



# Association of New Jersey Recyclers

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November 23, 2020

Catherine R. McCabe  
Commissioner  
New Jersey Department of Environmental Protection  
401 E. State St.  
7th Floor, East Wing  
P.O. Box 402  
Trenton, NJ 08625-0402

RE: Environmental Justice Rulemaking Stakeholder Process  
Comments from the Association of New Jersey Recyclers

Dear Commissioner McCabe:

I reach out to you today on behalf of the Association of New Jersey Recyclers (ANJR) to offer comments to the Department as part of your environmental justice (EJ) rulemaking stakeholder process. ANJR carefully monitored the legislative process associated with the passage of A2212/S232 and has also participated in the Department's prior stakeholder discussions held over the past two months. At this time, we wish to offer formal comments for your consideration. We wish to thank you for this opportunity and to complement the Department on the extensive nature of the stakeholder process you have undertaken.

By way of background, the mission of ANJR is to support, promote and enhance source reduction, reuse practices, organics management, and recycling activities in the State of New Jersey. ANJR provides educational and training programs, and also advances policies that support sustainable materials management, which in turn benefits the environment, the communities and the economy of New Jersey. We are a not-for-profit, 501(c) (3), nonpartisan network that was incorporated in 1984. ANJR's members consist of individuals and organizations from both the public and private sectors, governmental entities, the recycling industry, and the business community.

ANJR supports the Legislative declarations outlined in A2212/S232, particularly that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth and that communities must have a meaningful opportunity to participate in the permitting process. However, we must raise some critical concerns which we hope the Department will carefully consider when developing its proposed EJ rulemaking.

As you undoubtedly know, the recycling industry in New Jersey has grown to employ some 27,000 people which adds almost \$6 Billion annually to our State economy. We have 22 Class A facilities which process curbside collected material, over 100 NJDEP Class B facilities accepting concrete rubble, asphalt debris, wood scrap and scrap tires, 38 Class C facilities



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processing organic material and dozens of industrial facilities including steel mills, foundries and paper mills. Most recent DEP statistics show the State achieving a 60% total waste stream recycling rate and a 40% municipal waste stream recycling rate – among the highest recovery rates for any State in the US. We have grown from mandating 3 materials for recycling to an average of 16 in County Recycling Master Plans.

While we have made tremendous advances since becoming the first state in the country to adopt mandatory recycling in 1987, we now stand at a crossroads as international markets have all but collapsed, most notably based on public policy decisions and regulatory restrictions imposed by China which have been widely reported on and characterized as the Green Fence and Green Sword initiatives. Without question, recyclers face the most challenging market conditions in industry history which threatens the viability of many member businesses. The unprecedented economic impacts associated with COVID-19 further exacerbates the ominous condition of the recycling industry at this time.

We also wish to point out a concern over contradictory public policy directions which we hope the Department will acknowledge in the context of our industry recommendations as outlined below and provide the requested relief. ANJR worked for six years with the leadership of the Senate Environment and Energy Committee and Assembly Environment and Solid Waste Committee in developing the foundations of the Food Waste Recycling Act, which Governor Murphy signed into law in April 2020 as A2371/S865. The pressing need to divert food waste from landfilling to reduce GHG emissions was also highlighted in the actions called for within the Department's October 15, 2020 "Global Warming Response Act 80x50 Report" (see Chapter 5, page 103 for reference). New food waste recycling/composting facilities will require Class C Recycling Center approvals under the provisions of the Solid Waste Management Act and the Department's regulations. Both the Legislature and Department are also actively engaged in numerous initiatives to stimulate markets for recycled products, most notably in the context of A4676/S2515, the recycled content bill to require manufacturers to incorporate post-consumer material for various plastic resins and glass in their products. Our point is that we cannot advance recycling as a critical component of a sustainable future while imposing new and duplicative administrative and procedural burdens that we argue below are already being addressed in existing requirements.

