

Overview of Solid Waste Control Laws Local Authority & Judicial Forum

Introduction

This is an overview of the New Jersey laws governing solid waste control, with an emphasis on which laws may be enforced by county or municipal agencies. This summary should not be construed as legal advice, but rather serve as guidance to understand the extent of authority provided to 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, N.J.S.A. 13:1E-9a and d. 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 shall proceed only in accordance with County Environmental Health Act (CEHA), N.J.S.A. 26:3A2-21 et seq.

The SWMA at N.J.S.A. 13:1E-9(a) states that "All codes rules and regulations adopted by the department related to solid waste collection and disposal shall have the force and effect of law. These codes, rules and regulations shall be observed throughout the State and shall be enforced by the department and every local board of health, or county health department, as the case may be." This subsection further provides that "All enforcement activities undertaken by county health departments pursuant to this subsection shall conform to all applicable performance and administrative standards adopted pursuant to section 10 of the County Environmental Health Act."

Generally, the judicial forum is the Superior Court or the municipal court having jurisdiction (i.e. the municipality in which the violation occurred). Injunctive relief may only be sought in the Superior Court. Injunctive relief means a court order that either prohibits or compels a party from continuing a particular activity.

Ordinances

No local government entity may adopt any ordinance regarding solid waste management, including hazardous waste, at least insofar as the State has occupied the field unless the SWMA specifically provides for municipal ordinances, as in the case with municipal recycling ordinances. Since local and county boards of health are already authorized to enforce the SWMA and the regulations adopted thereunder, the need for them to adopt an ordinance to address most aspects of solid waste control is unnecessary. Local entities **may** be able to regulate matters characterized as solid waste management, such as junkyards, where the State has chosen not to regulate in this area (see notes on case law below**).

The judicial forum for ordinances is the municipal court having jurisdiction.

****NOTES:** The following information on case law is provided:

A) The SWMA preempted local zoning ordinances and therefore, a township's action could not seek to restrain a corporation from operating a recycling center. *Township of Howell v. Fred McDowell, Inc.*, 300 N.J. Super. 491, 693 A.2d 490, 1977 N.J. Super. LEXIS 214 (N.J. Super. Ct. App. Div. 1997).

B) Pursuant to SWMA, the Department of Environmental Protection and Energy cannot grant a solid waste facility permit for a facility that is not included in the adopted and approved solid waste management plan of the district in which the facility is located. *Regional Recycling, Inc. v. State*, 127 N.J. 568, 606 A.2d 815, 1992 N.J. LEXIS 365 (1992).

C) A municipality's power to regulate the removal of human excrement from septic tanks was not preempted by SWMA and municipality was permitted to prosecute an environmental service corporation whose driver failed to provide a required city permit to a police officer. *Upper Saddle River v. Gaess Env't Serv. Corp.*, 123 N.J. Super. 375, 303 A.2d 103, 1973 N.J. Super. LEXIS 766 (N.J. Super. Ct. 1973).

Disorderly Persons, Criminal, and Forfeiture Actions

This statute at N.J.S.A. 13:1E-9.3 was amended in 2003 by the State Legislature and creates a solid waste disorderly persons offense, which is a useful prosecutorial tool in the area of solid waste enforcement. This section prohibits the collection, transportation or disposal of solid waste in excess of 0.148 cubic yards or 30 U.S. gallons of liquids to or at disposal sites, which are not authorized by the DEP to accept solid waste. It is noted that there are also criminal actions relative to the transport, treatment, storage, or disposal of hazardous waste under N.J.S.A. 13:1E-9(g) and (h), which must be referred to the DEP's 24-hour hotline number, **1-877-WARNDEP** since hazardous waste enforcement is only handled by DEP.

