



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Solid & Hazardous Waste

Bureau of Recycling & Hazardous Waste Management

401 E. State Street

PO Box 420, Mail Code 401-02C

Trenton, New Jersey 08625-0420

Tel: (609) 984-3438

Fax: (609) 777-1951/984-0565

www.nj.gov/dep/dshw/recycling

CATHERINE R. McCABE
Commissioner

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Summary of Stakeholder Meeting: Exemption Rulemaking

February 14, 2019 (9:00 AM – 12:00 PM)

Background

Facilitator: Tanya Oznovich, (E: Tanya.Oznovich@dep.nj.gov)

Presenters:

1. Karen Kloo – Opening Remarks (E: Karen.Kloo@dep.nj.gov)
2. Zafar Billah – Exemption 1: Manufacturer's Exemption, (E: Zafar.Billah@dep.nj.gov)
3. Shaun Osgood – Exemption 2 (On-site Recycling), (E: Shaun.Osgood@dep.nj.gov)
4. Tom Farrell – Exemptions 7 (Receipt, Storage, and Transfer of Class B Materials) and 20 (Contractor's Exemption), (E: Thomas.Farrell@dep.nj.gov)
5. Judith Andrejko, Esq. - Concluding Remarks, (E: Judith.Andrejko@dep.nj.gov)

Summary

The New Jersey Department of Environmental Protection (NJDEP) hosted an external stakeholder meeting on February 14, 2019. The purpose of this meeting was to discuss with external stakeholders potential changes to exemptions, and to listen to feedback on these exemptions. The existing exemptions discussed were the following: #1 (Manufacturer's Exemption), #2 (On-site Recycling), #7 (Receipt, Storage, and Transfer of Class B Materials) and #20 (Contractor's Exemption).

The goal of proposing revisions to the exempt recycling rules is to minimize adverse impacts, create better enforceability, enhance coordination, remove problematic/unnecessary exemptions, combine, and add new exemptions as necessary. These changes are intended to be advantageous, not detrimental, as they are designed to benefit NJDEP, exempt operators, local governments, and the communities in which these facilities operate, on a multitude of fronts. One of the goals is to ensure that recycling centers (Class B, C, and D) and exempt recycling facilities are on a “level playing field” and every entity involved is treated fairly. NJDEP also recommends that best management practices are incorporated in the exempt recycling rulemaking. Because rulemaking is a multi-year process and the rules sunset on December 3, 2022, NJDEP intends to proceed with this process as soon as possible.

For all exemptions, the matters discussed included: limiting multiple exemptions of certain types, the need for NJDEP acknowledgement/approval before operations begin, county and municipal approval, and exemption expiration. For the certification statement, the goal is to make the exemption regulations more consistent with the other rules and included: the certification statement itself, individual sign-off clarity, and an example of certifying in the new mobile shredding rule. Lastly, in order to cover NJDEP’s cost for administrative and enforcement activities, a \$500 annual fee was discussed. The following includes more details on the proposed revisions to exempt recycling rules that were discussed, stakeholder input, and where to get more information.

The following subject matters regarding several existing exemptions were presented and discussed with the stakeholders in attendance:

1. Exemption #1 – Manufacturer’s Exemption:
 - a. Overview of exemption
 - b. Uncontrolled millings piles
 - c. Potential permit modifications
 - d. Potentially new mobile asphalt exemption
2. Exemption #2 – On-site Recycling:
 - a. Overview of exemption
 - b. One-time use clarification
 - c. Potential permit modifications
3. Exemption #7 – Receipt, Storage, Transfer of Class B Materials:
 - a. Overview of exemption
 - b. Potential permit modifications
4. Exemption #20 – Contractor’s Exemption
 - a. Overview of exemption
 - b. Potential permit modifications
 - c. Site Abandonment

Details

This section will expand on the information provided above and is formatted to explain the potential changes, and includes attendee and NJDEP communication, and the possible resolution for going forward.

