

Response to Comment Document

Education & Public Relations

Comment: A comment was received that recommended that the Department provide education on the purchase of environmentally friendly products and on the proper handling and disposal of household hazardous waste.

Response: The Department responds stating that the Department currently has information available regarding the purchase of recycled products in the form of a CD-ROM or online at www.state.nj.us/dep/dshw/recycle/cdrom05.htm. Additionally, the Department has a recycling and reuse manual entitled “A Place For Everything”, which focuses on averting disposal of certain items in Monmouth, Middlesex and Mercer Counties. Manuals focusing on other counties may be produced in the future.

The DEP provides education on household hazardous waste issues through the Association of New Jersey Household Hazardous Waste Coordinators. The organization, which is comprised of county household hazardous waste coordinators, state officials and hazardous waste disposal vendors, works toward the safe management of all household hazardous waste. The Department has also produced an informational brochure regarding the dangers of mercury and its proper disposal.

If recycling education funding should become available through the Recycling Enhancement Act, the Department would consider producing additional educational materials on these topics.

Comment: The Department received numerous comments regarding the need for a cohesive, statewide public relations/education campaign focusing on recycling in general, or on specific targeted materials or audiences.

Response: The Department responds by stating that we appreciate the support of those commentators who recognize the role that education must play in increasing recycling rates, and made suggestions regarding the scope and/or content of our future educational efforts. However, public relations and educational campaigns are very expensive. If the Recycling Enhancement Act is passed by the Legislature and signed by the Governor, it would provide \$500,000 annually for educational initiatives. Should these or other funds become available, we will certainly consider any and all possibilities in terms of the structure and content of our educational program.

Comment: The Department should consider providing recycling training to school officials.

Response: The Department responds by stating that there are plans to offer certification and re-certification courses to municipal recycling coordinators, which will include specific ideas on how to start or improve school recycling programs. We are hopeful that

municipal coordinators will be able to use the information provided in these courses to assist school officials in complying with state recycling laws.

Comment: One commentor suggested that the Department provide assistance to counties in their educational efforts, and that the Department work with the Department of Education to establish a core curriculum standard to be taught in elementary school.

Response: The Department responds stating that it has provided technical and material support to county and municipal educational efforts based on availability of state educational materials and on requests received. The DEP has designated one representative to sit on the committees established by the Department of Education to develop the state's core curriculum standards. These committees have opted to keep the environmental standards broad and have focused on comprehensive, large concepts while identifying appropriate examples or issues that would support the teaching of these broader concepts or skills. Additionally, the Department's Bureau of Recycling and Planning utilized teachers to update and revise the "Here Today, Here Tomorrow" recycling and solid waste curriculum to ensure that the lesson plans adequately supported the state's core curriculum standards.

Comment: One commentor suggested that county and local recycling coordinators should hold town meetings to reinforce the importance of recycling.

Response: The Department responds by stating that it recently prepared a power point presentation on the past and current state of New Jersey's recycling program, and offered to make the presentation available to each county. Interested counties responded to the offer and the presentation was made to those counties by the Department's Bureau of Recycling and Planning staff. Counties were able to invite their municipal recycling coordinators and other interested individuals to the presentations. County and municipal officials may use the presentation, which is available online, to reinforce the importance of recycling at future meetings of their many constituents.

In addition, upon adoption of the Plan, each county will need to update its respective plan to detail their strategy for attaining the Plan's recycling goals. One component of that strategy that should be addressed is how the county plans to increase and reinforce education efforts to its citizens, businesses, and institutions.

Comment: Comments were received which suggested that additional redistribution manuals be produced, and that the manuals be available online.

Response: The Department responds stating that the redistribution manual currently available through the Department at no charge was actually developed and written by Audrey Rockman, and it remains her property. The Department agreed to purchase a large number of manuals if Ms. Rockman would focus on a few counties at a time and incorporate information deemed necessary. She agreed to do so and eventually published "A Place for Everything" for Mercer, Middlesex and Monmouth Counties. Ms. Rockman sells the manuals at clutter management classes she conducts statewide, so it would be

inappropriate for us to make the manual available online, thereby eliminating her ability to profit from the publication.

Free copies of the manual were distributed to county and municipal coordinators in the three counties featured, and additional manuals were offered to all three counties and to others for appropriate distribution. When and if funding becomes available, we hope to eventually work with Ms. Rockman to produce additional manuals focusing on recycling and reuse opportunities in other counties.

Comment: A comment was received suggesting that the Department designate one person as the recycling outreach coordinator.

Response: Staff members of the Department's Bureau of Recycling and Planning are responsible for developing and implementing outreach components for each of their programs. Therefore, the identification of an outreach coordinator for the entire recycling program has not been necessary.

Comment: Comments were received regarding the need for municipalities to educate small businesses on the benefits of recycling, and that a state-generated checklist for businesses be sent to small businesses as part of an annual mailing/survey.

Response: The Department responds by stating that many counties have already established programs designed to encourage small businesses to implement recycling programs. Future certification and recertification courses offered to municipalities through the Cook College Office of Continuing Professional Education will focus on the implementation of programs at the local level that have the potential to increase recycling rates, including outreach to small businesses. All municipal coordinators who take the courses will then have the necessary tools to overcome obstacles to small business participation in local recycling programs.

In addition, upon adoption of the Plan, each county will need to update its respective plan to detail their strategy for attaining the Plan's recycling goals. One component of that strategy that will have to be addressed is increasing recycling compliance at small businesses.

Comment: A comment was received that suggested that the Department require manufacturers of plastic bottles to pay for part of the cost of recycling education.

Response: The Department responds stating that it is important to note that plastics manufacturers are already taxed through the Clean Communities Tax, and that part of the fund created by this tax is used to fund Clean Communities education.

Enforcement and Non-Performance

Comment: A comment was received stating that the DEP should fund waste composition studies in non-compliant district's that have clearly made a significant effort to achieve the mandated recycling goals prior to taking any punitive measures, such as withholding grant monies.

Response: The Department responds that money is currently unavailable to provide funds for composition studies. Should funds become available, consideration will be made to provide assistance to the counties for these studies.

Comment: A comment was received requesting assistance of Department and the County Health Dept. to inspect loads to ensure that mandatory recyclable materials are not included in waste received at the landfills and transfer stations.

Response: The Department agrees that more careful inspection of incoming loads of solid waste for the presence of designated recyclable materials at landfill and transfer stations is warranted. In Section H of the Plan, the Department has committed to and has already increased its vigilance at these facilities, ensuring that processes are and remain in place to detect recyclables in incoming loads. Additionally, the Department is focusing on hauling practices involving recyclable bottles, cans and paper. With respect to County Health Departments, the Department has designated certain "priority activities and inspections" it requires these agencies to perform. These priority activities include, among others, monitoring transporters hauling solid waste to ensure compliance with Department regulations and the applicable county solid waste management plan; and investigation of all solid waste complaints received from citizens and the Department. Lastly, the Department is drafting a rule proposal which clearly address the problem of recyclable materials in solid waste loads.

Comment: A comment was received stating that the Department should include enforcement sweeps as a specific contract requirement for all local CEHA agencies that receive State funding.

