

General Disclaimer for this Presentation:

The information within this presentation is slated to facilitate discussions on various existing and potential regulatory mechanisms. No final decision regarding this information is expressed or implied.

Any pictures or trade names of equipment, companies, or services should not be construed to indicate an endorsement by the New Jersey Department of Environmental Protection of any product or service derived from same.

Please note this meeting will be recorded.



Welcome to the NJDEP Stakeholder Meeting for P.L. 2021, c. 391



New Jersey's Recycled Content Law:

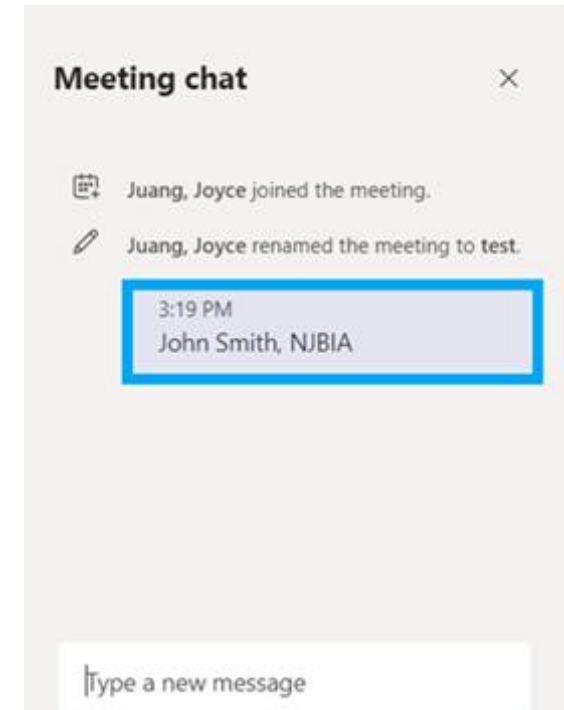
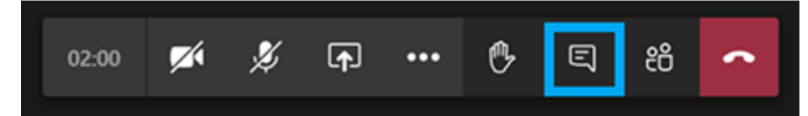
- An Act concerning the use of postconsumer recycled content in certain containers and packaging product

November 17th, 2022

1 pm - 4 pm

In-House Rules Friendly Reminder

- **Attendance:**
 1. Please enter your first and last name and organization you represent in the chat box in lieu of sign-in sheet.
 2. ***If you have dialed into the meeting, please email recycledcontent@dep.nj.gov. We are unable to identify the names of dialed in attendees.***



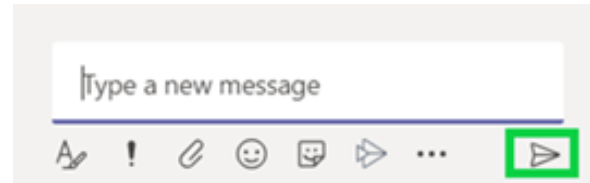
In-House Rules Friendly Reminder

- **Questions/Speaking Etiquette:**

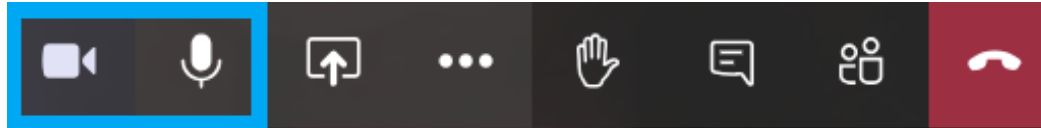
1. Please make sure your microphone is muted and your camera is off.



2. To request the opportunity to ask a question, please enter your name and affiliation in the chat box.



3. When called on to speak, you may un-mute yourself and, if you would like, turn on your camera.



4. When you have finished speaking, please re-mute yourself and turn off your camera.



Opening Remarks- Goals for Stakeholder Meetings

1. Introduce law
2. Gain input and feedback for rulemaking



NJDEP Rulemaking Team

1. Assistant Commissioner's Office, Contaminated Site Remediation & Redevelopment Program
 - Judith Andrejko, Esq., Regulatory Officer / Facilitator
2. Bureau of Solid Waste Planning and Licensing
 - Chris Mikulewicz, Environmental Specialist & Rulemaking Manager
 - Seth Hackman, Bureau Chief
 - Jill Aspinwall, Section Chief
 - Dylan O'Brien, Environmental Specialist
 - Nell Henry, Program Specialist Trainee
3. Bureau of Sustainability
 - Robin Heston-Murphy, Environmental Scientist 4
4. Division of Waste UST Compliance & Enforcement
 - Sonya Silcox, Standards & Procedures Technician 2



Agenda Outline

- Description of Recycled Content Law
- Discuss who and what is covered by the Law
- Garner feedback and take questions from stakeholders



