

Food Waste Recycling and Food Waste-to-Energy Production Law (N.J.S.A. 13:1E-99.122 et seq., P.L. 2020 c.24) Frequently Asked Questions

General Questions

1. What are the primary requirements of this law?

Beginning on October 14, 2021, N.J.S.A. 13:1E-99.122 et seq (P.L. 2020 c.24) requires “large food waste generators” located within 25 road miles of an authorized food waste recycling facility to source separate and recycle their food waste. Large food waste generators that meet this requirement must recycle their food waste at an authorized food waste recycling facility that has the available capacity and will accept the food waste or to otherwise comply with the requirement to source separate and recycle their food waste by: 1) performing on-site composting, or aerobic or anaerobic digestion in accordance with N.J.A.C. 7:26A-1.4, 4.5, or as otherwise authorized by the NJDEP, or 2) by using an alternative authorized food waste recycling method, as defined by the law.

2. What is the definition of a large food waste generator?

Under N.J.S.A. 13:1E-99.122 et seq., a “large food waste generator” is defined as: (1) any commercial food wholesaler, distributor, industrial food processor, supermarket, resort, conference center, banquet hall, restaurant, educational or religious institution, military installation, prison, hospital, medical facility, or casino; (2) that produces at least 52 tons per year of food waste.

The law expressly excludes any interstate carrier conducting interstate transportation operations in the post-security area of an international airport.

3. How does a generator know how much food waste it generates?

The NJDEP has identified several tools that can be utilized to measure or estimate food waste, which can be found at: <https://www.nj.gov/dep/dshw/food-waste-recycling-law/measure-food-waste.html>. Generators may also develop their own methodologies.

Please note, however, that NJDEP is undertaking rulemaking and will consider whether it is appropriate to establish specific methodologies or approaches for measuring food waste, which would be effective upon rule adoption.

4. If a large food waste generator does not have an authorized food waste recycling facility within 25 road miles, is it subject to the law?

Yes, the large food waste generator is subject to certain requirements in the law, such as record keeping and reporting requirements pursuant to adopted rules and regulations, but the establishment is not required to comply with the source separation and recycling requirements of the law. However, generators should be aware that new food waste recycling facilities are currently in the planning process; consequently, a generator's status may change, and it may be required to source separate and recycle its food waste in the future if a new food waste recycling facility opens within 25 road miles. The NJDEP encourages any establishment, regardless of the amount of food waste generated or proximity to any authorized food waste recycling facility, to source separate and recycle its food waste and consider how it can reduce food waste. The NJDEP has provided tips for food waste reduction at:

<https://www.nj.gov/dep/dshw/food-waste/>.

5. How does a large food waste generator determine whether it is located within 25 road miles of an authorized food waste recycling facility?

A large food waste generator may use online mapping tools to determine if it is located within 25 road miles of an authorized food waste facility. It is the large food waste generator's responsibility to determine whether it is located within 25 road miles of an authorized food waste recycling facility.

6. Are large food waste generators required by law to report food waste tonnages?

Although not mandated in the law at this time, all large food waste generators, regardless of their proximity to an authorized food waste recycling facility, are

requested to report food waste tonnages using the reporting form available online at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/reports-and-waivers.html>.

The law requires that the NJDEP adopt rules and regulations necessary to implement the law including, but not limited to, reporting requirements for large food waste generators. The NJDEP may institute a reporting requirement through rulemaking.

7. Is a large food waste generator that is subject to the source separation and recycling requirement under the law required to report how it manages its food waste?

Yes, the deadline to initially report was October 14, 2021. To demonstrate initial compliance, and annually thereafter, subject large food waste generators shall report the methods by which they manage their food waste using the reporting form available online at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/reports-and-waivers.html>.

8. Where can large food waste generators that are subject to the source separation and recycling requirement of the law send food waste?

Large food waste generators may send food waste for recycling to any authorized food waste recycling facility defined as a Class C recycling center within the state that is authorized to accept, store, process, or transfer food waste or compostable material pursuant to the law. Please see the answer to Question 23 below for more options.

The DEP maintains a list of authorized food waste recycling facilities online at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/food-waste-recycle-facilities.html>.