Response: The Department already incorporates recycling monitoring responsibilities for those CEHA agencies collecting the solid waste enforcement activity fee, of which there are six agencies. This year, these agencies were also asked to conduct a "mini-sweep" at convenience stores.

Comment: A comment was received that concurs with the Statewide Solid Waste Management Plan's incorporation of a new grace period for penalties assessed.

Response: The Department appreciates the commentor's support.

Comment: Comments were received stating State should take a stronger enforcement approach to ensure that municipalities are obtaining accurate reporting of recycling tonnages from haulers and markets.

Response: The Department agrees with the commentor that more effective enforcement of recordkeeping and reporting requirements for recyclable materials is necessary. Such enforcement, however, has been limited by the lack of clear Department regulations regarding the reporting of this recycling data. While the Solid Waste Management Act (SWMA), N.J.S.A. 13E-1 et seq., as amended, does contain reporting requirements, they are dispersed throughout the SWMA and have not been fully incorporated into the Department’s solid waste or recycling regulations. As stated in the Plan in Section H.1, the Department believes there is a great need for the development of “generator” regulations. Historically, the Department has deferred to counties and municipalities for the regulation of generators creating at a minimum the appearance of inconsistent regulation. Therefore, as part of its readoption of the Solid Waste and Recycling Regulations (N.J.A.C. 7:26 and 26A respectively), the Department is drafting amendments and new rules that will clearly address the requirements of generators of solid waste with respect to recyclable materials, including recordkeeping and reporting. In concert with these new regulatory provisions, the Department is amending its penalty tables to add penalty amounts for violations of same. This will both clarify for the regulated community their generator reporting requirements and make it easier for the Department and CEHA Agencies to cite violators who are not complying.

Comment: A comment was received stating that schools need to recycle more.

Response: The Department concurs with the comment that schools could recycle more in certain counties and will provide assistance to counties and school districts to enhance school participation.

In addition, upon adoption of the Plan, each county will need to update its respective plan to detail their strategy for attaining the Plan’s recycling goals. One component of that strategy that will have to be addressed is increasing recycling compliance at the county’s schools, businesses, institutions, and multi-family dwellings.

Comment: A comment was received stating that the Plan should include a policy for facilities consistently in compliance with their operating permit, which would allow for a reduction in the number of Departmental inspections and the Annual Compliance Monitoring Fee.

Response: The Department agrees with the commentor that facilities that are consistently in compliance with their operating permit could be considered for decreased inspection frequency. For example, the Department’s Silver Track II regulations for landfills at N.J.A.C. 7:26-2C already reward compliant landfills with decreased inspection frequency and compliance monitoring fees. The Draft Plan, however, only focuses on transfer station and recycling facilities with poor compliance histories. These facilities are being targeted for increased inspection. With a finite number of inspectors, such increased inspection in one area may require the Department to consider decreases in inspection frequency in others. This would be a more efficient use of manpower and become an incentive for targeted facilities to more readily come into compliance. Therefore, the

Department is amending the Plan to state that it will consider a decreased inspection frequency for compliant facilities where environmentally warranted. The Department notes, however, that some inspection frequencies (such as those for major hazardous waste facilities) are mandated under the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) or through agreements with the Federal Environmental Protection Agency. The Department could not, therefore, consider a reduction in the frequency of inspection for these facilities.

Unfortunately, a decrease in the number of inspections a facility receives may not immediately correlate to a decrease in its annual compliance monitoring fee. The annual compliance monitoring fee covers the Department's costs for compliance inspections, compliance assistance, and case management activities related to compliance monitoring. As such it represents an *average* cost to the Department for providing these services. As with all averages, this means that some facilities may receive slightly more or slightly less "service" for their fee. This fee is adjusted periodically to address changes in inspection frequencies and Departmental costs, but again, represents an average across all facilities of a given type. The Department is presently drafting amendments to its fee regulations, however, which may partly address some of the inherent inequities in charging fees based on "averages." The Department is proposing to charge additional fees when performing its services requires more time than was used as the basis for the fee in the fee schedule. Facilities that are targeted for increased inspections, therefore, can be charged increased compliance monitoring fees. The Department will then have justification to separate out the hours spent inspecting these facilities in determining the "average" number of hours spent on inspections of a given facility type. Additionally, these fee amendments propose to adjust the hourly rate component of the compliance monitoring fee annually. This will ensure compliance monitoring fees are more reflective of costs (increases or decreases) for the given operating year as opposed to establishing a set fee, usually for the duration of each rule cycle (5 years) pursuant to the "sunset" provisions. Revising the hourly rate annually should avoid abrupt and steep increases in fees by metering costs yearly and, in the event of decreased costs, ensure that the industry will receive this benefit in the next immediate annual billing cycle.

Comment: Additional expenses associated with enforcement can not be passed along in the form of additional operating fees.

Response: Department responds that the contracts with county CEHA agencies establish the performance levels required of the county and the amounts of monies received. Any additional expenses beyond the limits of the contract are either the responsibility of the county or subject to a renegotiation of the contract.

Comment: Counties should have the ability to shut down longer-term non-compliant facilities or haulers.

Response: The Department responds that the CEHA agencies have the authority to enforce the Department's rules and regulations and can take legal actions against

violators; however, revoking permission to operate a solid waste facility or hauling operation is solely a state function.

Comment: A comment was received stating that the Plan needs to provide analysis on some of the shortcomings and weaknesses of the tools and procedures available for state, county, and local enforcement agencies.

Response: The Department agrees that an analysis of the shortcomings and weaknesses, as well as an explanation of the strengths, of the tools and procedures available for state, county and local enforcement agencies would be helpful. However, such an analysis would take a tremendous amount of time, consideration, and research with respect to the county and local levels. Additionally, the Department would not have the benefit of receiving comments from affected parties on this addition, as was the case with the Draft Plan. Therefore, the Department will make an effort to include this information in the next Plan update. That said, the Department has provided a brief overview of the strengths and weaknesses of the tools and procedures it uses for enforcement.

From the State's perspective, the New Jersey Environmental Management System (NJEMS) database is both a strength and a weakness. While NJEMS allows Department personnel, county and local personnel and the public to view inspection, violation, and enforcement action information at a location for all media, it is limited to the time period for which the particular program area has entered data. For example, Solid Waste Enforcement began entering data into NJEMS in January 2000. Therefore, the only method of determining compliance prior to 2000 would be to file an Open Public Records Act request and actually review the paper file. Another similar tool, the Internet, is being under utilized. The Department has made an effort to provide both current and proposed regulations, as well as updates on Enforcement sweeps and their findings, and also to provide some compliance assistance information. Perhaps the Department's biggest shortcoming in this area is that of making people aware that this information is available through the Internet.

Lastly, clear, consistent, comprehensive regulations with detailed penalty provisions are one of the Department's most valuable tools for ensuring compliance. Published penalty regulations clearly identifying how penalties will be assessed and the amount act as a strong deterrent to non-compliance. For this reason, the Plan stresses the need for comprehensive local recycling ordinances that provide inspection and penalty authority. Even though a very valuable tool, regulations too have their weaknesses. Too proscriptive regulations can limit the Department's flexibility to craft innovative solutions to unanticipated compliance issues. Additionally, amending regulations is often a slow and tedious process. The Department's regulatory program can not always keep pace, therefore, with changes in the solid waste and recycling industries.