Pursuant to N.J.S.A. 13:1E-9.4, convicted offenders of N.J.S.A. 13:1D-9.3 are subject to sanctions of:

- (1) \$2,500.00 for the first offense (mandatory); up to \$5,000.00 for a second offense; and up to \$10,000.00 for each subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense;
- (2) Community service up to 90 days (mandatory);
- (3) Loss of driver's license for six months to one year (mandatory); and
- (4) **Forfeiture** of all conveyances used or intended for use in the unlawful transportation or disposal of solid waste pursuant to N.J.S.A. 13:1E-9.3; the proceeds from the disposal and sale of such conveyances shall be remitted to the chief financial officer of the municipality wherein the violation occurred, to be used by the municipality to help finance enforcement activities undertaken pursuant to N.J.S.A. 48:13A-12 or N.J.S.A. 13:1E-9.3. The process to follow for forfeiture of conveyances is found at N.J.S.A. 13:1K-1 et seq.

The judicial forum is the Superior Court or the municipal court having jurisdiction.

District Solid Waste Management Plans, N.J.S.A. 13:1E-2b(2).

This provision of the SWMA was established since the Legislature was concerned about the largely piecemeal efforts of local governments to manage solid waste. Each county and the Hackensack Meadowlands District received designation as a Solid Waste Management District with the power, singly or jointly with one or more other districts, to develop and implement a comprehensive solid waste management plan, which meets the needs of every municipality within its area of jurisdiction. Such plans are subject to the approval of DEP and must be updated periodically. N.J.S.A. 13:1D-20. Substantive changes such as the addition or expansion of a solid waste management facility require the district to amend the Plan and obtain approval of DEP. The regulatory requirements for these plans are found at N.J.A.C. 7:26-6.1 et seq.

Each solid waste management district is authorized to establish a system to meet the disposal needs within their area of jurisdiction, and may institute waste flow control requirements, which specifically direct where certain types of waste may be taken. If a solid waste transporter bypasses this system, the enforcement agency identified in the district plan (i.e. the CEHA agency or solid waste utility authority) may conduct enforcement and impose penalties. It must be noted that if a solid waste authority is identified to conduct enforcement, there must be an Uniform Shared Services Agreement (previously known as an Interlocal Agreement) executed between the lead CEHA agency and the solid waste authority that is approved by the Department.

In addition, solid waste operators and transporters registered with the Department must comply with the applicable district solid waste management plan. Failure to comply is considered a non-minor violation of the SWMA, N.J.A.C. 7:26-6.12(b) or N.J.A.C. 7:26-3.4(m) and may be subject to applicable penalties, which are found at N.J.A.C. 7:26-5.4(g), with a base penalty of \$4,500. The designation of "non-minor" indicates that the violation is not entitled to a grace period and may be subject to a penalty assessment even if corrected within a specified time period. In most cases non-minor violations are penalized as they represent the most serious violations.

In certain instances penalty amounts may be assessed using the penalty matrix listed at N.J.A.C. 7:26-5.5(f) rather than through use of base penalties. Typically the penalty matrix is used in instances where there is no established base penalty listed at N.J.A.C. 7:26-5.4(g) or the penalty listed does not provide a sufficient deterrent for the violation incurred. The matrix may also be used for grouping recurrent violations where the use of base penalties would result in a penalty which would be difficult to justify in a court of law. For example, if a violator was cited 20 times for violating the district solid waste management plan, the total penalty assessed using N.J.A.C. 7:26-5.4(g) would be at least \$90,000 as each instance carries a base penalty of \$4,500. The penalty could be assessed even higher due to severity factors, which allows for doubling the base penalty if the same violation is noted within the same 12-month period.

The penalty matrix is a table that classifies the Conduct and Seriousness of violations as Major, Moderate or Minor. Penalties assessed using this matrix range from \$3,000 to \$50,000 per violation. Using the example of a company cited for 20 instances of violating the district solid waste management plan, the total penalty assessed using N.J.A.C. 7:26-5.5(f) would be \$45,000. This is based if Conduct was classified as Major as the violation was "knowing" by virtue of being repeated, and if Seriousness was classified as Major because it severely impaired or undermined the intent of the requirements.

