

Morris County Solid Waste Management Plan Amendment – March 2007

Section 8

The following is an excerpt, Section 8, of the Morris County Solid Waste Management Plan Amendment dated March 2007. It was prepared for use the Recycling Enforcement Coordinator Kick-off Meeting on December 9, 2008. The sections that are in *italics and underlined* are meant to highlight those areas of this section that pertain directly to municipal enforcement of source separation recycling.

8. Enforcement Program

8.1. Development of County Enforcement Program

Prior to November 2002, the County of Morris had a limited compliance and enforcement program with respect to solid waste. With the exception of waste flow enforcement, the role of enforcing solid waste laws and regulations prior to November 2002 was the obligation of either the NJDEP or municipalities. Since that time when the Morris County Office of Health Management ("MCOHM") was established, Morris County has developed the necessary institutional framework to have an effective county-wide solid waste enforcement agency. As of the writing of this Plan Amendment, the impacts of the newly developed Morris County Office of Health Management are just being felt with respect to the regulated solid waste community. It is anticipated that over the next few years, the county's new health office will have influence over assuring compliance with state solid waste regulations and the county Solid Waste Management Plan, and that in doing so it will help Morris County achieve its recycling goals.

8.2. Historical Development of the Morris County Office of Health Management

On November 6, 2002, the Morris County Board of Chosen Freeholders adopted a resolution establishing a County Environmental Health Act ("CEHA") program within the auspices of a newly formed Morris County Division of Health Management, as referred to in the resolution. This resolution also resolved that the County of Morris through its Division of Health Management will assume responsibility for solid waste and, subsequently, emergency response.

In a resolution dated June 11, 2003, the Morris County Board of Chosen Freeholders approved the Environmental Health Act Work Plan of the Morris County Division of Health Management as it pertains to solid waste. This is referred to as the Solid Waste Control Program.

Finally, in an agreement executed on March 1, 2005, the Morris County Municipal Utilities Authority, County of Morris and the Morris County Office of Health Management, (this office was originally referred to as the Division of Health Management) entered into a contract for the provision of services for administration and enforcement of Title 13, the solid waste component of the CEHA program.

Copies of these two resolutions, the Solid Waste Control Program and the solid waste enforcement agreement have been included as Appendix E.

8.3. Inspection Universe

The inspection universe is detailed in the Solid Waste Control Program provided in Appendix E. Inspections will be performed and coordinated between three entities that are part of the CEHA program; the MCOHM, the NJDEP and the local municipal enforcing authority ("LMEA"). In Table 10, the solid waste activities to be inspected and the entity that will have the role of inspecting these solid waste activities is provided.

Table 10
Solid Waste Activities Inspection Checklist

Categories	# of Facilities	Frequency of Inspections	Total Inspections	Inspection Entity
Major Landfills	0	One per year	0	MCOHM
Minor Landfills	0	One per year	0	MCOHM
Resource Recovery Facility	1	One per year	1	NJDEP
Class B Recycling Centers	4	One per year	4	NJDEP
Class C Composting Facilities	16	Once per year	16	MCOHM
Class A Recycling Centers	3	Once per year	3	NJDEP
Farmland Mulch	0	Once per year	0	NJDEP
Recycling Depot	33	Once per year	33	MCOHM
Transfer Stations/MRFS	3	Twice per year	6	MCOHM / NJDEP
<i>Solid Waste Activities</i>			Number of Activities	
Truck checks			50	MCOHM
<i>✓ Recycling Investigations</i>			<i>117</i>	<i>Local or MCOHM if needed</i>
Illegal Dumping Investigations			As needed	Local
Container Inspections			50	MCOHM
Waste Flow Investigations			As needed	MCMUA
<i>✓ Citizen Complaint Investigations</i>			<i>As needed</i>	<i>Local</i>
<i>✓ NJDEP Referrals</i>			<i>As needed</i>	<i>MCOHM</i>
Transporter Route Investigations (if applicable)			As needed	MCOHM
Exempt Hauler Interviews			As needed	MCMUA
Exempt Hauler Investigations			As needed	MCOHM
<i>✓ Enforcement Actions (NOVs, Settlements, Court)</i>			<i>As needed</i>	<i>Local, MCOHM or NJDEP</i>
Tire Sites			5	MCOHM