We believe that it is also critically important in the context of developing EJ rules that the Department recognize how recycling facilities are currently regulated. Without question, the approval process for recycling facilities is among the most stringent of any State in the country. Extremely rigorous application requirements and standards are embodied in DEP regulations at N.J.A.C. 7:26A-3.1 and 3.2. Two public hearings are already required for Class A, Class B, Class C and Class D recycling centers during the County Planning phase of the regulatory review process as outlined in the Department's April 23, 2019 "Solid Waste and Recycling Facility Solid Waste Management Plan Guidance" document. (This document is attached to these comments for reference.) The notice requirements for these hearings are nearly identical to what was adopted in the EJ Legislation in section 4.a.(3).



**2. Please provide blanket approval to allow for the consolidation of public hearings for Class A, B, C and D recycling centers which are currently conducted under the requirements of the New Jersey Solid Waste Management Act**

**Discussion:** As noted previously, two public hearings are already required for Class A, Class B, Class C and Class D recycling centers during the County Planning phase of the regulatory review process as outlined in the Department's April 23, 2019 "Solid Waste and Recycling Facility Solid Waste Management Plan Guidance" document. As provided in Section 3. Item 6. Of the Department's Guidance document, ***"at least one public hearing shall be held during the business day and at least one public hearing shall be held in the evening hours."*** Arguably, there are as many as four (4) opportunities for public comment in the planning phase of the permitting process. The New Jersey Solid Waste Management Act authorized the creation of "Solid Waste Advisory Councils" (SWACs) in each county and in the Hackensack Meadowlands District pursuant to N.J.S.A. 13:1E-20 – "Solid waste management plans." Public hearing requirements are also set forth by statute at 13:1E-23 – "Adoption of solid waste management plan; procedure; review."

In practice, many counties require two readings of an application for inclusion of a Class A, Class B, Class C or Class D recycling facility within a County Plan before a County SWAC. These meetings are publicly advertised and/or open to the public for comment. Should a SWAC recommend plan amendment approval of a Class B, Class C or Class D recycling center, the respective Board of Chosen Freeholders also must formally approve the action. This requires two public hearings which also involve two readings and two opportunities to receive public comment.

These requirements are also generally embodied within DEP's rules. N.J.A.C. 7:26-6.10(b)7 specifically provides that plan amendments are required for County Plan inclusion for new facilities:

***"The inclusion of new facilities, including ..... recycling facilities for Class B (except those described at N.J.A.C. 7:26A-1.4(a) or 3.7(a)), Class C (except those identified at N.J.A.C. 7:26A-1.4(a)13) and Class D materials, permanent household hazardous waste collection sites, and new regulated medical waste treatment, processing and disposal facilities;"***

N.J.A.C. 7:26-6.10(c) further provides that: ***"Upon the development of a solid waste plan amendment, a board of chosen freeholders or the New Jersey Meadowlands Commission shall hold a public hearing for the purpose of receiving comments from persons interested in or affected by the adoption of the plan amendment."***

It should also be noted that detailed public notice requirements are also set forth within the Department's Recycling Regulations at N.J.A.C. 7:26A-3.1 ***"General requirements applicable to all recycling centers which receive, store, process or transfer Class B, Class C or Class D recyclable material."*** These requirements were further supplemented in great detail by the

Finally, it must also be pointed out that the cost of compliance with DEP standards and fees set forth at N.J.A.C. 7:26A-2.1 are nothing short of exorbitant. Application fees, annual fees, compliance monitoring fees, modification fees and renewal fees literally run tens of thousands of dollars per year and have forced many smaller recyclers out of business. The recycling industry can ill afford additional costs and duplicative procedures to remain viable and a critical component of a sustainable society in the future.

With this backdrop in mind, ANJR respectfully submits the following comments for your consideration in developing the Department's draft EJ rules.

**1. Please clarify in your rulemaking that Class A recycling facilities are exempt from the EJ Requirements at C.13:1D-160**

**Discussion:** The Department defines four classes of recycling facilities within its recycling rules found at N.J.A.C. 7:26-A-1.3. These classes can loosely be framed as:

- Class A: curbside commodities;
- Class B: construction & demolition debris (concrete, asphalt, brick, block, etc.);
- Class C: organic material;
- Class D: universal waste.

