



*Statutory References, Rules and Regulations*

The following is a Table of Contents for the N.J.S.A 13:1E-99 et seq. the “Statewide Mandatory Source Separation and Recycling Act”.

*The complete Rules can be found on the New Jersey Legislature website at <http://www.njleg.state.nj.us/>*

13:1E-99.11.	Findings, declarations <b>“Statewide Mandatory Source Separation and Recycling Act”</b>
13:1E-99.12.	Definitions
13:1E-99.13.	District recycling plan
13:1E-99.13a.	Adoption of model ordinance on recycling in multifamily housing
13:1E-99.13b.	Written cooperative marketing agreement
13:1E-99.14.	Contracts for recycling services
13:1E-99.15.	Exemption
13:1E-99.16.	Municipal recycling program
13:1E-99.17.	Bidding for collection, disposal of recyclable materials
13:1E-99.18.	Identification as recyclable container
13:1E-99.19.	Written determination
13:1E-99.20.	Disposition, recycling of automobile tires
13:1E-99.21.	Use of leaf composting, vegetative waste composting facilities or recycling center
13:1E-99.22.	Municipal leaf collections
13:1E-99.21a.	Authorization to own or operate leaf-composting facility
13:1E-99.21b.	Requirements for licensing for owner, operator of leaf composting facility
13:1E-99.21c.	Leaf composting demonstration projects
13:1E-99.21d.	Vehicles for transporting leaves to facility, registration not required
13:1E-99.21e.	Jurisdiction over charges, rates; revenue not included in tariff computation
13:1E-99.21f.	Rules, regulations.
13:1E-99.23.	Preference to materials paid with public funds
13:1E-99.24.	Purchase of recycled paper, products; review of bid specs
13:1E-99.25.	Contracts for recycled paper, products
13:1E-99.26.	Cooperative purchase, marketing
13:1E-99.27.	Increasing percentage of recycled paper
13:1E-99.27a.	Contracts for purchase of recycled nonpaper products
13:1E-99.28.	Recyclable paving materials
13:1E-99.29.	Fuel from waste oil
13:1E-99.30.	Compliance with district recycling plan
13:1E-99.31.	Resource recovery facility to comply with district recycling plan
13:1E-99.32.	Short title
13:1E-99.33.	Recycling activities outside BPU jurisdiction
13:1E-99.34.	Recycling centers
13:1E-99.35.	Sale of motor oil; rules, regulations
13:1E-99.36.	Sign posted "used oil collection center" defined; rules, regulations
13:1E-99.37.	Statewide Mandatory Source Separation and Recycling Program Fund.
13:1E-99.38.	Marketing studies
13:1E-99.39.	Report to Legislature
13:1E-99.40.	<b>Definitions "Toxic Packaging Reduction Act."</b>
13:1E-99.41.	Material code labels on bottles, containers; required
13:1E-99.42.	Violations, penalties