8.4. The Morris County Office of Health Management ("MCOHM")

In accordance with the Solid Waste Control Program and as authorized by CEHA, the MCOHM will perform all routine compliance monitoring inspections of solid waste facilities throughout the county. The MCOHM will handle NJDEP and Morris County referrals such as those referrals provided by the MCMUA. The MCOHM will monitor the compliance of collector haulers for having proper NJDEP registration cards and NJDEP numbers on their vehicles.

A Solid Waste Enforcement Agreement was executed between the MCMUA, the MCOHM and the County of Morris on March 1, 2005, that provides for the MCMUA to make its investigators available as agents of the MCOHM. Acting as a subcontractor to the MCOHM, the solid waste investigations by the MCMUA will include illegal dumping, illegal operation of solid waste facilities, decaling of containers and vehicles, violations of the Morris County Solid Waste Management Plan, including, but not limited to the Plan's designated materials mandated to be source separated and recycled, litter, proper solid waste disposal and proper disposal of regulated medical waste.

While MCMUA waives any fees or reimbursement for the enforcement activities performed by the MCMUA on behalf of the MCOHM, the agreement states that the enforcement of waste flow control issues remain in the exclusive control of the MCMUA.

8.5. New Jersey Department of Environmental Protection ("NJDEP")

The NJDEP retains primary responsibility for monitoring and inspecting solid waste facilities for registration and engineering design violations. NJDEP is mandated to have the responsibility for fee collection and registration of facilities and collector/haulers.

8.6. Local Municipal Enforcing Authority ("LMEA")

Within six months of the certification of this Plan Amendment by the Department, each municipality shall designate a municipal recycling enforcement coordinator. This person will have the following responsibilities:

- Maintain a list of personnel in the municipality who are capable of and obligated to enforce the municipal recycling ordinance and/or other municipal ordinances which pertain to illegal dumping, solid waste and recycling and provide copy of this list to the MCMUA as requested.
- Coordinate all communication between various agencies including the MCMUA, MCOHM and NJDEP regarding solid waste and recycling enforcement issues.
- Ensure that violations have been followed through to corrective action by the violator and/or that penalties have been imposed.
- Notify the MCMUA when a notice of violation has been issued to any entity other than a single family or a multifamily dwellings with 34 units or fewer.
- Ensure that the required annual inspections have been performed.
- Provide a report of the illegal dumping, solid waste and/or recycling enforcement activity which has taken place in the municipality. This report shall be submitted to the municipal recycling coordinator in order to be included in the annual municipal recycling and solid waste program report explained in Section 9.2.i).

If for any reason, there becomes a vacancy in this position and/or the recycling enforcement coordinator is not available to perform these duties, the municipality shall designate a new or acting recycling enforcement coordinator, so that the period of time of vacancy does not exceed two weeks.

The LMEA responsible for solid waste enforcement shall investigate illegal dumping and residential complaints that are not NJDEP referrals. The LMEA shall also investigate illegal dumping and residential complaints referred to them by the MCMUA and/or the MCOHM. In addition, matters in which generators violate the source separation recycling requirements of the Plan and, in turn, the municipal ordinance, will first be referred to the municipal recycling enforcement coordinator to seek compliance with the local municipal recycling ordinance. The MCOHM will serve as a backup to the LMEA, only for multifamily complexes of 35 or more units and non-residential generators, enforcing the source separation recycling requirements of the Plan if invited to do so by the LMEA.

At a minimum, each municipality shall conduct a total of three (3) recycling investigations per year at schools, businesses and/or multifamily complexes. In accordance with Table 10, Morris County, as a whole, will complete a minimum of 117 recycling investigations per year based on three (3) per municipality. Site visits, as prescribed in Section 9.2.(g), will count toward the minimum required number of recycling investigations.