Description of Recycled Content Law



Covered Products



Rigid Plastic Containers (up to 50% PCR*)



Plastic Beverage Containers (up to 50% PCR)



Glass Containers (up to 35% PCR)



Paper Carryout Bags (up to 40% PCR)



Plastic Carryout Bags (up to 40% PCR)



Plastic Trash Bags (up to 40% PCR)



Polystyrene Loose-fill Packaging (Packing Peanuts)

Recycled Content Standards

Timeframe	Rigid Plastic Container	Plastic Beverage Container	Plastic Carryout Bag	Trash Bag*	Glass Container	Paper Carryout Bag					
2022	All manufacturers must register starting July 18th, 2022										
2023	0%	0%	0%	0%	0%	0%					
2024	10%	15%	20%	5-20%	25-35%	20-40%					
2025											
2026											
2027	20%	20%	40%	10-40%							
2028											
2029											
2030	30%	25%									
2031											
2032											
2033	40%	30%*									
2034											
2035											
2036	50%	35%									
2037											
2038											
2039		40%									
2040											
2041											
2042		45%									
2043											
2044											
2045		50%									

*Tiered based on bag thickness

**Hot fill packaging capped at 30%



What is a Manufacturer?

“Manufacturer” is defined as:

1. a person that produces or generates a rigid plastic container, paper carryout bag, plastic carryout bag, or plastic trash bag that does not contain a product and that is sold or offered for sale in the State;
2. a person that is the brand owner of a product that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container, unless the brand owner identifies a licensee who agrees to accept responsibility under this act and the licensee informs the department in writing of the agreement; or
3. in the absence of a person meeting the criteria in (1) or (2) of this definition over whom the State may exercise jurisdiction, a person who imports or distributes a product into or within the State that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container.

“Manufacturer” shall not include a person who, at a single physical location, produces, packages, and sells a product directly to a consumer at retail which may include a grocery store, restaurant, bar, cafeteria, café, food truck, food cart, or similar establishment.

“Licensee” means a manufacturer or entity who licenses a brand and manufactures a product under that brand

“Person” means an individual, corporation, company, association, society, firm, partnership, or joint stock company.



Law Requirements and Compliance

- Manufacturers are required to begin registering and pay a registration fee starting July 18th, 2022.
 - Registration and fee are required annually thereafter.
- Beginning July 18th, 2025, registered manufacturers are required to certify compliance.
 - Compliance certification reports are required to include:
 - ☐ the amount, in pounds, of virgin plastic, glass, or paper;
 - ☐ the amount, in pounds, of postconsumer recycled material used by the manufacturer for any covered products;
 - ☐ any other information as the Department deems necessary.
- The Department is authorized to audit a random sample of manufacturers at any time to assess compliance.



Waivers

Manufacturers may apply for a waiver if:

- Conflicting law, rule, or regulation precludes compliance
- It is not technologically feasible to meet requirements
- There is an inadequate availability of recycled materials or disruption in supply
- Other reason as determined by the Department

Exemptions

Permanent exemptions to the recycled content requirements include:

- Milk products
- Plant-based products with names that include the names of dairy foods (ex. Almond Milk)
- Medical food
- Food for special dietary use
- Infant formula

A package or container that contains food is exempt for a period of 5 years with the option for the Department to extend upon expiration



Penalties & Enforcement

Failure to comply with provisions of the Law, or subsequent rules and regulations, may result in one or multiple of the following enforcement actions:

- An order requiring compliance with violated provisions
- A civil action
- A civil administrative penalty
- A civil penalty
- Producing and submitting a corrective action plan
- Public notification of a manufacturer's violation
- Penalties range from \$1,000-\$25,000 per violation per day

Civil Administrative Penalty assessments may range from \$1,000-\$25,000 per violation per day.

Penalties may be assessed on a per pound basis for each pound of virgin material used where recycled material is required (to be established upon rule adoption).

Civil Penalty assessments can be up to \$50,000 with a court order.



Discussion Topic 1: Rigid Plastic Containers



Discussion Topic 1: Rigid Plastic Container

“Rigid plastic container” means a container made of plastic that has a relatively inflexible finite shape or form, has a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, and is capable of maintaining its shape while empty or while holding other products

QUESTION: With the definition above, what kind of container do you believe would meet this criteria?



Discussion Topic 1: Rigid Plastic Container

“Rigid plastic container” means a container made of plastic that has a relatively inflexible finite shape or form, has a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, and is capable of maintaining its shape while empty or while holding other products

QUESTION: What kind of guidance would help manufacturers determine whether a product or package would be considered a ‘rigid plastic container’?