A District Solid Waste Management Plan may include district-specific or unique requirements such as transporter routes and generators, or mandatory recycling of specific materials. These unique requirements are subject to approval by the Department. If a district wishes to establish unique penalties for violations of their unique requirements, the district has two options to consider: 1-Cite a general violation of the solid waste rules, which is further explained in the section below, or 2- Adopt a separate penalty ordinance under CEHA, subject to approval by the Department. It must be noted that the Department will allow CEHA agencies to settle first-time generator violations based on separate enforcement guidance. It must be noted that when the Department has a specified penalty amount for a specific violation in the State's solid waste regulations, a local solid waste enforcement agency must cite that penalty amount and not develop its own penalty schedule.

The judicial forum for violations of the applicable district solid waste management plan is the Superior Court or municipal court having jurisdiction. Injunctive relief may be sought in the Superior Court.

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

The SWMA was substantially revised in 1987 with the addition of the Mandatory Source Separation and Recycling Act, 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 each municipality was required to adopt an ordinance to implement the applicable district recycling plan within its jurisdiction. The Plan and municipal ordinances must provide for source separation from the municipal solid waste stream of at least three recyclable materials, in addition to leaves. Recycling enforcement occurs through:

- 1- Enforcement of the municipal recycling ordinance by the municipal recycling coordinator or other municipal officials identified in the municipal ordinance;
- 2- Enforcement of the District Recycling Plan by the CEHA agency, the county recycling coordinator, or the solid waste authority that has entered into a Uniform Shared Services Agreement with the lead CEHA agency; or
- 3- Enforcement of the State's recycling regulations by the Department's Solid Waste inspectors, CEHA agency, local board of health, or by a solid waste authority that has entered into a Uniform Shared Services Agreement with the lead 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 as required by N.J.A.C. 7:26-6.12(b) and N.J.A.C. 7:26-3.4(m), 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.”

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."

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. 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.

How to address co-mingling of trash and recyclables? The Solid Waste Management Act at N.J.S.A. 13:1E-99.16(b) mandates that each municipality adopts an ordinance that requires generators of municipal solid waste to source separate. All waste must be source separated at the point of generation unless specifically exempted by the local recycling coordinator.

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.

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.

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

Updated April 2008, Supersedes previous versions from 2006 & 2007
NJDEP, Office of Local Environmental Management

Generally, the judicial forum depends on whether the State rule, CEHA ordinance or municipal recycling ordinance is being cited. If the rule 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. If the enforcement agency is a county agency, it may be preferable, particularly if there are numerous violations, to take the case to Superior Court.

Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq., P.L. 1970, c.40

This statute establishes the framework for safe, adequate and proper solid waste disposal at reasonable rates. The Department is responsible for monitoring the collector industry to insure that the rates charged are due to effective competition in the marketplace. The Department also establishes bid specifications for municipalities that contract with private solid waste collectors. The DEP program responsible for this work is the Solid Waste Economic Regulation Section, which is located within Compliance & Enforcement.

	Solid Waste Management Act	Recycling	Solid Waste Utility Control Act	Recycling Ordinances	District S Mgm
Statutory Citation	N.J.S.A. 13:1E et. seq.	N.J.S.A. 13:1E-99.11	N.J.S.A. 48:13A-12	N.J.S.A. 13:1E-99.16	N.J.S.A. 13:2b(2)Solid & 13:1E-99 Recycling
Regulatory Citation	N.J.A.C. 7:26	N.J.A.C. 7:26A	N.J.A.C. 7:26 and N.J.A.C. 7:26H	N/A	N.J.A.C. 7:26 seq.
Does local agency have enforcement authority?					
CEHA Agency (i.e. county health department)	Yes	Yes	Not at this time-though NJDEP can delegate.	CEHA Ordinance allowed only for unique requirements. Can enforce local recycling ordinance if identified.	Yes
Local Boards of Health	Yes	Yes	No	Can enforce the local ordinance if ID'd as the enforcement agency.	No
Solid Waste Utility Authority	Only if participating as approved subcontractor under CEHA.	Only if participating as approved subcontractor under CEHA.	No	No	No, unless District Plan
General Municipal Powers	No	No	No	Yes	No