- 13:1E-99.43. Rules, regulations
- 13:1E-99.44. Short title "Toxic Packaging Reduction Act."
- 13:1E-99.45. Findings, declarations, determinations
- 13:1E-99.46. Definitions.
- 13:1E-99.47. Sale of certain packages, components, packaged products, restricted; terms defined.
- 13:1E-99.48. Exemptions, criteria.
- 13:1E-99.49. Request for information by department
- 13:1E-99.50. Fees
- 13:1E-99.51. Certification of compliance
- 13:1E-99.52. Determination of compliance by department
- 13:1E-99.53. Noncompliance
- 13:1E-99.54. Violations, penalties, remedies
- 13:1E-99.55. Toxic Packaging Reduction Fund created
- 13:1E-99.56. Review, report.
- 13:1E-99.57. Request for copy of declaration of exemption, certificate of compliance
- 13:1E-99.58. Rules, regulations
- 13:1E-99.59. **Short title "Dry Cell Battery Management Act."**
- 13:1E-99.60. Findings, declarations
- 13:1E-99.61. Definitions relative to dry cell batteries
- 13:1E-99.62. Restricted sales of certain batteries
- 13:1E-99.63. Restricted sale of consumer mercuric oxide battery
- 13:1E-99.64. Sale of rechargeable consumer products restricted, exemptions
- 13:1E-99.65. Sale of certain batteries dependent on battery management plan
- 13:1E-99.66. Submission of battery management plan
- 13:1E-99.67. Submission of dry cell battery collection plan
- 13:1E-99.68. Disposal of mercuric oxide batteries as solid waste, prohibited
- 13:1E-99.69. Disposal of used nickel-cadmium rechargeable batteries as solid waste, prohibited
- 13:1E-99.70. Solid waste collectors not to collect certain used batteries
- 13:1E-99.71. Solid waste facilities not to accept certain used batteries for disposal
- 13:1E-99.72. Retailers, distributors, manufacturers to accept used batteries
- 13:1E-99.73. Institutional generators to provide for disposal of certain batteries
- 13:1E-99.74. Adoption of district household hazardous waste management plan.
- 13:1E-99.75. Implementation of countywide used dry cell battery source separation and collection program
- 13:1E-99.76. Order issued by commissioner to manufacturers
- 13:1E-99.77. Addressing consumer complaints, establishment of public education program, determination of compliance
- 13:1E-99.78. Violations, penalties
- 13:1E-99.79. Rules, regulations
- 13:1E-99.80. Report by commissioner to the Legislature
- 13:1E-99.81. Collector, transporter exemptions
- 13:1E-99.82. **Short title "Mercury Switch Removal Act of 2005."**
- 13:1E-99.83. Findings, declarations relative to mercury pollution from switches in scrap vehicles.
- 13:1E-99.84. Definitions relative to mercury switches in scrap vehicles.
- 13:1E-99.85. Development of mercury minimization plan for vehicles by manufacturers.
- 13:1E-99.86. Approval, disapproval, conditional approval of mercury minimization plan.
- 13:1E-99.87. Removal of mercury switches.
- 13:1E-99.88. Manufacturer's report to commissioner relative to implementation of mercury minimization plan.

- 13:1E-99.89 Violations, civil action, penalty.
- 13:1E-99.90 Revision of policies of Department of the Treasury relative to purchase of vehicles.
- 13:1E-99.91. Sale of certain mercury thermometers prohibited.
- 13:1E-99.92. DEP responsible for compliance, public education program.
- 13:1E-99.93. Violations, penalties.

# RECYCLING REGULATIONS

## N.J.A.C. 7:26A-1 et seq.

The following is a Table of Contents for the NJ Recycling Regulations. NJAC 7:26A-1 et seq. contains the rules of the NJDEP governing the operation of recycling centers pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A 13:1E-99.11 et seq. These rules do not apply to hazardous waste, except for universal waste exempted from hazardous waste regulation as provided at N.J.A.C. 7:26A-7. or the use or reuse of material that would otherwise become solid waste pursuant to N.J.A.C. 7:26 as fill material, aggregate substitute, fuel substitute, or landfill cover which in some cases may be recycling, are reviewed and approved in accordance with N.J.A.C. 7:26-1.7(g).

*The complete Rules can be found on the NJDEP website at  
<http://www.nj.gov/dep/dshw/resource/recyreg03.pdf>*

<b>Subchapter 1.</b> General Provisions .....	Pages 1-20
<b>Subchapter 2.</b> Annual Fees for A General or Limited Approval to Operate a Recycling Center for Class B, D [sic] and D Recyclable Material .....	Pages 20-24
<b>Subchapter 3.</b> Approval of Recycling Centers for Class B, Class C or Class D Recyclable Materials .....	Pages 20-49
<b>Subchapter 4.</b> 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 .....	Pages 49-69
<b>Subchapter 5.</b> Requirements for Processing Discarded Appliances That Contain Refrigerant Fluid.....	Pages 69-70
<b>Subchapter 6</b> Standards for the Management of Used Oil .....	Pages 70-101
<b>Subchapter 7</b> Standards for the Management of Class D Universal Waste .....	Pages 101-108
<b>Subchapter 8</b> Requirements for Transporters of Source Separated Materials .....	Pages 108-108