Discussion Topic 1: Rigid Plastic Container

“Rigid plastic container” means a container made of plastic that has a relatively inflexible finite shape or form, has a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, and is capable of maintaining its shape while empty or while holding other products

QUESTION: What are some examples of other metrics that can be used to quantify the capacity requirements when the definition states “eight fluid ounces or its equivalent volume”? If the product is not a liquid, how can the container’s size be quantified?



How should disposable cups be addressed?

Examples of Rigid Plastic Containers

What is considered a rigid plastic container:



Plastic bottles/jugs/jars/tubes/clamshells

What is not considered a rigid plastic container:



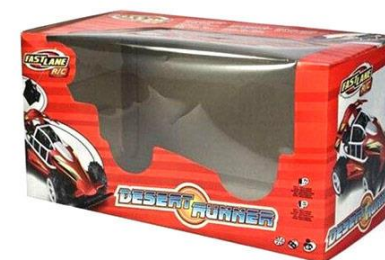
Plastic film



Plastic containers larger than 5 gallons



Products that do not resemble the profile of a typical container



Multi-material packaging

QUESTION: Do you agree? Are there containers out there that we are not aware of or should be considered further?



Rigid Plastic Container - Exemptions

- Rigid Plastic Containers are exempt if they contain:
 - Drugs, dietary supplements, medical devices, or cosmetics defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.
 - Toxic or hazardous products regulated under the “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C. s.136 et seq
- Rigid Plastic Containers are also exempt if they are a refillable container or a reusable container.
 - “refillable container” means a rigid plastic container that is routinely returned to and refilled by the manufacturer with the same product packaged by the container
 - “reusable container” means a rigid plastic container that is routinely reused by consumers to store the original product packaged by the container

It is the responsibility of the manufacturer to notify the Department if claiming an exemption for any covered product along with documentation or citations detailing how the product meets exemption criteria.



Rigid Plastic Container – Exemptions (cont.)

“Refillable container” means a rigid plastic container that is routinely returned to and refilled by the manufacturer with the same product packaged by the container

- **QUESTION: With the definition provided, what are some examples of what you would consider to be a refillable container?**
- **QUESTION: Should the Department further clarify the definition of refillable container? If so, what should be added?**



Rigid Plastic Container – Exemptions (cont.)

“Reusable container” means a rigid plastic container that is routinely reused by consumers to store the original product packaged by the container

- **QUESTION: With the definition provided, what are some examples of what you would consider to be a reusable container?**
- **QUESTION: Should the Department further clarify the definition of reusable container? If so, what should be added?**



Discussion Topic 2: Identification of Manufacturer



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“Manufacturer” is defined as:

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3. in the absence of a person meeting the criteria in (1) or (2) of this definition over whom the State may exercise jurisdiction, a person who imports or distributes a product into or within the State that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container.

QUESTION: Who is responsible for registering and complying with the Law and should the Department add clarifying language on how to determine the responsible party?



Discussion Topic 2: Identification of Manufacturer

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QUESTION: How should covered products from private label/store brands be captured under the Law?

What entities are associated with these products and who makes the most sense for taking compliance responsibility? Please provide examples if possible.



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QUESTION: How should subsidiaries of larger companies be addressed?

Should such companies be treated as separate from the parent company (i.e., required to register and report independently)?



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QUESTION: Is there anything that the Department should be aware of regarding the production/distribution of covered products?

- E.g., Supply chain variables; sourcing of materials; multiple entities in possession of one covered product etc.



Discussion Topic 3: Registration



Discussion Topic 3: Registration

As you may be aware, July 18, 2022, manufacturers were required to begin registering with the Department

- **How was the registration process for your business? Was the registration form easy to use? What was challenging?**
- **Was there any information that was not necessary or other details should have been included? Why?**
- **Are there any improvements that could be made to the registration process in the future?**



Discussion Topic 3: Registration

The Department intends to have a fully electronic registration process so we can run reports on the information

QUESTION: An electronic registration process requires a program to sign or certify electronically – are there concerns with an electronic registration process?



Discussion Topic 3: Registration (cont.)

The Department is working on a form that will require manufacturers to list covered products that are sold or offered for sale in NJ.

QUESTION: Is it feasible for your company to provide a detailed list of covered brands/products? Why or why not?

- What can be provided?
- What cannot be provided?





Additional Questions/Comments?

Review of Today's Discussion Topics:

1. Rigid Plastic Container
2. Identification of Manufacturer
3. Registration

Future Meetings

- We will meet again – are there any topics that have not been discussed that you would like to address?
 - Comments can be emailed to the Department at recycledcontent@dep.nj.gov
 - If there is anything you would like to discuss with the Department in a smaller setting, please reach out to the above email address for scheduling



Closing Remarks

- Email: recycledcontent@dep.nj.gov or call 609-984-4250
- Visit <https://www.nj.gov/dep/dshw/recycled-content/index.html> to:
 1. Review the Law,
 2. Read the FAQ's
 3. Learn about registration and to register with the Department
 4. View additional resources

Thank you!