Compliance may also be attained by 1) performing enclosed on-site composting, or anaerobic or aerobic digestion of the source separated food waste in accordance with approvals or standards authorized by the NJDEP, including but not limited to N.J.A.C.

7:26A-1.4, 4.5 or 2) by using an alternative authorized food waste recycling method, as defined by the law and provided in the response to Question 21 below.

9. If an authorized food waste recycling facility within 25 road miles is not willing or does not have capacity to accept food waste from a large food waste generator, can the food waste be disposed as a solid waste?

Yes, if the authorized food waste recycling facility does not have capacity or is unwilling to accept source separated food waste, the large food waste generator may send the food waste for final disposal at a solid waste facility as provided in the approved district solid waste management plan for the solid waste management district in which the generator is located. The district solid waste management plan summary can be found online at <https://www.nj.gov/dep/dshw/recycling/03cplsum.htm>.

Specific details regarding confirmation of capacity and acceptance of food waste at food waste recycling facilities may be outlined in rules and regulations. At this time, the NJDEP recommends that the large food waste generator obtains, in writing, evidence that the authorized food waste recycling facility will not accept their food waste and maintain these records in the event they are requested by the NJDEP or its delegated authorities.

10. Is a large food waste generator that is subject to the law's source separation and recycling requirements required to recycle its food waste at the facility that is located within that boundary of 25 road miles, or can the generator send the food waste to another facility that may be further away?

A large food waste generator that is located within 25 road miles of an authorized food waste recycling facility must source separate and recycle its food waste but may send its food waste to any authorized food waste recycling facility.

Waivers

11. Can a large food waste generator that is required to source separate and recycle its food waste obtain a waiver of these requirements?

Yes, a waiver may be obtained under certain conditions. As stated in the law, “the generator may petition the Department for a waiver from the requirement to source separate and recycle food waste at an authorized food waste recycling facility if the cost of (1) transporting the food waste plus the fee charged by an authorized food waste recycling facility located within 25 road miles of the large food waste generator is at least 10 percent more than (2) the cost of transporting the food waste for disposal as solid waste plus the disposal fee charged for solid waste disposal in the State for noncontract commercial waste by a properly licensed transfer station, sanitary landfill facility, incinerator, or resource recovery facility located within 25 road miles of the large food waste generator provided that (3) any authorized food waste recycling facility located within 25 road miles of the large food waste generator seeking the waiver must be given notice of the petition and an opportunity to participate in the proceeding before the Department.”

12. How does a large food waste generator obtain a waiver of the source separation and recycling requirements under the law?

The NJDEP is undertaking rulemaking to implement the law. The waiver process will be established in the rules. Pending promulgated rules, the NJDEP requests that any large food waste generator that is seeking a waiver submit the Petition for Waiver Form available online at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/reports-and-waivers.html>.

Waiver requests shall be consistent with the requirements for a waiver identified in N.J.S.A. 13:1E-99.123(b)3 and submitted via email to reducefoodwaste@dep.nj.gov and also by hard copy to:

Seth Hackman, Chief
Bureau of Solid Waste Planning and Licensing
P O Box 420
Mail Code: 401-02C
401 East State Street
2nd Floor, West Wing
Trenton, NJ 08625-0420

Guidance regarding additional documents that may be required for a waiver request is available on the NJDEP's website at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/reports-and-waivers.html>.

Food Waste vs. Plate Waste

13. What is “food waste” vs “plate waste”? Is the recycling of plate waste included in the law?

“Food waste” means food processing vegetative waste, food processing residue generated from processing and packaging operations, overripe produce, trimmings from food, food product over-runs from food processing, soiled and unrecyclable paper generated from food processing, and used cooking fats, oil, and grease, but shall not include food donated by the generator for human consumption, any waste generated by a consumer after the generator issues or sells food to the consumer, or any waste regulated by 7 C.F.R. ss.330.400 through 330.403 and 9 C.F.R. s.94.5.

Plate waste is typically defined as food waste that has been generated by the consumer after the generator issues or sells food to the consumer. In other words, any food product that has been prepared by the generator and offered or sold to a consumer that has not been consumed or donated, even if that food is left to be disposed/recycled by the generator, is considered plate waste and not subject to the law. In the instance where a buffet or salad bar has remaining food that has not been placed on a consumer's plate, the remaining food that would otherwise be collected by the

generator or their employees shall be recycled and count toward the generator's food waste estimate.

