



# New Jersey Enacts Food Waste Recycling Mandate – Implementation Issues on Horizon

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People in New Jersey sent 1.3 million tons of food waste to landfills and incinerators in 2017, according to an estimate from the New Jersey Department of Environmental Protection (“NJDEP”). However, efforts to reduce food waste in the state recently received a boost as Gov. Phil Murphy signed [legislation](#) April 14th that among other things, will require certain commercial and institutional entities to source-separate and recycle food waste.

In so doing, New Jersey joins six other states and several cities across in the U.S. that have enacted food waste recycling laws. The other states are California, Massachusetts, Vermont, Connecticut, Rhode Island and [New York](#). The Garden State now is poised to reap the environmental, economic, and social benefits that stem from food waste reduction efforts, but a number of questions regarding the implementation of the new law remain to be resolved.

## **Overview of New Jersey’s Food Waste Recycling Law**

The New Jersey legislation will require “large food waste generators” (i.e., certain commercial and institutional entities that generate at least 52 tons/year of food waste at a single location) to source- separate and recycle food waste at an appropriate facility. To protect businesses from excess costs as a result of this requirement, large food waste generators must comply with the mandate only if: (1) generator is located within 25 miles of a recycling facility with sufficient capacity to accept the waste, and (2) the cost of transporting and processing the food waste at the recycling facility does not exceed 110 percent of the cost of transporting and disposing of the food as solid waste (e.g., at a landfill). A generator also may comply with the recycling mandate by recycling its food waste on-site

through composting or anaerobic digestion, or by recycling the food waste through alternative approved means. The recycling mandate goes into effect in October 2021.

It is important to note that the legislation contains other provisions that will lend much needed support to the market for products and energy generated by food waste recycling in New Jersey. Specifically, these other provisions:

- create a Food Waste Recycling Market Development Council to provide recommendations on how to increase demand for products and energy generated by food waste recycling facilities;
- require state departments or agencies that engage in landscaping or construction to use compost, mulch or other soil amendments generated from recycling of organic materials when competitively priced and feasible; and
- provide a financial incentive for energy generated at a food waste recycling facility by giving the facility a “class 1 renewable energy certificate.”

The next step is for the NJDEP to propose regulations to implement the new law, although it is not clear when the NJDEP will propose these regulations. The law itself requires these regulations to include certain administrative requirements; these include (a) recordkeeping and reporting requirements for generators and recycling facilities, (b) guidelines for businesses to follow to determine whether they are subject to the food waste recycling mandate, (c) a list of food waste products that must be recycled, standards for on-site composting or digestion of food waste by generators, and (d) procedures for generators to petition for a waiver of the recycling requirement if recycling costs exceed 110 percent of the cost of transporting and disposing of the food as solid waste.

### **Questions Regarding Implementation of the Food Waste Recycling Mandate**

As we await these regulations, and the implementation of the law itself, questions remain to be resolved:

- **What food waste will generators be required to recycle?** The definition of food waste may be the most important issue going forward. This is because a generator is only subject to the recycling requirement if it produces 52 tons or more per year of food waste that meets this definition, and because such generators must recycle only food waste included within the specification. The legislation defines food waste by using a mix of general and specific terms, and because food waste can arise in a number of contexts, confusion already has emerged about what food waste is included in the definition. As noted above, NJDEP will include a list of food waste that must be recycled in its proposed regulations, which hopefully will bring clarity to this issue.
- **What guidance will the NJDEP provide to generators that may be subject to the recycling requirement?** The recycling mandate applies only if a commercial or institutional entity generates more

than 52 tons or more per year of food waste at a single location. Yet there is nothing in the legislation that requires entities to track the amount of food waste, and it is not clear how the generators or the NJDEP will determine whether a business is subject to the recycling mandate. The law requires the NJDEP to provide guidance to generators as to whether they are subject to the recycling mandate. Will the NJDEP propose regulations requiring entities to track and report food waste to determine applicability of the recycling mandate? Or will the NJDEP take a different approach, such as requiring that businesses use an estimation tool based on square footage, business type or other relevant factors to determine if they are likely to be subject to the requirements of the law?

- **Will recycling infrastructure expand rapidly enough to match the supply of food waste created by the legislation?** New Jersey regulations differentiate between different classes of recyclable material, and it includes food waste within the definition of “Class C recyclable material.” The NJDEP maintains [list of facilities](#) that hold Class C recycling permits, which typically are issued to large-scale commercial recycling facilities. This list identifies the facilities that accept food waste.

There are a few other food waste recycling facilities in the state that operate pursuant according to Research Demonstration and Design Permits, which are intended to be temporary authorizations with fewer requirements than a Class C recycling permit, permit. There are still and still others that operate pursuant according to limited approvals or exemptions.

While a couple of the food waste recycling facilities in New Jersey are quite large and can accept several hundred tons of food waste per day, they certainly are not large enough to accept all of the food waste generated in the state. As a result, the recycling infrastructure will need to expand. However, the siting and permitting of a recycling facility in New Jersey can take 12-24 months, and the NJDEP recently reported that no new food waste recycling facilities are in the permitting pipeline. (The NJDEP is working on new regulations to streamline the permitting process and create a tiered permitting program that takes into account the size and type of facility, but these regulations have not yet been proposed.)

- **How will the NJDEP regulate food waste that is recycled (or upcycled) through alternative means as opposed to at a permitted recycling facility?** The legislation allows a generator to comply with the recycling requirement by processing food waste using an “Alternative Authorized Food Waste Recycling Method” rather than sending the material to a Class C facility. This is important because it expands the options for generators and should lead to a more competitive landscape of disposal options that reduces costs. But what exactly is an “Alternative Authorized Food Waste Recycling Method”? The definition includes certain on-site recycling methods, such as on-site composting or digestion, as well as the shipping food waste off-site for agricultural use. It also includes any and any other method of recycling or re-use authorized by the NJDEP.

Notably, it does not expressly include community composting or upcycling of food waste (i.e., **using food that would have otherwise gone to waste to make a new food product or ingredient that's available to consumers**). The exclusion of upcycled food from the definition reflects the particular challenges faced by the growing upcycled food industry, as laws are not typically drafted to regulate upcycled food. Will the NJDEP propose regulations that expand the list of “Alternative Authorized Food Waste Recycling Methods” to include a blanket approval for community composting, upcycled food and other alternative methods of addressing food waste? Doing so would provide generators with more certainty as they determine how best to address food waste, rather than requiring each generator to seek clarification from the NJDEP.

- **How will landfills and incinerators react?** The New Jersey legislature passed a version of the current law in June 2019, but Gov. Murphy **vetoed** that legislation at the urging of a number of industry and environmental groups. The problem? The earlier version contained exemptions from the recycling requirement for food waste sent to a landfill with a landfill gas capture system or to an incinerator. The exemptions were championed by several county governments because of concerns that the recycling requirement would deprive public landfills of valuable waste streams that generate methane and would undermine the financial viability of their landfill gas capture systems. In Gov. Murphy's veto, he recommended that the legislature remove the landfill and incinerator exemptions, and the current law eliminates those exemptions. Notwithstanding the passage of the revised bill, there remains a strong push to retain the landfill and incinerator exemptions, and it is possible that proponents of the landfill and incinerator exemptions will seek to enact the exemptions through supplemental legislation.

Despite these open questions, supporters of food waste reduction in New Jersey and beyond are in a hopeful mood. It is time to look to the future and embrace the broad benefits of food waste recycling and reduction.

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