Exemption 1 – Manufacturer’s Exemption:

NJDEP’s presentation consisted of details relevant to the manufacturer’s exemption. The areas of focus included: allowed activities and materials, limitations, pallet vs. asphalt manufacturing issues, mounting milling piles, Class B milling storage, intermediate storage, and potential new mobile asphalt exemption. The following questions and matters were discussed:

- (NJDEP): How should the uncontrolled millings piles be controlled?
 - (Attendees): The imbalance of supply and demand (too much supply and not enough demand) is the main issue in place here. Need to explore other ways to use millings in an environmentally sound manner. Evaluating how other states utilize their millings would be valuable. Volume control regulation is preferred instead of a time limit.
- (NJDEP): Should NJDEP require the asphalt plants to use the Class B Facilities for storage of the millings?
 - (Attendees): Many asphalt plants have adjacent Class B recycling operations, which include millings. For NJDEP, it would be easier to enforce regulations if both the millings stored at the asphalt plant and the Class B facility were under the control of the same owner/operator. But, from the facility’s perspective, it would not be advantageous because in many instances the operations are independent of one another.
 - (NJDEP): Should the provision for intermediate storage away from the plant be removed because it has never been requested and the rules are not clear about the approval process?
 - (Attendees): This is a project-driven requirement, as off-site storage could be used for a large project needing a temporary location.
 - (Attendees): There are numerous unpermitted storage issues all over the State.
 - (Attendees): NJDEP rules do not allow exempt activities at a Class B facility.
- (NJDEP): Should NJDEP establish a new exemption for mobile asphalt recycling activity?
 - (Attendees): This exemption should be created for mobile asphalt recycling activities, because some contractors are bringing material from off-site without approvals.
 - (Attendees): Better enforcement is necessary.
 - (Attendees): Also, unrelated, the exemption master list will be made available to select official entities.
- **Consensus:** Research and evaluation of the questions, comments, and concerns addressed during this portion of the meeting must be done to properly refine and improve this asphalt material-related exemption.

Exemption #2 – On-site Recycling:

NJDEP’s presentation consisted of matters relevant to on-site recycling, including: allowed materials and activities, limitations, categorical exemption for one-time use, demolition notification for concrete residential swimming pools, and exclusion of on-site composting. The following questions and matters were discussed:

- (NJDEP): Should NJDEP categorically exempt permittees for one-time use?
 - (Attendees): The activities allowed under this exemption are usually detailed in contractor's bids for projects. Determining if the material is clean is difficult. Since the municipalities issue the permits, they should have more resources to track down their permittees and get more information to better regulate this activity.
- (NJDEP): Should NJDEP allow pool demolition to happen without notifying NJDEP, but notifying the county?
 - (Attendees): Pool demolition is a municipality issue, but imposition of a square footage limit could reduce the number of notifications sent to NJDEP. Getting the material crushed on-site would make matters easier to handle. Sink holes are also an issue for larger pools, so limiting the size of crushed concrete used as back fill could be beneficial.
- (NJDEP): Should NJDEP exclude on-site composting and instead incorporate it into another exemption?
 - (Attendees): No clear resolution at this time, as this subject falls more closely into the category of a separate exemption. Food waste is the primary issue, prevalent extensively with colleges,
 - (NJDEP): This issue will be addressed more substantially in exemption #21, which will be covered during the next meeting.
- **Consensus:** Research and evaluation of the questions, comments, and concerns addressed during this portion of the meeting must be done to properly refine and improve this on-site exemption, specifically concerning one-time use, pool demolition, and on-site composting.

Exemption 7 - Receipt, Storage, Transfer of Class B Materials:

NJDEP's presentation consisted of matters relevant to the transfer of Class B materials, including: allowed material and activities, limitations, continuous versus non-continuous operations, timeframes, temporary versus open storage, container storage, volume, height, and dust control. The following questions and matters were discussed:

- (NJDEP): Should the 60-day timeframe for limited operations be changed?
 - (Attendees): Most projects take longer than a 60-day period, so this timeframe should be changed. Is there a way to tie this exemption to a municipal demolition permit?
 - (NJDEP): These exemptions are primarily for temporary storage, and are not related to any specific demolition projects, which are permitted through the municipality.
- (NJDEP): Should the existing temporary (60-day) storage exemption be eliminated? Also, should the existing continuous exemption include only open storage (no container)?
 - (Attendees): NJDEP should specifically define what a container is; there is confusion about whether a container can also be made out of a barrier or structure (bin blocks,

jersey barriers, etc.). Also, containers are very expensive, so it is more cost-effective to avoid them all together.