Food waste, under certain conditions, is required by the law to be source separated and recycled. Plate waste, however, is not required to be source separated and recycled nor is it counted towards the amount of food waste that an establishment generates. While not expressly subject to the law, the NJDEP encourages generators to source separate and recycle plate waste with otherwise subject food waste.

The NJDEP intends to fully delineate this issue through rulemaking.

14. Under the definition of food waste, the law indicates that any waste regulated by 7 C.F.R. ss.330.400 through 330.403 and 9 C.F.R. s.94.5 is not considered food waste. What type of wastes do these laws reference?

These laws address, but are not limited to, waste transportation to/from Hawaii; waste generated on cruise ships; and waste generated on airplanes.

15. Are ingredients or portions of ingredients (e.g., meat trimmings) used to make prepared meals that are not used in the final product considered plate waste?

The ingredients used while preparing the meal that were not ultimately used in the final product issued or sold to the consumer are not considered plate waste; this is counted towards food waste generated and must be source separated and recycled as appropriate pursuant to this law.

16. Are coffee grinds and loose tea or tea bags considered food waste?

Yes, ingredients that can be used to make coffee and tea are considered food waste; however, coffee grinds or tea that have been used by the consumer are considered "plate waste." If these ingredients are considered a "food processing residue generated from processing and packaging operations," they meet the definition of food waste.

17. How will packaged food waste be treated under the law?

Packaging is not considered food waste and should not be included in estimating food waste generation. A large food waste generator subject to the source separation and recycling requirements of the law is required to separate food waste from its packaging if the recycling facility at which the food waste will be recycled will not accept packaged food waste materials. Check with your authorized food waste recycling facility to find out if it will accept packaged food waste.

Authorized Food Waste Recycling Facilities

18. What is an authorized food waste recycling facility?

Under N.J.S.A. 13:1E-99.122 et seq., an “authorized food waste recycling facility” is defined as a Class C recycling center within the state that is authorized to accept, store, process, or transfer food waste or compostable material, pursuant to subsection b. of section 41 of P.L.1987, c.102 (N.J.S.A. 13:1E-99.34).

19. Where are authorized food waste recycling facilities currently located?

The NJDEP lists all authorized food waste recycling facilities on its website at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/food-waste-recycle-facilities.html>. It is the large food waste generator’s responsibility to determine if an authorized food waste recycling facility is located within 25 road miles of the establishment.

20. How can a facility become an authorized food waste recycling facility, as defined in the law?

For permitting information, please contact the Bureau of Recycling and Hazardous Waste Management at (609) 984-3438 or email recyclingfacilities@dep.nj.gov.

Alternative Recycling Methods

21. The law provides for large food waste generators to be deemed in compliance with the provisions of the law by utilizing an alternative authorized food waste recycling method. What is an alternative authorized food waste recycling method?

An alternative authorized food waste recycling method means (1) recycling food waste at the site at which it is generated as authorized by the Department of Environmental Protection; (2) treating food waste at the site at which it is generated pursuant to a permit issued by the department; (3) sending food waste for offsite use for agricultural purposes, including as animal feed; (4) sending food waste offsite for treatment with sewage sludge in an anaerobic digester for renewable natural gas or biogas recovery as authorized by the department; or (5) any other method of recycling or reuse of food waste, as authorized by the department.

22. What is the process for the NJDEP to authorize an “alternative authorized food waste recycling method” (see definition in Question 21 above)?

The NJDEP is undertaking rulemaking to implement the law. The process to authorize alternative methods of recycling will be established in the rules.

23. Are there any alternative authorized food waste recycling methods that have already been permitted or approved by the NJDEP?

Yes. Sending food waste for off-site use for agricultural purposes (including animal feed) does not require specific NJDEP authorization (but must be conducted in compliance with all New Jersey Department of Agriculture requirements) and is an acceptable alternative method of recycling food waste.

