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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

Notice of Action on Petition for Rulemaking

Sustainable Waste Management

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 the Department of Environmental Protection (Department) has denied the petition for rulemaking from Vivaria Ecologics LLC (petitioner). The petitioner 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 Department received the petition on October 20, 2023, and published the notice of receipt in the November 20, 2023, New Jersey Register (55 N.J.R. 2361(a)). The Department published a notice of action referring the petition for further deliberation in the January 16, 2024, New Jersey Register (56 N.J.R. 150(b)).

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The Petition

Petitioner is the owner of a 42-acre property on Blau Road in Mansfield Township, Warren County (Blau Road operation), 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. Petitioner states it has another potential facility site that could compost up to 100,000 tons of food waste combined with wood chips and/or other materials per year. Petitioner asserts that it is unable to pursue these opportunities because the recycling rules applicable to the design and construction of Class C recycling facilities for food waste require that all operations occur in an enclosed structure. 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.

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According to petitioner, modern composting technologies including the Aerated Static Pile (ASP) process and windrow composting process, will meet the above conditions without being enclosed in by four walls and a ceiling. Petitioner contends that the optimized, science-based system combined with proper and documented process management does not require a full enclosure to mitigate odors and noxious compounds. Further, petitioner asserts that 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 facility's operating conditions as well as the facility's 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 allow such activity under an RD&D Certificate of Authority to Operate (CAO) 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 enacted in 2020, and the corresponding reduction in greenhouse gas emissions

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from food waste decomposing in landfills. According to petitioner, the goals of the food waste recycling law cannot be met since the recycling rules require composting operations to occur within full enclosure.

Petitioner also claims that the requirement that food waste composting occur in a fully enclosed structure with complete walls, roof, and an air management system is part of the reason that the Warren County Solid Waste Advisory Council Sub-Committee rejected its application to include the Blau Road operation in the Warren County Solid Waste Management Plan.

Petitioner includes in its petition more detailed information that it states that when properly employed, modern food waste composting 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 CAO 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.)

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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.**

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Background

The Solid Waste Management Act

Under the Solid Waste Management Act (SWMA), each of the 22 solid waste management districts in the State, including the 21 counties and the Hackensack Meadowlands district, is responsible for developing and implementing a solid waste management plan, subject to the Department's approval. The solid waste management plan includes the siting of solid waste facilities and recycling centers in the district. The district in consultation with its solid waste advisory council is to consider any requests for modifications to the plan, for example, to include a new recycling center or modify an existing recycling center approval.

Recycling rules

The recycling rules at N.J.A.C. 7:26A allow a facility to recycle food waste under a Class C recycling general approval or under a recycling exemption. N.J.A.C. 7:26A-4.5 sets forth the specific design and operational requirements for a recycling center that receives, stores, processes, or transfers Class C recyclable materials. Pursuant to N.J.A.C. 7:26A-4.5(a)15ii, a recycling center that processes Class C recyclable material other than or in addition to yard trimmings must conduct its operation "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 rules include a 50-foot minimum setback requirement. See N.J.A.C. 7:26A-4.5(a)15ii. The rules also require the composting process to meet the criteria for a process to reduce pathogens in

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accordance with 40 CFR Part 503 by using the windrow method, aerated static pile method, or enclosed vessel composting method. See N.J.A.C. 7:26A-4.5(a)15x.

The rules give the Department discretion to allow a “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.” Ibid. Based on the results of the RD&D project, the Department may issue a general approval authorizing “other forms of structures, or other measures that would be adequate to prevent on and off-site impacts.” Ibid.

In the Department’s proposal of N.J.A.C. 7:26A-4.5, the Department explained that it determined “based on experience with several sites that have accepted food wastes that the impacts of odors and leachate runoff are too significant to continue to allow food wastes to be processed outdoors.” 40 N.J.R. 7(a) (Jan. 7, 2008). The Department indicated its full support for “recycling efforts such as composting for food wastes,” but found that “the recycling operations must be conducted in a manner that will be protective of human health and the environment and will not result in unwarranted leachate runoff and nuisance impacts such as severe odors.” Thus, the Department adopted the rules requiring enclosure while allowing a recycling center to demonstrate that operations utilizing other measures are adequate to prevent on- and off-site impacts.

Food waste recycling law

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In 2020, a new law was passed which requires large food waste generators within 25 road miles of a Class C recycling center authorized to accept, store, process, or transfer food waste or compostable material (referred to as an authorized Class C recycling center) to source separate and recycle their food waste. See N.J.S.A. 13:1E-99.123 et seq. There are two authorized Class C recycling centers in the State. Pursuant to the law, a large food waste generator may comply by sending the source separated food waste to an authorized Class C recycling center that has available capacity and will accept the waste, “perform[ing] enclosed on-site composting, or anaerobic or aerobic digestion of its source separated food waste,” or using an alternative authorized food waste recycling method, as defined by statute, to recycle the food waste. See N.J.S.A. 13:1E-99.122 and 99.123. Notably, the law specifies that compliance may be achieved by *enclosed* on-site composting. See N.J.A.C. 13:1E-99.123.b(2)(a).

The Department’s Response to the Petition

After careful consideration, the Department has determined to deny the petitioner’s request. The Department acknowledges that other states as identified in the petition do not require full enclosure of a food waste composting facility, which are required to have comprehensive plans to address on- and off-site odor, vector, and other potential nuisance impacts. The Department also acknowledges the importance of food waste recycling. As such, the Department is evaluating potential amendments to the recycling rules as well as other Department rules to further encourage food waste composting in the State in a manner that protects public health and the environment. As part of the Department’s evaluation, the

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Department is considering various approaches to regulating food waste composting, including a more holistic approach that could include amendments to other parts of the Department's rules that govern food waste composting operations. If the Department determines that rulemaking is appropriate, given the anticipated degree of public interest, the Department will engage interested stakeholders for feedback and proceed accordingly. In the meantime, as petitioner notes in its petition, the recycling rules allow a recycling center to use a certificate of authority to operate an RD&D project, the results of which may cause the Department to "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." N.J.A.C. 7:26A-4.5(a)15ii. Indeed, the Ag Choice facility that petitioner cites as an example of a successful outdoor food waste composting operation recently entered into an agreement with the Department for the facility to secure a general approval, which would allow it to continue to operate outside of a full enclosure.

Therefore, in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2, after careful consideration of the petition, the Department has determined to deny the petition for rulemaking. A copy of this notice has been mailed to the petitioners as required by N.J.A.C. 1:30-4.2.