**Municipal Responsibilities  
under the  
“New Jersey Statewide Mandatory Source Separation and Recycling Act”,  
PL.1987, c. 102 (NJSA 13:1E-99.11 et seq.)**

1. **Designate one or more persons as the municipal recycling coordinator (13:1E-99.16).** Though the specific duties of this official are not spelled out in law or regulation, it is presumed that they will be responsible for administering some or all of the duties listed in this document.
2. **Provide a collection system for designated recyclable materials (13:1E-99.16a).** The municipality is the “collector of last resort” in those instances where a collection system is not otherwise provided by the generator, or other public or private entity. This applies to all materials designated for mandatory recycling in the respective County Recycling Plan, and the municipal ordinance adopted pursuant to that Plan, and this Act. Further, this applies to designated recyclable materials generated in the residential, commercial or institutional sectors, and must be detailed in the municipal ordinance.
3. **Adopt a mandatory source separation and recycling ordinance (13:1E-99.16b. and 99.17).** This ordinance must include, at a minimum: the designation of materials mandated for source separation and recycling from all residential, commercial and institutional generators; responsibilities of generators for the collection and recycling of those materials; method of enforcement for the mandate, including delegation of enforcement powers and penalties for non-compliance. The ordinance may also include a requirement that all registered solid waste haulers bid on recycling services, if this provision is included in a County Recycling Plan.
4. **Periodic review and update of municipal land use master plan and development regulations (13:1E-99.13a. and 99.16c.).** The master plan and development regulations shall require, at a minimum, provisions for the storage and collection of designated recyclable materials in any development requiring site plan approval and which involves the construction of 50 or more units of single-family residential housing, any construction of multi-family residential construction, or commercial or industrial development for the utilization of 1000 square feet or more of land.
5. **Allow certain generator to be exempt from source separation requirements in certain circumstances (13:1E-99.16d.).** A municipality may exempt commercial and institutional entities from the ordinance mentioned in #3 above, in those instances where the designated materials are otherwise recycled. Proof, adequate to the governing body of that recycling must be provided, and the generator is responsible for reporting, on at least an annual basis, to the municipality on the total tons of designated materials recycled. Note that **only** the municipality has this authority, not the provider of the recycling or solid waste service.
6. **Submit an annual municipal recycling tonnage report to the NJDEP (13:1E-99.16e.).** The NJDEP provides an annual guidance document and on-line reporting forms for this requirement. This report must detail all recycling that occurred in the municipality, from all sectors (residential, commercial and institutional) subject to the ordinance. The NJDEP provides several reminders regarding this report and the

governing body resolution which must accompany this report. Those municipalities which do not report are barred from receiving a recycling grant, may jeopardize receiving other NJDEP grants, and will be referred to NJDEP Enforcement for appropriate action.

7. **Notify all generators of their source separation responsibilities (13:1E-99.16f.).** At least twice annually, the municipality must notify all occupants of residential, commercial and institutional properties of the requirements of the municipal recycling ordinance.
8. **Prohibit, by ordinance, the placement of leaves for disposal as solid waste (13:1E-99.22).** The ordinance may either specify the on-site composting of leaves (for residential generators only), or the placement of leaves for collection and composting as provided in the ordinance.

## 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 recycling ordinances. 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\*\*). 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.



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 CEHA agency or solid waste utility authority may conduct enforcement and impose penalties.

In addition, solid waste facilities must comply with the applicable district solid waste management plan. Failure to comply is considered a violation of the SWMA and is subject to applicable penalties, N.J.A.C. 7:26-6.12(b).