8.7. Interagency Enforcement Coordination

Interagency enforcement coordination is detailed in the Solid Waste Control Program provided in Appendix E. In accordance with the Solid Waste Control Program, the MCOHM will provide technical and enforcement support to LMEAs for illegal dumping and residential complaints when called upon to do so.

As a means to assure consistency and coordination, all investigations and enforcement procedures shall be conducted pursuant to the standard operating procedures and guidance of the NJDEP. The NJDEP has ultimate authority and responsibility over MCOHM. Only those solid waste investigations and inspections specified in the Solid Waste Control Program may be performed by MCOHM. Any and all solid waste investigations and actions that are overly complex or political in nature shall be immediately brought to the attention of the NJDEP to determine appropriate enforcement action.

The MCMUA will develop a database to track recycling violations from both the MCOHM and the municipalities. This database will track violations county-wide so that the MCMUA and MCOHM are readily able to determine repeat offenders and to keep track of the history of individual violations.

8.8. Compliance Assistance, Education and Training

Compliance assistance, education and training is provided by Morris County in many forms. The MCMUA conducts meetings for municipal recycling coordinators several times throughout the year informing municipalities of new opportunities, regulations and issues that municipal recycling coordinators may face in their jobs. These meetings provide an excellent networking opportunity for the recycling coordinators to get to know their neighboring towns and, their

problems as well as their management techniques or solutions. In addition, the MCOHM routinely visits local recycling depots and department of public works sites in a compliance assistance role providing education and training to both municipal recycling coordinators and public works staffs.

As a new effort, the MCMUA will host meetings on a regular basis with Morris County municipal recycling enforcement coordinators, a new title which was previously explained and is created by this Plan Amendment, and with MCOHM personnel involved with solid waste and recycling enforcement.

8.9. Punitive Measures

The punitive measures of the enforcement program are detailed in sections IV and V the Solid Waste Control Program provided in Appendix E. In accordance with the Solid Waste Control Program, the MCOHM will provide enforcement by issuing notices of violations (“NOV”), conducting settlement meetings or making and signing complaints and summons for the NOVs. All penalties and fees resulting from solid waste enforcement activities and violations shall be consistent with applicable Department solid waste rules.

In addition to enforcing the Solid Waste Management Act N.J.S.A. 13:1E-1 *et seq.* and the regulations adopted pursuant thereto, the MCOHM will enforce the provisions contained in this Morris County Solid Waste Management Plan. Authority to enforce the provisions contained in the Morris County Solid Waste Management Plan is found in the Solid Waste Control Program provided in Appendix E. Additionally, the CEHA program provides authority for the MCOHM to enforce the rules and regulations in N.J.A.C 7:26-1, *et seq.* as stated in Subchapter 5 section 5.1(a) of these regulations:

"This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.*, including the Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, amending and supplementing the Solid Waste Management Act (hereinafter "the Act"), including violation of any rule promulgated, any administrative order, permit, license or other operating authority issued, any **district solid waste management plan** approved, pursuant to the Act."

a. Generator Non-Compliance with Source Separation Recycling Requirements

With respect to generators not complying with the source separation recycling requirements of the Plan, herein, referrals will first be made to the local municipal recycling enforcement coordinator in an effort to obtain compliance with the applicable local recycling ordinance. Penalties will be assessed based on this ordinance.

According to the 1993 Morris County Solid Waste Management Plan Update, "The municipal ordinances shall include enforcement policies which include inspection of garbage set out for disposal and a minimum fine of \$25.00 per offense for recycling violators." Upon the adoption of the updated municipal recycling ordinance in accordance with the requirements of this Plan, the enforcement language above shall be superseded by the following language which shall be included in the ordinance:

Source Separation of Designated Recyclable Material

It shall be mandatory for all persons who are owners, tenants, or occupants of residential and non-residential premises, which shall include but not be limited to retail and other commercial locations, as well as government, schools and other institutional locations within the municipality of (insert name of municipality), to separate designated recyclable materials from all solid waste. Designated recyclable materials shall be deposited separately and apart from other solid waste generated by the owners, tenants, or occupants of such premises.

