator, place the leaves for collection in the manner provided by the ordinance. Alternately, the ordinance may prohibit the placement of leaves for collection or disposal as solid waste, and specify that all residents shall mulch or compost the leaves generated at those premises.

Comments: replace "residents that" with "that residents"

7:26A-11.1(b)3 The ordinance shall set forth standards governing the inclusion, in all new multi-family housing developments that require subdivision or site plan approval, of collection or storage facilities which allow for the placement and temporary storage of all recyclable materials required of other residences by the ordinance. For the purposes of this provision, "multifamily housing" shall mean three or more housing units.

Comments: It is difficult to understand what this regulation is trying to convey. It could be worded better. Some suggested wording changes follow: "The ordinance shall set forth standards governing the inclusion provision, in all new multi-family housing developments that require subdivision or site plan approval, of collection or storage facilities sites and equipment within the development which allow for the placement of all those recyclable materials which are required to be recycled by of other single family residences by the ordinance. ..."

7.26A-11.1(b)4 The municipal source separation ordinance shall specify the municipal official(s) that may enforce the ordinance, and to issue fines as needed.

Comments: Instead of saying "...municipal officials that may enforce the ordinance..." it is suggested to say "...shall specify the municipal officials(s) by title that are capable of and obligated to enforce the ordinance..."

7:26A-11.2 Recordkeeping and reporting

The governing body of each municipality shall, between January 1 and April 30 of each year, submit a recycling tonnage report on forms provided by the Department, or by electronic means as approved by the Department to...

and

7:26A-11.2(a)

Failure of a municipality to comply with recordkeeping and annual reporting requirements ...

\$3,000 M 30 day grace

Comments: The distribution of moneys to counties and municipalities from the “State Recycling Fund” in the form of “Direct Recycling Grants” depends on the receipt on all Tonnage Grant Applications. By adding a “civil administrative base penalty” of \$3,000 and a Grace Period of 30 days to file the Tonnage Grant may motivate municipalities to submit the application in a timely manner, providing there is an enforcement component from the Department.

7:26A-11.4(a) Each municipality shall provide for a collection system for the materials designated in the municipal ordinance. Each municipality shall provide for this collection in those instances where collection is not otherwise provided for by the generator, the county, inter-local service agreement or joint service program, or other private or public recycling program operator.

Comments: Does this mean that if a business decides it doesn't want to hire a hauler to handle its recyclables, the municipality is responsible for collecting them? Handling recycling for the entire commercial sector could place an unbearable burden on some municipalities.

7:26A-11.4(c) The governing body of each municipality shall, at least once every 36 months, review and revise the master plan and development regulations it has adopted pursuant to P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.). The revisions shall reflect changes in Federal, State, county and municipal laws, policies and objectives concerning the collection, disposition and recycling of designated recyclable materials. The revised master plan shall include provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the use of 1,000 square feet or more of land.

Comments: Is the DCA going to notify the municipal Planning Boards of this requirement? The Municipal Land Use Law (MLUL) specifies what has to be included in the Master Plan. Is the MLUL going to be amended to include these rules? The MLUL requires the Master Plan to be revised every six years. Will it have to be reviewed every three years with respect to recycling and every six years for everything else?

7:26A-11.5(a)2 The municipal coordinator shall review the applicant's documentation of alternate provision for the recycling of those materials designated in the district recycling plan that may be found in the solid waste generated at that location

Comments: Some municipalities may mandate additional materials beyond the district plan. Use the following rewrite of above: “The municipal coordinator shall review the applicant's documentation of alternate provision for the recycling of those materials designated in the district recycling plan and/or municipal recycling ordinance that may be found in the solid waste generated at that location.”

7:26A-11.5(a)3 The municipal coordinator shall review the written reports submitted by the providers of this alternate service, and, where required, the generators' annual written reports, of the total number of tons recycled.

Comments: None of the licensed Material Recovery Facility/transfer stations that handle exempt businesses provide a per-business tonnage report. Their annual recycling tonnage reports do not distinguish between the material they handled from generators that source-separate and the material they extract from exempt businesses' commingled waste.

7:26A-11.5(a)4 The municipal coordinator shall ascertain that the recycling facilities receiving the exempted waste are permitted to perform that recycling..

Comments: According to this regulation, municipal recycling coordinators are required to ascertain if facilities are permitted "to perform that recycling." It is recommended that the DEP carefully consider the wording of this regulation, so that it does not place undue burden upon municipal recycling coordinators. It is suggested that the DEP maintain a listing of facilities which have achieved satisfactory recycling levels in the process of separating mandated recyclable materials from garbage. The levels of recycling considered to be satisfactory needs to be determined by the DEP. The DEP should maintain this list of facilities. For each facility, those materials which the facility recycles to the satisfaction of the DEP should be indicated. It doesn't seem plausible that a municipal recycling coordinator will be able to make this determination. Further, the determination can be made once by the DEP, instead of over and over by different municipalities.

7:26A-11.5(a)6 The municipal coordinator keep a record of all generators who have received the exemption, and the destination of the waste or identity of the waste transporters handling the waste, and shall report this list annually to the applicable county recycling coordinator.