- (NJDEP): NJDEP will look into this matter. For exemption language, NJDEP may consider phrases such as “in a contained area” or “containment” when referring to such management practices.
 - (Attendees): For certain projects, like road construction, containerizing materials is not practical. For example, during State transportation projects, materials have been stockpiled for multiple-year cycles. There may be leeway for “large capital projects.” Instead of limiting to containers, a buffer area should be defined.
- (NJDEP): Should there be a volume limitation based on acreage?
 - (Attendees): Instead of a volume limitation, a site-specific approach using a percentage of the site is another option.
- (NJDEP): Should there be a storage pile height limit?
 - (Attendees): Would said height limit apply to an existing height? For example, would the measurement be based on the ground surface, or below grade, as applicable (in quarries, etc.)?
 - (Attendees): The exempt facilities should not be allowed to have higher storage piles than those at regulated Class B facilities.
 - (Attendees): Most pile heights are not limited to lower than 20 ft. It may be ideal to make this exemption more restrictive (requiring smaller pile volumes). Structural integrity must be considered.
- (NJDEP): Should dust control have a requirement? This is an issue on demolition sites.
 - (Attendees): Are there OSHA requirements for this activity? Regulations are needed, nonetheless. The Construction Demolition Recycling Association (CDRA) has best management guidelines that NJDEP may be able to use to help define proper requirements.
- **Consensus:** Research and evaluation of the questions, comments, and concerns addressed during this portion of the meeting must be done to properly refine and improve this Class B material-related exemption, specifically concerning timeframes, storage, volume, height, and dust control.

Exemption 20 - Contractor's Exemption:

NJDEP's presentation consisted of matters relevant to the Contractor's Exemption, including: allowed material and activities, including time limits, volume control, height restrictions, set-backs, and potential site abandonment. The following questions and matters were discussed:

- (NJDEP): Should NJDEP remove a storage time limit?
 - (Attendees): It would be difficult to completely remove the time limit. Not all exemption holders will be honest and remove the material.

- (Attendees): Photo documentation showing changes in site conditions of material storage over time (e.g., pile height changes and storage site locations) could assist with exemption compliance and monitoring.
 - (NJDEP): NJDEP could require photo documentation submission with a possible annual fee.
- (Attendees): Permitted facilities have paid to conduct this activity, so is it fair to provide this exemption?
 - (NJDEP): The difference between Class B facilities and exempt facilities is that a Class B facility may market the material commercially, but an exempt facility must be the sole end-user (using the material on its own project).
- (Attendees): There is very little regulation, especially if there was no 60-day limitation. The county can't enforce this without a time limit.
- (NJDEP): Should volume limitations be established?
 - (Attendees): Yes, and the limit should be based on a percentage of the acreage utilized. Stormwater runoff is also a concern, given larger volumes of material.
 - (NJDEP): Understood, but there cannot be a volume limitation included that competes with Class B facilities.
- (NJDEP): Should NJDEP distinguish between acceptable volumes of processed versus unprocessed material?
 - (Attendees): If restrictions are already being imposed on ground cover and height, just combine the processed and unprocessed material volume limits.
- (NJDEP): Should there be buffers (dedicated space) between existing property boundaries (including easements on-site) and the storage piles?
 - (Attendees): Resounding yes.
 - (NJDEP): Class B facilities are required to maintain a buffer.
- (NJDEP): How do we address site abandonment, especially with sites filled with materials that are the subject of exemptions?
 - (Attendees): A volume restriction could work; it would be better than a time restriction.
 - (Attendees): Would NJDEP require a completion schedule? Is NJDEP going to get rid of this requirement for contractors to notify NJDEP of project start and end dates?
 - (NJDEP): We are considering all options.
- **Consensus:** Research and evaluation of the questions, comments, and concerns addressed during this portion of the meeting must be done to properly refine and improve this contractor-related exemption, specifically concerning volumes, material type, setbacks and abandonment.

General:

NJDEP's presentation consisted of broad questions, comments, and concerns from the meeting that do not fall under the umbrella of a singular exemption.