Under Class C Recycling exemptions, the NJDEP allows in-vessel composting and outdoor composting at farms (N.J.A.C. 7:26A-1.4). Under Research Demonstration and Development (RD&D) approval, the NJDEP allows outdoor composting using a biofilter

as cover, or Bokashi with in-vessel composting (N.J.A.C. 7:26-1.7(f)). "Research, development and demonstration (RD&D) approval" means a certificate of authority to operate issued pursuant to N.J.A.C. 7:26-1.7(f) for a new or innovative technology or innovative operational process modification made to an existing recycling center or operation.

24. Do biodigesters or other approved methods of recycling/reuse approved by the NJDEP qualify as alternative methods of recycling under this law?

Yes, a biodigester that is authorized through an NJDEP Class C recycling center approval or exemption in accordance with the Recycling Rules at N.J.A.C. 7:26A-3.1 or 7:26A-1.4 or other approved methods of recycling/reuse approved by the NJDEP qualify as alternative methods of recycling. Please contact the NJDEP's Bureau of Recycling and Hazardous Waste Management at 609-984-3834 with any questions regarding the use of biodigesters.

25. How does a large food waste generator apply for an approval to recycle food waste at the site at which it was generated?

For permitting information, please contact the Bureau of Recycling and Hazardous Waste Management at (609) 984-3438 or email recyclingfacilities@dep.nj.gov.

Large Food Waste Generators

26. Can a large food waste generator that is required to source separate and recycle its food waste use out-of-state food waste recycling facilities or methods as an alternative food waste recycling method?

Yes, if the out-of-state facility is authorized by all required governmental entities of that state to recycle food waste and if the large food waste generator has documentation of such authorization, the generator may send its source separated food waste to such a facility and will be deemed to be in compliance with the law.

27. Is a business that is part of a chain with multiple locations in New Jersey subject to this law?

The 52-ton-per-year threshold is not based on the combined food waste generated at all locations. The food waste generated at each individual location should be measured or estimated separately by location to determine applicability of the law. Additionally, the individual establishment that generates a projected average of 52 tons or more per year of food waste is only subject to the source separation and recycling requirements of the law if that establishment is also located within 25 road miles of an authorized food waste recycling facility.

28. Is an establishment that generates less than 52 tons of food waste per year that is located within a larger facility that generates greater than 52 tons of food waste subject to this law?

“Large food waste generator” means any commercial food wholesaler, distributor, industrial food processor, supermarket, resort, conference center, banquet hall, restaurant, educational or religious institution, military installation, prison, hospital, medical facility, or casino that produces at least 52 tons per year of food waste. An individual establishment, such as a restaurant inside a shopping mall food court, that generates less than 52 tons of food waste is not subject to the provisions of the law. Since the law applies to the individual establishment that is considered a large food waste generator, not the collective amount of food waste generated at the food court, each establishment must determine if they individually meet the 52 ton per year threshold of food waste generation. Only those individual establishments that meet this threshold are subject to the requirements of the law.

Enforcement

29. Are there penalties for not complying with the law?

Yes, penalties are prescribed in the law as follows: “Any person who violates P.L. 2020, c.24 (N.J.S.A. 13:1E-99.122 et al.), or any rule or regulation adopted pursuant thereto, shall be subject to a civil penalty of \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third and each subsequent offense.”

30. Who is authorized to enforce the law?

The NJ Department of Environmental Protection and/or delegated authorities, such as county agencies certified pursuant to the “County Environmental Health Act” P.L.1977, c.443 (N.J.A.C. 26:3a2-21 et seq.), are authorized to enforce the law.

31. What if I have questions on the law that are not found here?

Email reducefoodwaste@dep.nj.gov or call (609) 984-4250. The NJDEP’s Food Waste Recycling website can be found at <https://www.nj.gov/dep/dshw/food-waste-recycling-law/>.

32. When will rules and regulations be implemented?

The NJDEP is undertaking rulemaking to implement the law and anticipates rules and regulations to be adopted by Fall 2024. If any large food waste generators, or other interested parties, would like to be included as stakeholders during this process, or to submit questions, please contact the NJDEP’s Division of Sustainable Waste Management at (609) 984-4250 or reducefoodwaste@dep.nj.gov.