Comment: A comment was received stating that stronger, concise rules and administrative procedures are needed to strengthen enforcement.

Response: The Department agrees that rules and administrative procedures should be concise and sufficiently stringent to ensure timely compliance. They must also be flexible enough to address unforeseen situations that arise in the future. This includes not only those promulgated by the Department, but those promulgated by counties and municipalities as well. Every five years the Department regulations regarding solid waste, hazardous waste, recycling, and public utilities expire obligating the Department to review them to ensure that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. Such review often results in proposed amendments to clarify and strengthen the regulations where necessary. Given the above noted regulations expire in 2007, the Department is starting this review process. The Department welcomes specific suggestions as to how and where these regulations need to be strengthened or made more concise.

Comment: A comment was received stating that withholding some or all recycling grants from municipalities not reaching a minimum recycling rate could also serve as an additional incentive to better focus municipal attention on local recycling efforts.

Response: The Department agrees with this comment and that non-performing counties may have recycling grants and other monies withheld unless they improve their recycling rates.

Comment: Comments were received stating that the State must develop specific guidelines and rules of empowerment to enforce and penalize violators on a county CEHA level.

Response: The Department established a Standard Operating Procedures document for CEHA agencies to provide additional guidance on conducting enforcement actions. This guidance document is in addition to the SWMA and rules adopted thereunder which should be enforced by CEHA agencies. If anything more specific is required, the commentor should contact the Department's Office of Local Environmental Management (OLEM) for information or to request additional training.

Comment: A comment was received stating that statutes must be changed to expand solid waste and recycling enforcement powers of district solid waste management agencies.

Response: The Department believes that in many situations, enforcement powers at each level of government are helpful in assuring solid waste and recyclable materials are managed properly. Problems arise, however, when these enforcement powers overlap, resulting in inconsistent enforcement, or conversely, excessive enforcement. The commentor, however, has not provided specifics on how the statutes should be expanded or what additional enforcement authority is needed for district solid waste management agencies. Therefore, the Department has not amended the Plan.

Comment: A comment was received stating that the Plan should mention counties enforcing recycling ordinances and mandates through CEHA Enforcement.

Response: All CEHA agencies have authority to enforce the State's recycling regulations, which are part of the solid waste regulations. Further, several counties have included a more specific section on recycling in their county solid waste management plans, which may also specify recycling enforcement responsibilities. CEHA agencies do not require utilization of a recycling ordinance since sufficient authority already exists.

Comment: A comment was received stating that the Plan relies on municipal recycling coordinators to do enforcement, which is not effective because of budgetary constraints (only 1 of 53 towns in Monmouth County imposes fines to violators of county imposed recycling mandates). The most effective recycling enforcement comes from County Health Dept.

Response: The Department has long recognized that county health agencies operating under the CEHA program are very effective in monitoring facilities for environmental compliance. Recycling compliance monitoring is not a core CEHA activity since the Department acknowledges the substantial workload of CEHA Agencies. Each level of Government, however, has an important role to play in recycling enforcement. The Department believes recycling involvement on the local level is critical. State and County Agencies simply do not have sufficient staff to inspect the vast number of entities that generate recyclable materials in the State. They also can not possibly know the local issues and needs of the municipality as well as its own inspectors would. While municipal enforcement, as well as county enforcement, can be hampered by a lack of funding, the Department notes that some municipalities consistently do an excellent job of enforcing local litter and recycling mandates under their current budgets. For these municipalities, recycling compliance is a priority. Moreover, some municipal recycling coordinators have requested more enforcement authority than they currently have under their local ordinance. For this reason, the Department is drafting a model recycling ordinance including enforcement provisions and penalties as guidance for municipalities to follow in structuring their ordinance. Lastly, the Department is drafting amendments to its recycling regulations that will clarify the responsibilities of generators of recyclable materials and add additional penalty provisions. These amended regulations should enhance recycling enforcement at both the State and county level, further supporting recycling enforcement efforts at the local level. Therefore, the Department's Plan continues to promote increased recycling enforcement at the local level.

Comment: A comment was received stating that the DEP should allow for environmental monitoring and/or performance based compliance rather than strict adherence to existing regulations. Current regulatory system results in reduced ability to innovate and micro management.

Response: The Department's enforcement program is charged with enforcing the codified regulations and individual permit conditions. Such permit conditions have not historically been performance based. While performance based compliance may be more difficult to ascertain, the Department is not adverse to assessing compliance in such manner. First, however, performance based criteria would have to be codified in

regulation, guidance issued, then training provided on how to assess compliance with these standards. The Department welcomes more specific information from the commentor on how compliance could be judged in this manner. This would help the Department determine if performance based compliance standards should be included in future rulemakings.

Comment: Comments were received stating that prior to withholding monies, Plan needs to define how performance is to be judged and at what levels a county will be considered non-performing.

Response: The Recycling Act clearly establishes recycling goals of 50% of the municipal solid waste stream and 60% of the total solid waste stream for solid waste planning districts. Non-performance, thus, will be defined as not meeting these statutory goals. It should be noted that non-performing districts will be given an adequate opportunity to develop the strategies required to meet the above-specified goals.

As for CEHA monies, the Department's contracts with CEHA agencies already establish the performance levels required of the county for the money received. The solid waste fee that some CEHA agencies collect under N.J.A.C. 7:26-4.5 could be impacted if these agencies don't perform recycling compliance monitoring activities as required. Therefore, it is not necessary for the Plan to define how performance is to be judged for recycling and environmental grants.

Comment: A comment was received stating that a portion of the Plan on page H-3 should be expanded/modified to include recycling regulations with penalty matrices for generators.

Response: As part of its readoption of the Solid Waste and Recycling Regulations (N.J.A.C. 7:26 and 26A respectively), the Department is drafting amendments and new rules that will clearly address the requirements of generators of solid waste with respect to recyclable materials, including recordkeeping and reporting. In concert with these new regulatory provisions, the Department is amending its penalty tables to add penalty amounts for violations of same. This will both clarify for the regulated community their generator reporting requirements and make it easier for the Department and CEHA Agencies to cite violators who are not complying.

Additionally, the Department agrees with the commentor that recycling regulations for generators is warranted and is in the process of developing these regulations including penalty matrices. However, the Department is not prepared at this time to include the penalty tables in the plan, since they are likely to change during the regulatory development process.

Comment: A comment was received stating that the DEP needs to make sure every town submits its annual tonnage report as required by law.

Response: See response above. Additionally, the Department does and will continue to ensure that all towns submit the required tonnage report. Towns which are recalcitrant are forwarded to enforcement for follow-up.

Comment: A comment was received strongly objecting to the proposal that would allow DEP to withhold grants from counties and municipalities that fail to meet goals and provisions within the Plan.

Response: The Department's contract with CEHA agencies already establishes the performance levels required of the county for the money received. The solid waste fee that some CEHA agencies collect under N.J.A.C. 7:26-4.5 could be impacted if these agencies don't perform recycling compliance monitoring activities as required.

Comment: A comment was received stating that the Plan does not offer funding for enhanced enforcement activities.