Currently there are no established penalties in the solid waste regulations for violations of the district solid waste management plan, which means the penalty matrix listed at N.J.A.C. 7:26-5.5(f) must be used. Penalties assessed using this matrix are based on the seriousness of the violation and the conduct of the violator.

District Solid Waste Management Plans include district-specific requirements such as transporter routes and recycling, and should identify the enforcement agency such as the CEHA agency or utility authority that will enforce the Plan's requirements.

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 are required to 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 District Recycling Plan, by the CEHA agency, the county recycling coordinator, or the utility authority as identified in the Plan;
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 an Interlocal 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 respective municipal recycling ordinance and subject to penalties prescribed in the ordinance or as referenced in their district solid waste management plan. There is currently no State regulation that can be cited against generators of

recyclable materials. The DEP plans on proposing State regulations for generators in the near future.<sup>1</sup> (This is why many county agencies cannot effectively enforce recycling requirements at this time).

Generally, the judicial forum depends on whether the State regulation, district solid waste management 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. If the enforcement agency is a county agency, it may be preferable, particularly if there are numerous violations, to take the case to the Superior Court.

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

- If the violator is cited for failing to comply with the applicable district solid waste management plan, the penalty matrix listed in the state regulations at N.J.A.C. 7:26-5.5(f) must be used. Penalties assessed using this matrix are based on the seriousness of the violation and the conduct of the violator.
- If the violator is cited for violating the NJ Statewide Mandatory Source Separation & Recycling Act and regulations adopted thereunder, the penalty is assessed pursuant to N.J.S.A.13:1E-99.42 and must be not less than \$500 nor more than \$1000 for each offense.
- If the violator is cited for violating a municipal recycling ordinance, the penalty assessed is based on the penalty provisions within the ordinance.

### **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.

---

<sup>1</sup> Note: For updates to DEP Solid Waste rules, please check the DEP Website at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

	<b>Solid Waste Management Act</b>	<b>Recycling</b>	<b>Solid Waste Utility Control Act</b>	<b>Recycling Ordinances</b>	<b>District Solid Waste Mgmt Plans</b>	<b>Forfeiture of Conveyances</b>
<b>Statutory Citation</b>	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. 13:1E-2b(2)Solid Waste Plan; & 13:1E-99.13 Recycling Plan	N.J.S.A. 13:1E-9.4
<b>Regulatory Citation</b>	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. 7:26-6.1 et seq.	N/A
<b>Does local agency have enforcement authority?</b>						
<b>CEHA Agency (i.e. county health department)</b>	Yes	Only recycling facilities & transporters OR if ID'd in the District Plan to enforce.	Yes	No	Yes	Yes
<b>Local Boards of Health</b>	Yes	Can enforce the local ordinance if ID'd as the enforcement agency.	Yes	Can enforce the local ordinance if ID'd as the enforcement agency.	No	Yes
<b>Solid Waste Utility Authority</b>	Only if participating as approved subcontractor under CEHA.	Only if participating under CEHA or ID'd in their District Plan to enforce.	No	No	Only if ID'd in their District Plan to enforce.	Only if participating as approved subcontractor under CEHA.
<b>General Municipal Powers</b>	No	No	Yes	Yes	No	No

## **THE MARKETING OF RECYCLABLE MATERIALS** provided by **Division of Local Government Services**

This concerns the application of the Local Public Contracts Law, specifically the meaning of N.J.S.A. 40A:11-5(s), to the collection of the most common recyclable materials (glass, tin-plated steel cans, plastic, aluminum, newspaper, corrugated cardboard, newsprint and various other paper grades) at curbside or from a contracting unit's public works' facility or any other recycling drop off location operated by the contracting unit. The question is whether the collection at these locations are part of the 40A:11-5(s) exemption, or subject to the solicitation of quotations or receipt of bids, depending on the dollar value.