- (NJDEP): Does anybody have general comments, questions, or issues that they would like to bring to NJDEP's attention?
 - (Attendees): One person can apply for multiple exemptions using different names. This is unjust to people who are operating permitted facilities.
 - (NJDEP): Noted.
 - (Attendees): Will this meeting information be online and available to the public?
 - (NJDEP): Yes, a summary of meeting information will be available on NJDEP stakeholder website.

Regulatory Language:

- (NJDEP): Under N.J.A.C. 7:26A-1.4(b), would adding in language to allow for multiple exemptions on one site be a good idea?
 - (Attendees): Resounding yes.
- (NJDEP): Should the exempt facilities seek NJDEP approval as well as local approval?
 - (Attendees): What kind of NJDEP approval would be required? Would it be similar to a permitted facility?
 - (NJDEP): NJDEP needs complete information to be able to issue the exemption approval and must include all necessary local approvals. Once NJDEP receives complete information, exemption acknowledgement/approval should be more expeditious than issuing a Class B permit.
- (NJDEP): How should the exemption expiration process work? Should there be a time period?
 - (Attendees): Do renewals need documentation like the original application?
 - (Attendees): The shorter the notification period, the more workload on NJDEP.
 - (Attendees): The duration of the exemption should not be longer than a permit duration. It should be half the time limit of a permit.
 - (NJDEP): Noted.
- (NJDEP): NJDEP noted that a phase-in period for existing exemptions will be necessary to incorporate the new rule revisions.
- (NJDEP): Should exemption holders post the local approvals they hold on their website? Also, should they add a sign on the location itself?
 - (Attendees): Agreement that website postings, including the geolocation in addition to lot and block numbers, should be added online. Also, attendees agreed that posting signs is a good idea.
 - (NJDEP): Under Site Remediation and Recycling rules, a sign is required at each site.

- (NJDEP): Should there be a designated individual to contact for each permitted exempt facility?
 - (Attendees): Resounding yes.
- (Attendees): Should there be a timing certification for certain exemptions that require start and end dates?

Billing:

- (NJDEP): Should there be an Annual Fee to maintain the exemption? Is an annual \$500 fee reasonable to offset NJDEP's administrative and enforcement costs?
 - (Attendees): A fee is a good idea. What will NJDEP do if an exempt recycling facility does not pay the fee?
 - (NJDEP): Contact with the facility may be maintained every year if a fee is instituted.
 - (Attendees): If the exemption fee is not paid, NJDEP should revoke the exemption.
 - (NJDEP): Agreed.
 - (Attendees): That is a hefty fee for a homeowner to demolish a pool.
 - (NJDEP): NJDEP may consider a categorical fee exemption or sliding fee scale for one-time exempt activities.
 - (Attendees): Fees are fair to entities applying for Class B or C permits. There may be incentives for individuals to get a permit.
 - (NJDEP): Noted.
- **Consensus:** Research and evaluation of the questions, comments, and concerns addressed during this portion of the meeting must be done to properly refine and improve the exemptions discussed during these meetings, including the administrative changes.

Other Supporting Documents:

1. Stakeholder Information:

Please click on the link below to be redirected to all the details from this meeting. Below, within the first row on the page, where it states *2/14/2019 - Stakeholder Meeting for Proposed Amendments to N.J.A.C. 7:26A-1.4-Recycling Rules-Invitation Only* one may find the following four documents: Invitation, Presentation, Agenda, Sign-in sheet, and this Summary itself.

Link: <https://www.nj.gov/dep/workgroups/past.html>

2. NJDEP - Exemptions Rules

Please click on the link below, then click on the pdf document in the first tab that states *RECYCLING REGULATIONS - N.J.A.C. 7:26A-1*. Once in the document, the exemptions start at the top of page 11 after the *7:26A-1.4 Activities exempt from general or limited approval* text and continue until page 17 and end right before the *7:26A-1.5 Burden of proof* section begins.

Link: <https://www.state.nj.us/dep/dshw/resource/rules.html>

3. NJDEP - State Website

Please click on the link below to be redirected to NJDEP's state website for general recycling information.

Link: <https://www.state.nj.us/dep/>