Response: The Department supports the efforts of proposed legislation which would establish a \$3.00 per ton surcharge on all solid waste brought for disposal in the State. Monies from this proposed surcharge could be utilized to fund the requested enforcement.

At present, the Department does not have additional funds to provide for enhanced enforcement activities and is seeking legislative support to develop new revenue sources to reimburse counties and municipalities for recycling compliance monitoring efforts (for example, S2615, the Recycling Enhancement Act). Additionally, the Department believes that some counties and municipalities may be able to enhance their current enforcement without the need for increased funding, by incorporating the successful strategies that other counties and municipalities are using.

Comment: A comment was received stating that under Section H, page H-9, bullet 8, a clause should be added that provides for the notice of a municipality of inspections, court actions, and follow-up reports on inspection of facilities within their borders.

Response: The Department does the bulk of recycling facility inspections. Municipalities can already get facility compliance history on these facilities through the Department's web site using "Data Miner." Additionally, in the near future counties will have the ability to enter inspection information into the Department's data system which municipalities will then be able to access. Therefore, the Department does not believe it is necessary to revise bullet 8 as the commentor requests.

Comment: A comment was received stating that all municipal recycling ordinances should be standardized.

Response: The Department agrees that some standardization is warranted in all municipal recycling ordinances. For example, at a minimum the Department would request that such ordinances include enforcement authority with corresponding penalty

provisions sufficient to deter non-compliance. However, the Department also acknowledges that each municipality has its own unique circumstances and concerns with respect to recycling, just as each county differs. Therefore, the Department believes that each municipality should be required to meet certain minimum standards in its ordinance, but be afforded the flexibility to add additional standards or requirements to meet its individual needs. To that end, the Department is drafting a model recycling ordinance as guidance for municipalities to follow in structuring their ordinance.

Comment: A comment was received stating that under Section H, page H-9, bullet 9, a clause should be added that provides for providing a quarterly report, as specified, to a municipality affected by any inspection action taken within its borders.

Response: The Department does the bulk of recycling facility inspections. Municipalities can already get facility compliance history on these facilities through the Department's web site using "Data Miner." Additionally, in the near future counties will have the ability to enter inspection information into the Department's data system which municipalities will then be able to access. Therefore, the Department does not believe it is necessary to revise bullet 8 as the commentor requests.

Comment: Prior to withholding monies, Plan needs to define how performance is to be judged and at what levels a county will be considered non-performing.

Response: The Department's contract with CEHA agencies already establishes the performance levels required of the county for the money received. The solid waste fee that some CEHA agencies collect under N.J.A.C. 7:26-4.5 could be impacted if these agencies don't perform recycling compliance monitoring activities as required. Therefore, it is not necessary for the Plan to define how performance is to be judged for CEHA grants.

Comment: Rather than taking recycling monies away from non-performing counties, DEP should require these counties to spend their grant monies in ways defined by the DEP to improve their programs.

Response: The Department's contract with CEHA agencies already establishes the performance levels required of the county for the money received. The solid waste fee that some CEHA agencies collect under N.J.A.C. 7:26-4.5 could be impacted if these agencies don't perform recycling compliance monitoring activities as required. Therefore, it is not necessary for the Plan to define how performance is to be judged for CEHA grants.

Comment: A comment was received stating that enforcement is needed to ensure that MRFs that are accepting mixed loads are engaging in the required extraction of the recyclables.

Response: The Department agrees with the commentor that a stronger enforcement and regulatory focus on materials recovery facilities is warranted. The Department is

concerned that less materials are recovered by MRFs for recycling than originally anticipated and that significantly more material might be recovered if a generator source separates recyclables for separate collection from solid waste. This is because materials recovered by MRFs are often too contaminated for current recycling markets. To address this problem, the Department is drafting new regulations for both generators exempt from source separation under a municipal exemption, municipalities granting such exemptions, as well as tightening up the regulations governing the extraction of recyclables at MRFs. Clear regulatory provisions for MRFs will make it easier for the Department's enforcement program to monitor the extraction activities at these facilities.

Comment: A comment was received stating that there needs to be enforcement initiatives to ensure that haulers are not commingling solid waste with recyclables and selling such a service instead of required source separation of recyclables.

Response: As mentioned in the Plan, the Department has already done targeted enforcement initiatives with respect to haulers that commingle solid waste with recyclable materials. For example, during the Department's Hudson County recycling sweep, inspectors were instructed to gather information on the transporters that handled recyclable materials and ask generators if their transporter mixes their separated recyclables back in with their solid waste. Information was also obtained on those transporters that claimed no source separation was required of the generator since the waste was being transported to a MRF. The Department is currently following up on reported illegal transporter activities. Due to the success of the Hudson sweep, the Department expects to conduct additional County recycling sweeps, continuing to focus on generators and transporters of solid waste and recyclable materials.

Comment: A comment was received suggesting that the State needs to stop overreacting to minor enforcement issues at Eastern Organics.

Response: The Department has a continuing obligation to ensure that all facilities are operated in an environmentally sound manner and that all complaints, are thoroughly investigated. Penalties are issued where warranted. The Department has been actively working with Eastern Organic to help them achieve compliance, rather than shutting them down, and is open to discussing separately with the commentor any continuing enforcement issues.

Comment: Only a few businesses recycle cardboard boxes and most do not recycle plastic bottles, cans, etc. Some put outdated computer monitors in their garbage.

Response: The Department responds by stating that counties are responsible for determining which materials to designate as required for recycling for a county to reach its recycling goals.

Comment: A comment was received that not enough money available on County level to increase enforcement efforts.

Response: At present, the Department does not have additional funds to provide for enhanced enforcement activities and is seeking legislative support to develop new revenue sources to reimburse counties and municipalities for recycling compliance monitoring efforts (for example, S2615, the Recycling Enhancement Act). Additionally, the Department believes that some counties and municipalities may be able to enhance their current enforcement without the need for increased funding, by incorporating the successful strategies that other counties and municipalities are using.

Comment: A comment was received that stated that local ordinances should have penalties in them to assess to non-compliant haulers.

Response: The Department agrees that local ordinances should include penalties for hauler non-compliance. The Department agrees that some standardization is warranted in all municipal recycling ordinances. For example, at a minimum the Department would request that such ordinances include enforcement authority with corresponding penalty provisions sufficient to deter non-compliance. However, the Department also acknowledges that each municipality has its own unique circumstances and concerns with respect to recycling, just as each county differs. Therefore, the Department believes that each municipality should be required to meet certain minimum standards in its ordinance, but be afforded the flexibility to add additional standards or requirements to meet its individual needs. To that end, the Department is drafting a model recycling ordinance as guidance for municipalities to follow in structuring their ordinance.

Comment: A comment was received that stated that the DEP wants CEHA to do more with respect to recycling, but most CEHAs are already overburdened.

Response: The Department has long recognized that county health agencies operating under the County Environmental Health Act (CEHA) program are very effective in monitoring facilities for environmental compliance. Recycling compliance monitoring is not a core CEHA activity since the Department acknowledges the substantial workload of CEHA Agencies. However, those CEHA Agencies collecting a solid waste enforcement fee at their county landfill are required to have heavier solid waste enforcement workloads, which includes recycling activities. If the Department determines that mandatory recycling monitoring activities by CEHA agencies is necessary to augment the activities of municipal recycling coordinators, a funding source will need to be identified to support this expansion of core CEHA activities.