There is a further question as to the type of facility that qualifies as an end user or end processor market ("market") for the various types of recyclable materials. Does a facility, which directly receives recyclable materials from the curbside, or from various recycling drop off locations operated by the contracting unit qualify as a market?

According to the Bureau of Recycling and Planning (Bureau) in the State Department of Environmental Protection, recyclable materials do not necessarily go directly to a market from pick up at curbside, public works yards, or any other recycling drop off location operated by the contracting unit. Most local programs in our State take or have a hauler deliver this type of recyclable materials to a "Class A Recycling Center." A Class A Recycling Center is typically where commingled recyclable materials are separated by material or grade and otherwise manually or mechanically processed as required by an end user or transportation specifications. The material is then ready for shipment to a market. It is at that "market facility" where the actual conversion to another product(s) takes place.

It is the Bureau's position that as long as a local contracting unit finds a Class A Recycling Center for processing as required by end user or transportation specifications, that facility meets the requirements of N.J.S.A. 40A:11-5(s) as a market, therefore, requiring bidding as the basis for a contract is not necessary. The exception in the law applies even though the Class A Recycling Center would eventually transport the recyclable materials as noted above to an actual market. Class A Recycling Centers are not licensed by the State, but are subject to the provisions of the Municipal Land Use Law and the Uniform Construction Code at the local level. However, the State does have regulations regarding the operations of such centers.

This exception applies only when the collection is done by contracting unit employees. Conversely, contracts for curbside pick up by a private hauler or transportation by a private hauler from a public works yard or any other recycling drop off location to a Class A Recycling Center or a market would be subject to either the solicitation of quotations or the receipt of bids. Both are examples of a hauling contract and do not fall under the exception.

If a local contracting unit wishes to establish a recycling program, or a recycling cooperative program by combining the collection (subject to the solicitation of quotations or receipt of bids) and marketing (an exemption from receipt of bids) components, it may do so pursuant to the provisions of N.J.S.A. 40A:11-5(5). This provision of law authorizes a negotiated contract process subject to approval of the Director of the Division of Local Government Services.

There are other classifications for facilities handling various types of recyclable materials that meet the exception of N.J.S.A. 40A:11-5(s). The classifications are as follows:

<u>Class A. Recycling Center</u>	Glass, tin-plated steel cans, plastic, aluminum, newspaper, corrugated cardboard, newsprint and various other paper grades
<u>Class B. Recycling Center</u>	Concrete, asphalt, tree stumps, tree parts, logs and tires
<u>Class C. Recycling Center</u>	Brush, vegetative growth, leaves and grass
<u>Class D. Recycling Center</u>	Electronic parts (computers), used oil, fluorescent light bulbs and similar lighting applications

Materials approved for acceptance at Recycling Centers are governed by regulations found at N.J.A.C. 7:26A-1.1 et seq. The regulations may be found on the website at: [www.state.nj.us/dep/dshw/resource/rules](http://www.state.nj.us/dep/dshw/resource/rules).

If a local contracting unit concludes that other types of material (street sweepings, pond sediment, etc.) can qualify under the “marketing” exemption of N.J.S.A. 40A:11-5(s), it can apply to the Bureau of Resource Recovery and Technical Programs in the Division of Solid and Hazardous Waste for a determination.

## EXECUTIVE ORDER NO. 11

Signed on Earth Day 2006

Creating the post of Director of Energy Savings and outlining significant steps to increase energy efficiency in state government. The Director of Energy Savings will design and implement a program to increase efficiency, reduce usage, and improve the procurement of energy for the hundreds of facilities owned by the state. The director will also take steps to establish New Jersey as a leader in its responsible stewardship of natural resources. Whenever possible the state will purchase products that are made from renewable materials and composed of low or no toxicity materials. Furthermore, all state brochures and pamphlets will be printed on recycled paper whenever possible.