Class A recycling facilities are not required to obtain approvals from the Department. More specifically, N.J.A.C. 7:26A-3.1 provides that ***“No recycling center shall receive, store, process or transfer any Class B, Class C or Class D recyclable material without the prior written approval of the Department.”*** Please note that Class A facilities are excluded from Department oversight with the exception of gaining County Plan approval from the host county pursuant to the Department's Solid Waste Planning Rules, and more specifically, N.J.A.C. 7:26-6(a)6 regarding waste types covered by the rules and procedurally N.J.A.C. 7:26-6.10 for county plan amendments and N.J.A.C. 7:26-6.11 for administrative actions.

The EJ law at C.13:1D-160, Requirements for permit applicants, Section 4. a. provides that ***“Beginning immediately upon the adoption of the rules and regulations required pursuant to section 5 of this act, the department shall not consider complete for review any application for a permit for a new facility or for the expansion of an existing facility, or any application for the renewal of an existing facility's major source permit, if the facility is located, or proposed to be located, in whole or in part, in an overburdened community.....”***

Since Class A recycling facilities do not receive permits or approvals from the Department, ANJR respectfully requests that the Department clarify in its rulemaking that they are not subject to C.13:1D-160. ANJR does not dispute that the EJ law does pertain to Class B, C and D recycling centers which obtain Department oversight and approval.



Department's previously referenced April 23, 2019 "Solid Waste and Recycling Facility Solid Waste Management Plan Guidance" document. Additional requirements include, among others: to provide public notice in language(s) commonly spoken by the impacted communities; to provide direct notice to any established community group, advocates for a community, or an Environmental Justice group representing the impacted community; and conducting public hearings at locations easily accessible to local residents and easily accessible by public transportation if available.

C.13:1D-160 4.a(3) outlines the requirements for holding a public hearing in an overburdened community. As stated previously, these requirements are nearly identical to what has been called for and complied with for all Class A, Class B, Class C and Class D recycling facilities for literally decades, as supplemented by the Department's April 23, 2019 guidance to counties pursuant to Governor Murphy's Executive Order 23 on Environmental Justice. Significantly, C.13:1D-160 4.a(3) also provides the authority to the Department to "consolidate" public hearings, as follows:

*"The department may require the applicant to consolidate the public hearing held pursuant to this paragraph with any other public hearing held or required by the department regarding the permit application, provided the public hearing meets the other requirements of this paragraph. The department shall consider a request by a permit applicant to consolidate required public hearings and, if the request is granted by the department, the consolidation shall not preclude an application from being deemed complete for review pursuant to subsection a. of this section."*

Consistent with the above background, ANJR respectfully requests that the DEP's EJ rules provide for a blanket consolidation of all public hearings held for Class A, Class B, Class C and Class D recycling centers provided the hearing is conducted and held by a County Board of Chosen Freeholders within the overburdened community as required under C.13:1D-160 4.a(3) and that one (1) hearing shall take place during the business day and one (1) hearing shall take place during the evening hours.

**3. Please consider an exemption for Class B, Class C and Class D recycling centers from the requirement to prepare an Environmental Justice Impact statement pursuant to C.13:1D-160 4. a. (1).**

**Discussion:** An environmental and public health impact assessment has never been required for any recycling center and would represent an enormous impediment to the future of recycling in New Jersey. In fact, dating back to the passage of the Mandatory Source Separation and Recycling Act in 1987, the Legislature provided for an explicit exemption from the requirement to prepare an Environmental and Health Impact Statement (EHIS) for recycling facilities as found at N.J.S.A. 13:1E-99.34 and we argue strongly on behalf of our members and industry that this exemption should be maintained. The statute specifically provides that:

*"13:1E-99.34. Recycling centers*

*a. Notwithstanding the provisions of P.L. 1970, c. 39 (C. 13:1E-1 et seq.) or any other law, rule or regulation to the contrary, no recycling center as defined in section 2 of P.L. 1987, c.*