Comments: The word "shall" appears to be missing: "The municipal coordinator shall keep a record..." Further, instead of allowing the reporting to be on the destination of the waste or the identity of the waste transporter handling the waste, both of these categories of information should be required.

Also, does this mean that if a company has an exemption for 5 years it gets reported to the county 5 times or just the first time?

SUBCHAPTER 12. STANDARDS FOR COUNTIES

7:26A-12.1 Applicability

Comments: Refers to Hackensack Meadowlands Development Commission, but other sections of the regulations refer to New Jersey Meadowlands Commission. Was the HMDC renamed NJMC? If so, reference to the agency should be current and consistent.

7:26A-12.2(a) Planning by the designated agency

Comments: What if a county plan amendment is late? Will a county still be fined?

7:26A-12.2(a)2 An inventory of all solid waste generated within the district for the 10-year period commencing with the adoption of the updated district solid waste management plan.

Comments: The way this regulation is written seems to ask for the past 10 year period. However, in the recent county plan amendments, counties, were required to do a 10 year projection. Please clarify if this is a 10 year history starting with the adoption of the plan and going backward or a 10 year projection starting the adoption of the plan and going forward.

7:26A-12.2(a)3 An inventory of all solid waste and recycling facilities (lot and block and street address) including approved waste types and amounts, hours of operation and approved truck routes (in the case of solid waste facilities).

Comments: Eliminate truck routes as a mandatory item to be included in the solid waste and recycling facility inventory for all facilities. Instead leave it up to each county to decide which facilities require the inclusion of truck routes.

7:26A-12.2(a)5 A procedure for the processing of applications for inclusion of solid waste and recycling facilities within the district solid waste management plans. The procedure shall state the applicant requirements for inclusion into the district plan and the specific county review process/procedures, including time frames for county approvals or rejections and subsequent submittals to the Department. The criteria for inclusion shall not include a requirement that local zoning or planning board approval(s) be obtained as a condition for inclusion within the district solid waste management plan, nor shall such a requirement be made a condition for subsequent construction or operation of any facility;

Comments: There are too many factors that influence the time frame for including facilities in the county plan therefore there should not be a requirement to include a time frame. Requiring a time frame may result in the rejection of a facility's plan inclusion (to conform to the plan to approve or reject within a certain time) instead of allowing time for a matter to be resolved.

7:26A-12.2(a)6iv A comprehensive enforcement program that identifies the county and/or municipal entity(ies) responsible for enforcement of the recycling mandates, specifies the

minimum number of recycling inspections that will be undertaken by these entities on an annual basis and details the penalties to be imposed for non-compliance.

Comments: The number of inspections per year should not be in the county plan; the more appropriate place for that information would be in the CEHA work plan.

As a result of review by the NJ District Attorney's Office, county plans should not contain penalties that differ from the state's penalty matrix. If this is correct, then the reference to the county solid waste management plan penalties should be deleted.

7:26A-12.2(a)6v Anticipated gains in recycling in the small business sector, multifamily housing developments and schools and other institutions, in tonnage of recycled material, by material and by generating sector.

Comment: The County does not receive recycling tonnage reports by sector from the NJDEP and would have no way to comply with the above requirement unless the NJDEP is planning to provide such data to the counties. This level of detail, "anticipated gains... by material and by generating sector" is too detailed of a request of information. Counties do have that level of detail of information available and if they did, it would be too fluid to capture. Once the data was estimated, it would be out dated. Also, why does this specify "small business sector?" Shouldn't it be just business sector?

7:26A-12.3 Appointment of a county, or a Hackensack Meadowlands District Recycling Coordinator

Comments: Says HMDC should say NJMC

7:26A-12.3(a)

Comments: Says HMDC should say NJMC

7:26A-12.3(a)3 Maintain copies of all municipal recycling ordinances and ensure that the ordinances are consistent with the county recycling plan

Comments: Does this mean that the county will need to get a copy of each municipal recycling ordinance any time that one is updated?

7:26A-12.3 (b) County recycling coordinators designated pursuant to N.J.S.A. 13:1E-99.13.b.1 shall maintain a current list of:

1. Retail service stations that have used oil collection tanks on the premises;
2. Re-inspection stations permitted by the Motor Vehicles Commission;
3. Used oil collection centers, do-it-yourselfer used oil collection centers; and
4. Used oil aggregation points.

Comments: It would be more efficient for the NJDEP to compile the above information. Many of the commercial used oil sites are part of a larger retail chain and it

would be more efficient to gather a list of all of a chain's locations for the whole state rather than have each county try to contact each location. In addition, it would be more logical for the NJDEP, a state agency, to contact another state agency, the MVC, to obtain the list of all of the re-inspection stations, instead of each county contacting the MVC.

If this section remains in the regulations, the following changes should be made:

12.3(b)1 The following additional underlined language should be added "Retail service stations, within the respective county, that have used oil collection tanks on the premises;"

12.3(b)2 The following additional underlined language should be added "Re-inspection stations, within the respective county, permitted by the Motor Vehicles Commission;"

12.3(b)3 The following additional underlined language should be added "Used oil collection centers; do-it-yourselfer used oil collection centers, within the respective county;"

12.3(b)4 The following additional underlined language should be added "Used oil aggregation points, within the respective county;"