**WHEREAS**, New Jersey is a national leader in promoting energy efficiency, renewable energy, and environmental protection and is dedicated to reducing energy usage, which decreases emissions of greenhouse gasses and improves the health and welfare of the State's citizens; and

**WHEREAS**, increasing greenhouse gas emissions have been documented to result in global warming that is causing a rise in sea level, which in turn will affect the natural resources of the 127 miles of New Jersey's coast and negatively impact billions of dollars of existing infrastructure; and

**WHEREAS**, New Jersey State government controls hundreds of buildings throughout the State and spends nearly \$128 million annually on energy for its various facilities; and

**WHEREAS**, establishing the position of Director of Energy Savings within the Department of Treasury will assist in reducing the State's energy expenses and benefit the environment; and

**WHEREAS**, reducing energy usage through energy efficiency and increased use of renewable energy will improve the State's economy by exerting downward pressure on natural gas prices and otherwise lowering the cost of energy, creating local jobs, and stemming the flow of energy dollars to out-of-state entities; and

**WHEREAS**, energy savings and environmental protection gains can be achieved through changes in the purchasing patterns of State government, which wields considerable purchasing power; and

**WHEREAS**, the increased purchase of energy efficient, less toxic, and recycled products and services by State government is considered one of



the best ways to bolster these markets, as well as the economic viability of New Jersey; and

**WHEREAS**, State government should assume a leadership role in promoting the efficient use of energy and natural resources in the interest of long-term protection and enhancement of our State's natural beauty;

**NOW, THEREFORE, I, JON S. CORZINE**, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created within the Department of Treasury the position of Director of Energy Savings. The Director of Energy Savings shall be appointed by the Governor and shall report to the Treasurer.
2. The Director of Energy Savings shall be responsible for implementing a program to increase energy efficiency, reduce energy usage, and improve the procurement of energy for all State facilities. Specifically, the Director of Energy Savings shall:
  - a. Oversee energy audits to be conducted at State buildings, centers, and facilities and subsequent implementation of the recommendations contained in the audits in the most cost-effective manner available. These audits shall, at a minimum, analyze energy efficiencies and the feasibility of installing on-site renewable energy systems that can be cost-effectively implemented with a 10-year payback period;
  - b. Provide an annual report to the Governor outlining the environmental results and cost savings to the State;
  - c. Take the action necessary to enable the State to partake in the bulk purchase and energy contract program to maximize the State's purchasing power;
  - d. Assist in implementing the procurement practices set forth in this Order;
  - e. Work with the Economic Development Authority, the Office of Economic Growth, the Commission on Science and Technology, and the Board of Public Utilities to develop a plan for promoting economic development around renewable energy and advanced energy technologies;
  - f. Coordinate with the agencies that own, lease, occupy or maintain State buildings to implement immediate energy efficiency practices;
  - g. Evaluate and determine whether the State should participate in the Board of Public Utilities' Clean Power Choice program; and