Penalty for Non-compliance with Source Separation Requirement

Any person, corporation, occupant, or entity that violates or fails to comply with any provision of this ordinance or any of the rules and regulations promulgated hereunder shall, upon conviction thereof, be punishable by a fine not less than \$25, nor more than \$1,000.

For the information of municipalities as they consider the revisions to their ordinances in accordance with this Plan, reference is made to the provisions of N.J.S.A. 40:49-5. titled "Penalties for violations of municipal ordinances." Included in this statute among other provisions is the following statement:

"The governing body may prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000."

If adequate compliance by the generator with the source separation recycling requirements of the Plan is not obtained by the efforts of the LMEA, the LMEA may invite the MCOHM to assume the responsibility of investigating such noncompliant activities and assess penalties with the exception that the MCOHM will not assume the responsibility of investigating noncompliant activities for residential generators in single family homes or in multifamily dwellings with 34 units or fewer. The penalties assessed from such investigations will be based on the following:

1. It shall be mandatory for all persons who are owners, tenants, or occupants of residential and non-residential premises, which shall include but not be limited to retail and other commercial locations, as well as government, schools and other institutional locations within the County of Morris to separate designated recyclable materials from all solid waste. Designated recyclable materials shall be deposited separately and apart from other solid waste generated by the owners, tenants, or occupants of such premises.

Penalties associated with this section of the Plan shall be in accordance with those available to the municipal court of jurisdiction.

b. Prohibition of Hauling of Mandated Recyclable Materials Commingled With Solid Waste
As written in the New Jersey Solid Waste Utility Regulations, N.J.A.C. 7:26H-4.4 Solid waste collection tariff terms and conditions:

"(a) 6. Collectors are prohibited from collecting commingled loads of solid waste and designated source separated recyclable materials, except in those instances where a specific municipal exemption has been granted to the generator of those materials as provided by N.J.S.A. 13:1E-99.16(d). Each solid waste management district plan contains a definition of the district's designated recyclable materials. Collectors are prohibited from disposing of leaves in any manner that differs from that outlined in N.J.S.A. 13:1E-99.21."

Morris County hereby incorporates the following similar language into this Plan Amendment, to be enforceable as part of the Plan.

1. Collectors are prohibited from collecting commingled loads of solid waste and the mandated source separated recyclable materials, except in those instances where a specific municipal exemption has been granted to the generator of those materials as provided by N.J.S.A. 13:1E-99.16(d).

The following actions will be considered violations under this Plan.

- 1) A hauler which collects waste which includes mandated recyclable materials mixed in it.
- 2) A hauler which informs the generator that source separation of mandated recyclable materials from the waste is not necessary.
- 3) A hauler which mixes mandated source separated recyclable materials with waste.

Haulers are hereby put on notice that all three of the scenarios listed above violate N.J.A.C. 7:26H-4.4(a)6. and this Plan and the MCOHM will enforce this violation as part of this Plan to its fullest extent. Below is the fining schedule for violations by haulers to the Plan's prohibition of collecting commingled loads of solid waste and mandated source separated recyclable materials.

¹Fining Schedule for Hauler Violations of This Section

~~1st offense: _____ NOV with grace period with no fine~~
~~2nd offense Fine: _____ \$500.00~~
~~3rd offense Fine: _____ \$1,000.00~~
~~4th offense Fine: _____ \$2,000.00~~

In accordance with DEP regulations, the MCOHM may conduct a settlement meeting at which a reduction in fines may be given up to 20%. In order to be eligible for a reduction, the offender must be in full compliance at the time of the settlement meeting.

¹ *In accordance with the October 10, 2007 NJDEP certification of this Plan Amendment, this fining schedule provided above is rejected.*