**102 (C. 13:1E-99.12) shall be required by the department to obtain a registration statement, engineering design approval, or approval of an environmental and health impact statement prior to the commencement of operations.”**

We are very concerned about our member companies and the additional economic burden of preparing an Environmental Justice Impact Statement. We understand that this term has yet to be defined by the Department and will be the subject of the proposed rules. However, we assume that the provisions will closely mirror the type of requirements in existing law as can be found in the solid waste regulations at N.J.A.C. 7:26-2.9 “Environmental and Health Impact Statement requirements.” It should be noted, there are certain mechanisms in place where the Department addresses local concerns within the current rules whereas the applicant must submit a Traffic Study for both new facilities as well as applications for facility expansion. Additionally, the applicant must demonstrate Noise Control Methods to minimize, manage and monitor noise at nearby residential and/or commercial property lines, and they must meet New Jersey Noise Control Regulations at N.J.A.C. 7:29. We have spoken to a number of private consulting firms and believe the cost associated with the preparation of such an EHIS is likely to be \$50,000 or more. This is an exorbitant economic burden to existing and prospective recycling facility applicants considering an expansion of 100 tons per day or more or the siting of a new facility. The requirement that this impact statement be prepared at the very beginning of the permit process, in the case of recycling facilities, at the County SWAC/Board of Chosen Freeholder public hearing phase, will undoubtedly stop new recycling facility and recycling facility expansions in New Jersey. This clearly is not in the best interests of promoting sustainable materials management in our State.

The existing application requirements at N.J.A.C. 7:26A 3.2, as supplemented by the Departments April 23, 2019 Guidance Document requirements, will provide communities with a full picture of what is proposed and numerous opportunities to provide meaningful public comment. To be clear, ANJR supports the intent of C.13:1D-160 to provide burdened communities with full disclosure of Class A, Class B, Class C and Class D recycling center new facility and expansion proposals greater than 100 tons per day at the earliest phase of the regulatory process.

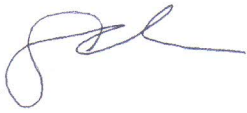
We respectfully request that the Department include within its regulations a requirement that applicants for new or expanded Class B, Class C and Class D recycling facilities prepare full recycling center applications pursuant to N.J.A.C. 7:26A 3.2 for consideration at the public hearing by a Board of Chosen Freeholders at the beginning of the County Planning phase of the regulatory process. Even this represents a major change to the existing regulatory process where County Plan approval is obtained before an applicant makes a significant economic investment and completes a full application submission pursuant to N.J.A.C. 7:26A 3.2. With this background for reference we request exemption for the requirement for Class B, Class C and Class D recycling facility applicants to prepare an Environmental Justice Impact Statement.

We believe the above satisfies the intent of C.13:1D-160 4. a. (1) while not imposing significant additional Environmental Justice Impact Statement requirements and costs on an already struggling recycling industry.



As always, we thank you in advance for your consideration and please use ANJR Executive Director Marie Kruzan as your point of contact should you or your staff have any questions regarding these comments. In light of the Coronavirus pandemic, we would be happy to participate in a conference call or "Zoom" call with your designated staff at any time to review these comments further. Marie can be reached either by phone at (908) 722-7575 or by email at [anjr@optimum.net](mailto:anjr@optimum.net).

Sincerely,

A handwritten signature in black ink, appearing to read 'A Andersen', written in a cursive style.

Angela Andersen  
President, Board of Directors

CC: Deputy Commissioner Olivia Glenn

*The mission of the Association of New Jersey Recyclers (ANJR) is to support, promote and enhance source reduction, reuse practices, organics management, and recycling activities in the State of New Jersey. ANJR provides educational and training programs, and also advances policies that support sustainable materials management, which in turn benefits the environment, the communities and the economy of New Jersey. The Association of New Jersey Recyclers (ANJR) is a not-for-profit, 501(c) (3), nonpartisan network that was incorporated in 1984. ANJR's members consist of individuals and organizations from both the public and private sectors, governmental entities, the recycling industry, and the business community.*