- d. State agencies shall make best efforts to use both sides of the paper stock (*i.e.*, two-sided or duplex copies) when producing or copying documents.
  - e. In all product procurements, State agencies shall make best efforts to purchase low toxicity products, PBT-free or reduced-PBT products, and other products manufactured through environmentally sustainable methods. In cases where a PBT-free alternative is not available, the State agency shall include specifications to encourage product manufacturers to take back and recycle used PBT-containing products.
6. In creating any new specification, and prior to the renewal of any expired specification, each State agency shall revise or eliminate any standards or provisions unrelated to performance that present barriers to the purchase of recycled products (e.g., unnecessary brightness standards or their equivalents for paper and paper products shall be lowered to remove any impediments that these standards may pose to the purchase of recycled paper or recycled paper products), energy efficient products, renewable energy products, low toxicity products and alternatives to products that contain PBTs, and other products manufactured through environmentally sustainable methods.
  7. The Director of the Division of Purchase and Property shall have the authority to extend any existing contracts under their current terms when the Director determines such extension to be in the best interests of the State.
  8. Each State agency shall submit an annual report to the Division of Purchase and Property by August 31 of each year that details the types, volume and dollar amounts of recycled products, energy efficient products, renewable energy products, low toxicity products and alternatives to products that contain PBTs, and other products manufactured through environmentally sustainable methods purchased during the previous fiscal year. This report shall be submitted either electronically or on paper in accordance with subsections (c) and (d) of section 5 of this Order.
  9. State agencies shall transition to energy efficient products and equipment, renewable energy products, recycled products, low toxicity products and alternatives to products that contain PBTs, and other products manufactured through environmentally sustainable methods as soon as possible but in a manner that avoids wasting of existing inventories and allows the phase-out of products inconsistent with this Order.
  10. The Office of Clean Energy in the Board of Public Utilities and the Department of Environmental Protection shall provide technical assistance to the Director of Energy Savings, State agency coordinators, and the Division of Purchase and Property in support of implementation of this Order and shall promote innovative research and development to identify new recycled products, energy efficient products, renewable energy

products, low toxicity products and alternatives to products that contain PBTs, and other products manufactured through environmentally sustainable methods to be purchased by State agencies.

11. This Order shall not apply whenever inclusion in a contract of a provision or provisions of this Order would violate the terms, conditions, or limitations of any grant, funding or financial assistance from the federal government or any agency thereof.
12. This Order shall take effect immediately.

## **Addendum**

**Construction Products-** Unless otherwise noted, in accordance with United States Environmental Protection Agency's (hereinafter "USEPA") Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

Asphalt pavement or asphalt pavement patching materials made with recycled asphalt shingles - New Jersey Department of Transportation (hereinafter "NJDOT") specification

- Building insulation products
- Carpet
- Carpet cushion
- Cement and concrete
- Consolidated and reprocessed latex paint
- Floor tiles
- Flowable fill
- Glassphalt - NJDOT specification
- Laminated paperboard
- Patio blocks
- Railroad grade crossing surfaces
- Reclaimed asphalt pavement (RAP) - NJDOT specification
- Recycled concrete aggregate (RCA) - NJDOT specification
- Recycled plastic lumber - American Society for Testing and Materials specification
- Rubber modified asphalt
- Shower and restroom dividers/partitions
- Structural fiberboard

**Landscaping Products-** Unless otherwise noted, in accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Garden and soaker hoses
- Hydraulic mulch
- Lawn and garden edging

Mulch, compost and other soil amendments made from municipal solid waste, sludge, yard waste, food waste, clean wood scrap and other organic materials - NJDEP solid waste and recycling rules

Plastic lumber landscaping timbers and posts

**Nonpaper Office Products-** In accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Binders, clipboards, file folders, clip portfolios, and presentation folders
- Office recycling containers
- Office waste receptacles
- Plastic desktop accessories
- Plastic envelopes
- Plastic trash bags
- Printer ribbons
- Toner cartridges
- Soy-based inks

**Paper and Paper Products-** In accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Commercial/industrial sanitary tissue products
- Miscellaneous papers
- Newsprint
- Paperboard and packaging products
- Printing and writing papers

**Park and Recreation Products-** In accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Park benches and picnic tables
- Plastic fencing
- Playground equipment
- Playground surfaces
- Running tracks

**Transportation Products-** Unless otherwise noted, in accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Channelizers
- Delineators - NJDOT specification
- Flexible delineators
- Parking stops
- Traffic barricades
- Traffic cones - NJDOT specification

**Miscellaneous Products-** In accordance with USEPA's Comprehensive Procurement Guidelines developed pursuant to Federal Executive Order 13101:

- Awards and plaques
- Industrial drums
- Manual-grade strapping
- Mats
- Pallets
- Signage
- Sorbents