Comment: A comment was received stating that the DEP should enforce the County Plans by making the counties accountable for recycling inspections.

Response: The Department, through its contract with CEHA agencies, already requires counties to perform inspections of Class A, B, & C recycling centers, limited Class B facilities, exempt compost facilities, and farmland mulch sites as well as a limited number of generator inspections. These inspections are done in support of the county plan.

Comment: A comment was received stating that local enforcement is critical. That's the level at which it all begins and the most important one on which to focus.

Response: The Department agrees with the commentor that local enforcement plays an integral role in protecting New Jersey's environment. It is one reason the Department is focusing on updating municipal recycling ordinances, requiring them to include an enforcement and penalty component.

Comment: A comment was received stating that code officials at universities are having a hard time enforcing recycling mandates. Older buildings just don't have the space for recycling facilities.

Response: The Department is aware that some universities, and schools in general, have been remiss in complying with their recycling obligations, and not just because of space considerations. For that reason, many county solid waste and recycling programs are focusing specifically on schools. Many counties have had success, even in situations where the buildings were not designed with recycling in mind. Also, recycling is mandatory in New Jersey. The Department, therefore, does not have the authority to exempt these entities from the requirement to source separate simply because of space issues. The Department is willing to work with any code official who has encountered this problem to discuss possible solutions. Additionally, the Department notes that the mandatory recycling regulations provide an exemption from the requirement to source separate recyclables from solid waste, provided the waste is going to a Materials Recovery Facility. The municipality in which the university resides must issue such exemptions.

Comment: A comment was received stating that too many towns don't want to cite local businesses for violations.

Response: The Department understands that it can be difficult and politically unpopular to cite local businesses for violations. Recycling, however, is mandatory. The Department also is aware that there are municipalities that routinely inspect and enforce both litter and recycling violations against local businesses. Therefore, it can be done. A municipal recycling ordinance that provides both enforcement authority and penalties for non-compliance should make it easier for towns to cite local violators.

Comment: A comment was received stating that haulers are advising their customers to commingle, claiming that the waste goes to a MRF.

Response: This was a common complaint the Department received during its recycling sweep in Hudson County in June of this year. The Department is following up on haulers who were reported to erroneously advise their customers. In addition, the Department is drafting regulations that will make it a violation for a hauler to mix source separated recyclable materials with solid waste for any purpose.

Comment: DEP should do more enforcement at facilities. There are a lot of recyclables in with the trash. If a hauler were made to dump out his load and pick out the recyclables, then reload his truck, it would go far to make them careful about the loads they pick up.

Response: The Department agrees that more careful inspection of incoming loads of solid waste for the presence of designated recyclable materials at landfill and transfer stations is warranted. In Section H of the Plan, the Department has committed to and has already increased its vigilance at these facilities, ensuring that processes are and remain in place to detect recyclables in incoming loads. Additionally, the Department is focusing on hauling practices involving recyclable bottles, cans and paper. With respect to County Health Departments, the Department has designated certain “priority activities and inspections” it requires these agencies to perform. These priority activities include, among others, monitoring transporters hauling solid waste to ensure compliance with Department regulations and applicable county solid waste management plan; and investigation of all solid waste complaints received from citizens and the Department. Lastly, the Department is drafting a rule proposal which clearly address the problem of recyclable materials in solid waste loads. Additionally while requiring a hauler to pick out the recyclables at first glance sounds good, it is likely these recyclables will be too contaminated at that point to recycle.

Recycling Taxes & Funding

Comment: Additional funding is needed to promote and advance the hierarchy objectives set forth by the Plan.

Response: The Department agrees that a stable and equitable source of funding for recycling is essential to the future success of New Jersey's many recycling programs. Clearly, the state's declining recycling rates can be attributed, in part, to the expiration of the Recycling Tax in 1996. As such, the Department has recommended in the revised Plan the creation of a funding system that would place a \$3 per ton surcharge on solid waste received at disposal facilities. The NJDEP is hopeful that such a system will be implemented in the near future and is willing to work with the Legislature in this regard.

Comment: It is unrealistic to expect that districts will be able to develop new and costly recycling programs without the significant financial support from the State.

Response: The Department recognizes that funding is an important key to any local recycling program, however, it must be noted that the Plan does not call for the achievement of recycling rates beyond that which have been required by law since 1992. While a new source of state funding for recycling would undoubtedly help counties and municipalities achieve the long established recycling goals of 50% of the municipal solid waste stream and 60% of the total solid waste stream, the Plan has been crafted to include initiatives that will result in higher recycling rates regardless of the availability of state funding. In the event that no new source of funding is established by the Legislature, the Department will recommend the establishment of county funding systems, where possible, the use of Solid Waste Services Tax funds or the continued judicious use of recycling funds provided through the Clean Communities program.

Comment: Several comments were received stating that the collection of the proposed \$3 surcharge from haulers will be very difficult, resulting in monies much less than the expected \$34 million.

Response: The Department agrees that the funding system proposed in the Plan would be difficult to implement and administer due to the vast number of solid waste transporters that work in the New Jersey market. Furthermore, the Department agrees that it would be less cumbersome to assess a solid waste surcharge at the state's solid waste disposal facilities due to the significantly smaller universe of such facilities that exist as compared to the universe of solid waste transporters. As such, the Department has revised the Plan and replaced the proposed recommended funding system with one that would place a \$3 per ton surcharge on solid waste received at disposal facilities. Clearly, the Department's historical experience with the administration of fee collection programs coordinated through solid waste disposal facilities would prove helpful in the establishment and administration of such a fee system for recycling. The Department also recognizes that any funding system that may be established must be equitable so that waste from all counties is assessed regardless of the type of disposal facility receiving the waste. The suggestion that the proposed surcharge be reduced to \$2 per ton and include an annual

escalator is not supported by the Department, however, as such a system would not generate the funds needed to adequately support the program.

Comment: Numerous comments were received recommending that the Plan and DEP should consider the impact that the \$3 surcharge may have.

Response: The Department understands that all new fees have an impact, to varying degrees, upon the regulated community and general public, however, it believes that the impact of the proposed \$3 per ton waste surcharge would be minimal. This position is supported by the fact that the Department is also recommending in the Plan that the Solid Waste Services Tax be eliminated upon the enactment of the recommended surcharge. While the Solid Waste Services Tax (currently at \$1.50 per ton) is only paid at landfills, the elimination of this fee would partially offset the addition of a \$3 surcharge in those counties with such facilities. For those counties without landfills and not paying the Solid Waste Services Tax, an increase of \$3 per ton on waste disposal is still not considered burdensome by the Department. In fact, a \$3 increase to the statewide average tipping fee for Type 10 waste (as of 4/1/05) only represents a 4% increase.

