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## **PUBLIC NOTICE**

### **ENVIRONMENTAL PROTECTION**

### **OFFICE OF LEGAL AFFAIRS**

#### **Notice of Receipt of Petition for Rulemaking**

#### **Petition to Amend Rules Governing Class C Recycling Facilities for Food Waste**

#### **N.J.A.C. 7:26A-4.5**

Petitioner: Vivaria Ecologics LLC

**Take notice** that on October 20, 2023, the Department of Environmental Protection (Department) received a petition for rulemaking from Vivaria Ecologics, LLC (petitioner). The petitioner seeks amendments to the Recycling Rules at N.J.A.C. 7:26A as they relate to Class C recycling centers within the State authorized to accept, store, process, or transfer food waste or compostable material. Petitioner states that it is the owner of a 42-acre parcel on Blau Road in Mansfield Township, Warren County, on which it proposes to construct a facility to compost up to 17,000 tons of food waste and 33,000 tons of wood chips each year. It has also pursued and is pursuing multiple opportunities to construct and operate Class C facilities dedicated to meeting the need for authorized food waste recycling facilities to comply with the food waste recycling requirements of the Food Waste Recycling and Food Waste-to-Energy Production Law, N.J.S.A. 13:1E-99.122 et seq. (Food Waste Recycling Law).

Specifically, the petition requests that the Department amend the Recycling Rules at N.J.A.C. 7:26A-4.5 to allow a Class C composting facility to operate without being enclosed in a structure and without requiring that such a facility operate first under a research, development, and demonstration (RD&D) approval pursuant to N.J.A.C. 7:26-1.7(f), provided an applicant is

able to demonstrate that, based on the technology employed and the specific materials received, the facility does not require full enclosure to prevent leachate migration and off-site impacts, such as odors.

### The Petition

The Food Waste Recycling Law, enacted in 2020, requires food waste generators to source separate and recycle food waste if they are located within 25 miles of an authorized food waste recycling facility, generate a projected average of 52 tons or more of food waste per year, and are in one of the following categories: 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. Subject food waste generators may otherwise comply with the requirements of the Food Waste Recycling Law by performing on-site composting, aerobic or anaerobic digestion in accordance with N.J.A.C. 7:26A-1.4, 4.5, or as otherwise authorized by the Department, or by using an alternative authorized food waste recycling method, defined by the Food Waste Recycling Law. According to petitioner, for the Law to become effective, New Jersey needs to encourage the development of food waste recycling facilities in multiple locations so that they are within 25 miles of the generators.

Under the Food Waste Recycling Law, an “authorized food waste recycling facility” is defined as a Class C recycling center within the State authorized to accept, store, process, or transfer food waste or compostable material. Pursuant to the Recycling Rules at N.J.A.C. 7:26A-4.5(a)15ii, recycling center operations “shall be fully enclosed in a structure, or structures, with complete walls and roof and shall include an air management system permitted by the Department pursuant to N.J.A.C. 7:27 [the Air Pollution Control rules] that is capable of

removing odors and noxious compounds. The building shall have a minimum setback of fifty feet from the property line of the recycling center.”

Petitioner states that under Class C Recycling exemptions, the Department allows in-vessel composting and outdoor composting at farms (N.J.A.C. 7:26A-1.4). Petitioner further states that the Department may also allow the recycling center to use a certification of authority to operate a RD&D project pursuant to N.J.A.C. 7:26-1.7(f), to conduct outdoor composting using a biofilter as cover, or Bokashi with in-vessel composting (N.J.A.C. 7:26-1.7(f)).

Petitioner states that in order to comply with the Recycling Rules, a food waste facility would need to have:

- A composting structure to contain the composting material in a set space (concrete bunker wall configuration) that can withstand wear and tear of normal operations;
- An impermeable operating pad which will direct leachate to a leachate collection system;
- An active compost area that utilizes high aeration rates and automated temperature feedback controls to facilitate optimized process conditions, uses a bio-layer cover (approximately 12” of post-PFRP1 compost on top) (1 PFRP = Process to Further Reduce Pathogens at 40 CFR Part 503 Appendix B) to insulate the surface and utilizes surface irrigation to keep the surface cool and moist; and
- A minimum setback of 50 feet from the property line to the process area.

According to petitioner, modern composting technologies including the Aerated Static Pile (ASP) process and windrow composting process, will meet these conditions without being enclosed in a building. The optimized, science-based system combined with proper and documented process management does not require an enclosure to mitigate odors and noxious

compounds. ASP and windrow systems have been highly successful at efficient, low odor composting through the combination of optimized process conditions by the equipment and trained operators. Key process indicators (such as temperature, moisture, pH, C/N ratio, density) are used to ensure that the primary composting process remains optimally controlled. The correct ranges for these metrics may be written into the permit conditions as well as the facilities operations and maintenance manual so that regulators and the public will have confidence the facility is operating as designed.

Petitioner acknowledges that the existing Department rules provide for permits under an RD&D authorization. RD&D authorization means that the facility has 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. However, because an RD&D authorization is available only for a limited time and scope of project, financing for such projects is not readily available, according to petitioner. As a result, without a change to the rules New Jersey will not benefit from modern food waste composting facilities, which are a key to implementing the Food Waste Recycling Law, and the corresponding reduction in greenhouse gas emissions from food waste decomposing in landfills.

Petitioner attaches to its petition is more detailed information that the petitioner states demonstrates that when properly employed, these systems are effective in limiting off-site impacts. Petitioner points to the Ag Choice facility in Andover Township, Sussex County, which it states has operated under an RD&D permit for approximately 18 years as an open-air windrow facility, demonstrating that outdoor food waste composting can be successful, and provides citations to regulations in California, Massachusetts, Maryland, Virginia, and Minnesota for further support of its position.

Petitioner's requested rule language is set forth below with additions shown in boldface, and deletions shown in brackets:

7:26A-4.5 Additional design and operational requirements for recycling centers that receive, store, process or transfer Class C recyclable materials

(a) In addition to the requirements of N.J.A.C. 7:26A-4.1, the following operational and design criteria apply to recycling centers receiving Class C recyclable materials:

1. through 14. (No change.)

15. Recycling centers that process Class C recyclable material other than or in addition to yard trimmings shall operate in accordance with the following minimum requirements in addition to site specific requirements set forth in the general approval:

i. (No change.)

ii. [The] **Other than as set forth below, the** recycling center operations shall be fully enclosed in a structure, or structures, with complete walls and roof and shall include an air management system permitted by the Department pursuant to N.J.A.C. 7:27 that is capable of removing odors and noxious compounds. The building shall have a minimum setback of fifty feet from the property line of the recycling center. The Department may allow the recycling center to use a certificate of authority to operate an RD&D project obtained pursuant to N.J.A.C. 7:26-1.7(f) to demonstrate that the specific materials received do not require full enclosure that would prevent leachate problems and off-site impacts such as odors from typical food wastes. Based on the results of the RD&D project the Department may issue a general approval to allow other forms of structures, no structures or other measures that would be adequate to prevent on and off-site impacts. **The Department may also issue a general approval for a food waste composting operation to operate without the need for an enclosure when the applicant demonstrates**

**that the facility will employ modern composting technologies such as Aerated Static Pile or windrow composting processes, and that based upon specific operating parameters proposed by the applicant, and the specifics of the proposed site, full enclosure is unnecessary to prevent leachate problems and off-site impacts from odors.**

This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the petitioner a copy of this notice of action on the petition.