

Overview of Recycling Laws Local Authority & Judicial Forum

Introduction

This is an overview of the New Jersey laws governing recycling. This summary should not be construed as legal advice, but rather serve as guidance to understand the extent of authority provided to the NJ Department of Environmental Protection and local governments.

Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., P.L. 1970, c.39.

The Solid Waste Management Act (SWMA) authorizes the Department of Environmental Protection (DEP or Department), and local boards of health and county health departments to initiate civil actions in the Superior Court for injunctive relief and confers jurisdiction upon the Superior Court and municipal courts to hear and decide actions to collect a penalty for violations of the Act. The SWMA requires that a local board of health and county health department provide notice to the Department of any legal action instituted under the Act, and further provides that the Department may intervene in any such action, N.J.S.A. 13:1E-9d. It should also be noted that, although the SWMA confers upon local boards of health and county health departments independent authority to enforce the SWMA at N.J.S.A. 13:1E-9d, the SWMA also requires that a county health department proceed only in accordance with County Environmental Health Act (CEHA), N.J.S.A. 26:3A2-21 et seq.

The judicial forum is the Superior Court or the municipal court having jurisdiction (i.e. the municipality in which the violation occurred).

Ordinances

Municipalities are able to regulate recycling through adoption of an ordinance. This ordinance should mirror the recycling requirements found in the applicable district solid waste management plan and conform to guidance received from the Department's Bureau of Recycling & Planning. The judicial forum is the municipal court having jurisdiction.

NJ Statewide Mandatory Source Separation and Recycling Act, P.L. 1987, c.102

The SWMA was substantially revised in 1987 to expand the existing voluntary State recycling plan and establish a statutory framework for a mandatory statewide recycling program. Counties were required to adopt district recycling plans and municipalities to adopt ordinances to implement the District Recycling Plan. The Plan and municipal ordinances were required to provide for source separation from the municipal solid waste stream of at least three recyclable materials, in addition to leaves. Recycling enforcement can occur through:

1-Enforcement of the District Recycling Plan, by the CEHA agency, the county recycling coordinator, or the utility authority as identified in the Plan provided that the utility authority has entered into a Uniform Shared Services Agreement with the CEHA agency. A utility authority lacks authority to enforce recycling on its own, but may do so under the umbrella of the CEHA program;

Overview of Local Solid Waste Enforcement Authority

2-Enforcement of the municipal recycling ordinance by the municipal recycling coordinator, or other municipal officials identified in the municipal ordinance; or

3-Enforcement of the State's recycling regulations by the Department's Solid Waste inspectors, CEHA agency or local agency that has entered into a Uniform Services Agreement with the CEHA agency. Possible citations of the State's recycling regulations include:

Transporter requirements (general) at N.J.A.C. 7:26-3.4(b) state that "All collected solid waste shall be properly deposited at an approved facility in accordance with N.J.A.C. 7:26-1 and 2. Solid waste or recyclable materials shall be deposited at a solid waste or recycling facility only to the extent the materials contained in an individual load are waste types and recyclable materials permitted for acceptance at the facility and commingled only to the extent permitted in the operating approvals for that facility."

Facility operators and transporters must comply with district solid waste management plan at N.J.A.C. 7:26-6.12(b), which states that "All solid waste facility operators and transporters registered with the Department shall operate in compliance with the applicable district solid waste management plan as well as any amendments to and/or approved administrative actions concerning such plan. Any facility operator or transporter who fails to comply with the applicable solid waste management plan as well as any amendment to or approved administrative actions concerning such plan shall be deemed to be in violation of the Act and this chapter and shall be subject to the applicable penalties provided under the Act and this chapter, and any other applicable law or regulation." It is important to note that usage of this provision is entirely dependent on whether the county included enforceable language in their district solid waste management plan.

Solid Waste collection companies must comply with solid waste collection tariff terms and conditions at N.J.A.C. 7:26H-4.4(a) 6, which states that "Collectors are prohibited from collecting commingled loads of solid waste and designated source separated recyclable materials, except in those instances where a specific municipal exemption has been granted to the generator of those materials as provided by N.J.S.A. 13:1E-99.16(d). Each solid waste management district plan contains a definition of the district's designated recyclable materials. Collectors are prohibited from disposing of leaves in any manner that differs from that outlined in N.J.S.A. 13:1E-99.21."

Generators of recyclable materials are required to abide by the requirements found in their applicable district solid waste management plan and their applicable municipal recycling ordinance. Generators are subject to penalties for failing to source separate, with the citation and penalty amount determined by the regulating entity as follows:

- A CEHA agency or authorized solid waste utility would cite either the specific penalty provisions established for generators in their CEHA recycling ordinance or they would use the citation of violating the NJ Statewide Mandatory Source Separation & Recycling Act at N.J.S.A. 13:1E-11, with penalties is assessed pursuant to N.J.S.A.13:1E-99.42, which must be not less than \$500 nor more than \$1000 for each offense.
- The municipal recycling coordinator would cite their municipal recycling ordinance, using penalty provisions contained within that ordinance.

Overview of Local Solid Waste Enforcement Authority

It must be noted that CEHA certified agencies may settle generator cases for first-time violations based on separate enforcement guidance provided by the Department. If a CEHA agency wishes to adopt a penalty ordinance for generator violations, it may do so subject to approval by the Department. The Department plans on proposing State regulations for generators in the near future¹ so a CEHA agency must decide whether it wishes to rely on the existing general penalties or adopt a penalty ordinance that may only be in effect until the new rule is promulgated.

The amount of penalty to be assessed for a recycling violation is governed by what authority is being cited to take the enforcement action.

The judicial forum depends on whether the State regulation, district recycling plan or municipal recycling ordinance is being cited. If the regulation or plan is cited, the judicial forum is the Superior Court or municipal court having jurisdiction. If the ordinance is cited, the appropriate forum is the municipal court having jurisdiction.

Penalties prescribed in the State's solid waste rules for failing to comply with a district solid waste management plan, are found at N.J.A.C. 7:26-5.4(g) or in the penalty matrix listed at N.J.A.C. 7:26-5.5(f). The State's solid waste rules identify a penalty of \$4,500 for a solid waste facility operators and transporters who violate a district plan. Penalties assessed using this matrix are based on the seriousness of the violation and the conduct of the violator. If the penalty matrix is used, the penalty range would be at least Moderate Minor which has a range of \$3,000 to \$6,000 with a midpoint of \$4,500 - typically the midpoint of range is used unless circumstances justify using the upper or lower portion or range.

¹ Note: For updates to DEP Solid Waste rules, please check the DEP Website at www.nj.gov/dep/rules.