Based upon the above, the Department disagrees with those comments that suggest that the proposed surcharge will have a negative impact on the business community and in particular the food and beverage service industry. Furthermore, the Department disagrees with the comment that suggests that the proposed fee is merely a tax on the food industry. Clearly, the proposed fee does not target the food industry since it would be assessed on solid waste generated by the residential, commercial and institutional sectors, among others, and not on one particular class of businesses. The Department also believes that such a small overall increase in tipping fees would not lead to an increase in out-of-state disposal or illegal dumping. Rising fuel prices also make the prospect of increased out-of-state disposal unlikely. The impact of the proposed fee on counties that already have a funding mechanism in place would also be minimal. Tipping fees in such counties would increase by a few percent, as explained above, however, such an increase is not considered large enough to make solid waste haulers look elsewhere for disposal. Such counties would benefit, of course, by receiving additional funds from the proposed fee that could be used to further improve recycling programs within the district.

The proposed surcharge must also be considered in regard to its macroeconomic impact. Numerous studies indicate that recycling creates significant economic activity. Based upon these studies, the Department believes that the approximate \$30 million in grant money that would be generated by the proposed surcharge would stimulate many more millions of dollars in private investment. It is also important to note that at the present time there is only about \$3.5 million dollars available for recycling grants to municipalities and counties through the Clean Communities Fund. While a step in the right direction, this level of funding is far less than is necessary, and ranks New Jersey as 25th in state support for recycling in the nation. Clearly, to fully address the needs of our state's recycling program, a dedicated, equitable and non-burdensome system of funding is required. The Department believes that the revised funding proposal outlined in the Plan is such a system.

Comment: Numerous comments were received concerning the disbursement and use of funds.

Response: The Department agrees that the disbursement formula proposed in the Draft Plan should direct additional funding to the recycling tonnage grant program. Accordingly, the Department has revised the Plan such that 60% of the fund would go towards municipal and county recycling tonnage grants. This represents a doubling of the funding level originally proposed by the Department for this program in the Draft Plan.

The Department received opposing comments regarding the distribution of funds to counties with recycling rates well below the recycling goals set forth in the statute. More specifically, it was suggested that the Department withhold funds from underachieving counties. It was also suggested that the Department provide a larger portion of the fund to such counties in order to help them improve their programs, as their needs are greater. In general, the Department favors neither approach as it finds it more equitable to provide funding to all counties based upon a performance-neutral factor, such as population or number of households. Of course, the Department has stated in the Draft Plan that it would consider withholding funds, including non-solid waste/recycling funds such as Green Acres monies, from those counties that are underperforming and not taking the steps to address the situation.

While the disbursement formula proposed in the revised Plan does not explicitly allocate funding to the business sector as was done in the Recycling Act, it does include a ten percent disbursement of funds to the State for recycling program planning and program funding, including the administrative expenses thereof. Should the proposed funding system be established, the Department intends to utilize a portion of this funding for market development research that would ultimately benefit the private sector. Such investment by the Department has been highly effective in the past at stimulating business development and economic activity

The Department agrees that the use of recycling funds to reduce or eliminate fees for the permitting of solid waste and recycling facilities and assessments on solid waste utilities should be eliminated and has revised the Plan accordingly. In fact, the revised distribution formula proposed in the Plan does not address facility permitting fees, but rather focuses on returning money to municipalities and counties, which have been in need of additional program funding for quite some time. The Plan has also been further revised to include a provision that requires tonnage grant funds to be used solely for recycling. Such a measure will greatly help our state's recycling programs.

Comment: Comments were received recommending that the MRF exemption from A-4075 should be eliminated. Optimally, they still are only recovering 10% of the incoming solid waste stream.

Response: The Department disagrees with the comment that suggests that the \$3 per ton waste surcharge be applied to Type 13C Construction and Demolition waste delivered to materials recovery facilities. The purpose of this fee payment exemption is to create an incentive that will lead to more mixed construction and demolition debris being managed at materials recovery facilities rather than at landfills and transfer stations that ship waste to landfills. The Department believes that materials recovery facilities can recover and recycle vast quantities of materials from this waste stream if operated properly. This exemption recognizes that the source separation of debris is often difficult at construction and demolition sites due to space constraints, especially in urban locations, and therefore strives to redirect this mixed waste stream towards facilities that can recover the recyclable materials found therein. (“Source separation” is the process by which materials are separated at the point of generation by the generator thereof from solid waste for the purpose of recycling.) Of course, materials recovery facilities will be required to recycle a certain percentage of their incoming waste stream, as determined by the Department, in order for this exemption to remain in effect.

Notwithstanding the above, the Department disagrees with the suggestion that an exemption from paying the \$3 per ton waste surcharge be created for all classes of recyclable materials that have been mixed with solid waste and delivered to materials recovery facilities. For the reasons noted above, the Department believes that this exemption makes sense for Type 13C Construction and Demolition waste, however, it does not believe that it makes sense for the rest of the universe of recyclable materials. One of the key reasons for this position pertains to the source separation requirement, as defined above, and as established in the Recycling Act. Source separation results in higher quality recyclable materials, especially in the case of Class A recyclable materials (glass bottles, metal cans, paper, plastic containers, etc.). This in turn makes the recyclable material more marketable and able to command a better price. The suggestion that the waste surcharge not be applied to all classes of recyclable materials delivered to materials recovery facilities would weaken the source separation approach to recycling and lead to lower quality recyclable materials. It would also result in an increase in recyclable materials being disposed as residue (for example, soiled paper, broken glass, etc.) and less revenue generated by the recycling stream. Therefore, the Department is not in favor of this recommendation since it would be an incentive to abandon New Jersey’s successful source separation approach in favor of mixed waste processing and would weaken the recycling system that has been in place for nearly two decades.

Comment: The Plan should take a strong stance in support of A-4075.

Response: While the revised Plan strongly supports the concepts found in Assembly bill A-4075 (as proposed on 8-1-05) and has incorporated these concepts into the Plan, the Department believes that it would be inappropriate to specifically cite A-4075 in the Plan since the bill could change dramatically before it might become law or before this Plan is formally adopted.

Comment: A comment was received stating that the Department’s regulations define “solid waste”, but that the Plan doesn’t define “solid waste” and that this is important for the levy of the proposed \$3 surcharge.

Response: The Department believes that it is not necessary to define “solid waste” in the Plan as this term is already defined both in law and regulation. The Plan is not a new rule, but rather a document intended to provide guidance. As such, the inclusion of definitions in the Plan would be inappropriate.

Comment: A comment was received recommending that the State offer homeowners a nominal tax rebate based on achieving targeted reductions of solid waste generation and increases in rates of recycling. This strategy can achieve the 50% recycling goal without the proposed \$3 surcharge.

Response: The Department does not believe that a program that offers homeowners a nominal tax rebate based on achieving targeted reductions of solid waste generation and increases in rates of recycling is needed since municipalities can achieve the same desired results through “Pay As You Throw” programs, which are much simpler to enact and administer.

Comment: A comment was received endorsing a total contribution of \$1 million to the Clean Communities Council from the \$12 million collected by the Litter Tax.

Response: The Department supports the Clean Communities program, but does not have a position on the funding allotted to the Clean Communities Council.

Comment: A comment was received asking if municipal budget caps will be lifted if the proposed \$3 surcharge does not get passed?

Response: While Assembly bill A-4075 addresses the municipal budget cap process as it relates to recycling, other legislation would be needed to change this system should this bill not get enacted into law.

Comment: A comment was received asking how towns that collect their own waste will get money back from the \$3 surcharge?

Response: The revised Plan proposes that the recycling surcharge be collected at solid waste disposal facilities and not through those collecting and hauling solid waste. As such, the concern raised in this comment is no longer applicable. Of course, municipalities will receive recycling funds back from the State through the recycling tonnage grant program.

Comment: The amount of money received through the current tonnage grant is not significant enough to make it worth the extra effort for small municipalities to obtain better recycling data.

Response: The Department believes that the amount of money available to municipalities through the tonnage grant program is irrelevant as it pertains to the issue of data collection at the local level. The Department suggests that municipalities enact ordinances that require businesses to submit recycling reports to the municipal recycling coordinator. Such ordinances should include monetary fines for non-compliance with this requirement. Undoubtedly, this would be a much more effective and efficient way for recycling coordinators to obtain recycling reports from the commercial sector. The Department is developing a model recycling ordinance that will include such a provision.

Solid Waste Services Tax and Landfill Contingency Tax

Comment: Numerous comments were received concerning the Solid Waste Services Tax and Landfill Contingency Tax.

Response: If the Solid Waste Services Tax were to be redesigned to be more equitable or if it were eliminated, it would require legislative action. Imposing the tax on all solid waste facilities rather than just sanitary landfills is a concept worth exploring. Under this scenario tax collections would increase as the number of contributing solid waste facilities increased. More funds would be available for the creation and expansion of recycling activities. Elimination of the tax is a credible option only if a more equitable replacement tax could be imposed. To simply eliminate the SWST program, without imposing a replacement tax would adversely impact all of state's recycling activities

The Department supports the efforts of the Legislature, particularly Senator Smith and Assemblyman McKeon, as sponsors of legislation to establish permanent funding for recycling efforts among the towns and counties. These legislators have sponsored bills (S-2615, A-4075) that would place a \$3.00 per ton surcharge on all solid waste brought for disposal in the state, including that waste imported from New York. It is estimated that this surcharge would generate some \$33 million annually, of which 85% would be distributed to towns and counties (the municipalities would get 60% of the total, and the counties 25%). The remainder would be used by the state to provide statewide recycling education, promotion and recycling coordinator-training initiatives, as well as provide recycling business incentives. Finally, this proposed legislation would repeal the solid waste services tax, currently assessed only at landfills, which exist largely in the southern half of the state, although the revenue is distributed across the state, based on population.

Tipping Fee Deregulation

Comment: A comment was received supporting the concept of facility rate deregulation; however, the commentor sought additional information.

Response: Facility rates are not being rate deregulated. The change in the definition of peak rate will allow all facilities to use the same peak rate. This will create uniformity in the regulatory process and allow all facilities to adjust rates accordingly. The Department is not relinquishing any authority. N.J.A.C. 7:26H-1.12 will still apply to all facilities, except Ocean County Landfill. The Department will maintain the authority to investigate and if necessary, reduce the rate at a disposal facility if a Department investigation demonstrates that the rate being charged by a facility is not reasonable.

Comment: A comment was received raising concerns about pages G-3 and G-4 of the Draft Plan which propose reform of solid waste utility rules. The comment specifically states that drastic increases in tipping fees of County-owned solid waste facilities will cause havoc on municipal budgets.

Response: The Department will be able to investigate any rate charged by a disposal facility following a complaint or on its own initiative. If a facility increases its rate below the peak rate but the increase has no financial justification, the Department can order the facility to reduce its rate following an investigation and a hearing.

Comment: If the proposed definition of peak rate is adopted, it would be imperative that the DEP continue to monitor rates, especially in those areas where there is a lack of effective competition.

Response: The Department will still require any changes in tipping fees to be reported within three days of the increase. If the Department receives a complaint or feels the rate is too high, there will be an investigation of the rate regardless of whether the rate exceeds the new definition of peak rate.

Comment: The DEP should use the Commercial Landfill Regulatory Reform Act and the Solid Waste Collector Regulatory Act to retain some rate oversight at disposal facilities. DEP should recognize the importance of recycling activities in reducing waste flow and its economic and environmental benefits by allowing facilities to include costs related to recycling activities in their solid waste disposal rates at their own discretion.

The definition of peak rate does not change the Department's authority to investigate and reduce a rate. The Solid Waste Collector Regulatory Reform Act requires the Department to demonstrate that a lack of effective competition exists before the Department can investigate a rate. The Commercial Landfill Regulatory Reform Act only allows the Department to investigate a rate when it exceeds the market based rate, which is the highest rate in state or any out of state competitor's rate. The Department will maintain more authority to investigate a facility rate after the new definition of peak rate takes effect than it currently has over collectors and commercial landfills.

Comment: The DEP should recognize the importance of recycling activities in reducing waste flow and its economic and environmental benefits by allowing facilities to include costs related to recycling activities in their solid waste disposal rates at their own discretion.

Response: The Department has allowed the cost of recycling to be included in solid waste facility rates in the past. It will continue to do so.

Source Reduction and Product Stewardship

Comment: Comments were received recommending that the Plan address problems currently inherent to source reduction including: inherent difficulties quantifying source reduction measures, lack of financial incentives, and the quandary that successful source reduction programs may actually lower total recycling rates. Comments also noted that the Plan needs to document a way to provide some type of incentive for source reduction, since it is a higher priority in the hierarchy than recycling.

Response: The Department is examining the source reduction program of Maryland (the only state program attempting quantification and reward), in order to develop programs that offset potential loss of municipal grant money. The Department would like to find a method of adding to tonnage grant awards based upon source reduction, but does not know how to do so. The formula used in Maryland increases the grants to counties (who carry out the programs) up to 5%, which might not be sufficient to offset loss of recycling tonnage and new effort. The Department would be interested in working with Cape May, or any other county, to develop a rational reward scheme.

The Department notes that in some cases, municipalities might experience cost avoidance by the non-collection of materials that are never purchased, making state subsidy less important. The Department anticipates that some counties will, in their amended district solid waste management plans, propose source reduction projects of limited scope, which the Department can then use to build models of measurement and tracking.

Comment: Comments were received recommending that the State work directly with manufacturers and organizations to promote product stewardship.

Response: With much enthusiasm, the State does indeed work with organizations past and present, including the Product Stewardship Institute, the Association of State and Territorial Solid Waste Management Officials, the Northeast Waste Management Officials, the Northeast Recycling Council and the Toxics in Packaging Clearinghouse to promote product stewardship. The Department also supports e-waste legislation which would make manufacturers more responsible for the recycling, handling, safe disposal of the products they produce.

Our actions speak for this in that we seek to develop and have successfully implemented regulations where legislation has been passed to take necessary public policy actions to reduce the amount and toxicity of materials entering our solid waste stream, in turn, serving to protect and preserve our public and environmental health.

However, without much needed technical data to support issues relative to true specifications of the constituents used in the manufacture (home or abroad) of products and packaging, toxicity and or the amount of material generated/wasted in the manufacture of consumer goods and its impacts; it is difficult to qualify the action of forcing affected industries to change to a feasible alternative; the necessity of legislation in many instances, is clearer than clear.

It should also be noted that how wisely we choose the products we use and how wisely we use the products we choose is another determining factor within this cycle.

Comment: In addition to the Plan's recycling goal of 50%, the State and Plan should have a source reduction goal and support for material exchange programs.

Response: The Department responds by stating that the Plan has a short lifespan, the Department only suggested a few source reduction options for the Department itself and for possible inclusion in county plans, including the establishment of materials exchanges. If each county were to pursue one or two programs, the Department would soon learn which yield the greatest benefit.

Comment: The State should use technologies in other countries (e.g. Canada) to reduce waste generation and encourage the use of refillables for detergents sold at supermarkets.

Response: The Department is aware of the Canadian National Packaging Protocol, but cannot single-handedly enact such limits in the United States. However, as noted in the plan, the Department is working with the National Toxics in Packaging Clearinghouse. This agency, despite its name, works to minimize volume, as well as toxicity, of packaging, and to favor reusable packaging. Amendment of our packaging law to conform to the national model would help us influence the choice of packaging materials. As we learn more about reusables, we will become more specific in our recommendations.

Comment: A comment was received stating that the Plan needs to address issues with plastics and work with other states and manufacturers to promote use of easier to recycle plastic packaging. The comment also recommends the State adopt the City of Clifton's resolution regarding plastics.

Response: The Department requests further clarification of the term "issues with plastics". However, regarding working with other states and manufacturers to promote the use of easier to recycle plastics packaging, be advised that the Department is engaged in these discussions, especially through the Northeast Recycling Council. It should be noted, though, that the Department has no authority under existing law to require the use of specific packaging. Finally, regarding adopting the City of Clifton's resolution, such an action would require legislation, which has not been proposed at this time.

Comment: The Plan must put substantially increased emphasis on Green Purchasing.

Response: Although the Draft Plan discusses buying recycled on the state level, the Department was not ready to set concrete standards. The Department of Treasury would be best able to develop procedures for EPP that would then be followed by executive order.

Comment: The State needs to take leadership role governing product stewardship (look to Europe).

Response: Insight into the actions and policies of other nations has shown how much we still need to face. It is true that the European Union (EU) has surpassed anything NJ and the nation has (or not) accomplished in the past few years.

It is also true that the EU's packaging laws which are much more stringent and comprehensive than any found in the USA, were borne of the Toxics in Packaging laws developed and passed around our country, including NJ where it is also true that enforcement is a major barrier. However, the tide may be slowly beginning to turn.

Although the EU provides us with interesting and relevant data; translating it into real time action nationally and in NJ is a complicated task we are facing and actively engaged within and working through.

It should be noted, however, that the Department also supports e-waste legislation which would make manufacturers more responsible for the recycling, handling, safe disposal of the products they produce.

Comment: A comment was received asking why the state is not pushing the federal government to get rid of the incentives to use virgin materials?

Response: The federal government's use or lack of incentives for the use of virgin materials in the manufacture of consumer goods is not the subject of the Plan.

Recyclable Materials & Markets

Comment: Cape May County generates less vegetative waste and office paper than most other districts and thus it will be harder for them to achieve the 50% Municipal Solid Waste recycling goal.

Response: The Department believes that each county has the means to achieve the recycling goals specified in the Recycling Act. The Department recognizes, however, that counties will generate varying amounts and types of waste materials and will look for this to be reflected in the district recycling plans that will be developed subsequent to the adoption of this Plan. Those counties that may generate less vegetative waste and office paper, as mentioned in this comment, may address this situation in a number of ways. For example, such counties may designate additional materials for mandatory recycling, implement more aggressive source reduction programs in order to reduce or slow waste generation or embark upon an aggressive recycling education and enforcement program to ensure the highest rate of compliance possible, or a combination thereof.

Comment: The DEP should impose a landfilling ban on designated recyclable materials.

Response: The Department does not believe that a landfill ban for designated recyclable materials is necessary because by virtue of their designation, these materials are not to be disposed as solid waste, but recycled. Thus, in theory the process of designating recyclable materials establishes a de facto disposal ban for the materials. In practice, however, it is difficult, if not impossible, to keep all recyclable material out of disposal facilities whether using a landfill ban or by designating materials for recycling. The success of both approaches depends on the effectiveness of education, enforcement and disposal facility inspection programs.

Comment: The DEP should mandate the recycling of designated C&D materials for which there is a reliable end market.

Response: While the Department oversees the county solid waste management and recycling planning process, the designation of those materials that must be recycled by the residential, commercial and institutional sectors can not be done through this Plan. Pursuant to the Recycling Act, the designation of those materials that must be source separated and recycled from these sectors is done through the county recycling plan. The Recycling Act also requires municipalities to adopt ordinances based upon the county recycling plan. Due to these statutory requirements, the Department cannot simply mandate the recycling of certain components of the construction and demolition (C & D) waste stream. Of course, the Department can suggest or recommend that certain materials be mandated for recycling. Ultimately, however, this decision is one that must be made at the county level of government.

Upon adoption of the Plan, each county will need to update its respective plan to detail their strategy for attaining the Plan's recycling goals. One component of that strategy may be a program to increase recycling of C & D waste generated within a county.

It should be noted that in the case of the C & D waste stream, mandating certain materials, such as concrete and asphalt debris, may be unnecessary due to the strong economic incentive that already exists to recycle these materials, as well as the readily available network of recycling centers for these materials.

Comment: Numerous comments were received recommending that the Plan encourage municipalities to adopt ordinances which require the recycling of C&D waste.

Response: The increasing cost of disposal, as well as the desire of some contractors to earn U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) points, are strong incentives to recycle components of the construction and demolition (C&D) waste stream. Nevertheless, the Department agrees that the recycling of this waste stream must be further encouraged. In fact, this is one of the keys to reaching the 60% recycling goal established in the Recycling Act for the total solid waste stream. Local regulation and enforcement can play a major role in this regard.

More specifically, the Department agrees with the suggestion that the Plan should encourage municipalities to develop programs that require contractors to submit recycling plans to the local building office as a condition to obtaining a building or demolition permit, and has done so accordingly. Such plans could require that contractors recycle at least 50% of the waste generated by the project, for example. Furthermore, the Department will develop a model ordinance for such a system, as suggested. The Department will also provide information on recycling centers for Class B recyclable materials and materials recovery facilities to municipalities considering or implementing such programs. In addition, the Department would also be willing to provide interested municipal officials with information from the City of Chicago and other local governments that have successfully implemented such systems.

Lastly, upon adoption of the Plan, each county will need to update its respective plan to detail their strategy for attaining the Plan's recycling goals and since the Recycling Act requires municipalities to adopt ordinances based upon the county recycling plan, municipalities may have to address this issue based upon a County's plan update.

Comment: Numerous comments were received stating the State develop or offer incentives to develop additional end markets for recyclables.

Response: The Department recognizes that the development and expansion of end markets is critical to the success of recycling. Clearly, the collection and processing of recyclable materials does not make sense unless there are end uses and end markets for these materials. Undoubtedly, the Department's efforts in this regard have been hampered over the past ten years by limited or non-existent funding, as well as by the expiration of the recycling loan and tax credit program. Nevertheless, the NJDEP has had numerous successes in its market development efforts during the past decade, as noted in the Plan. The development of the structural recycled plastic lumber market and creation of a specification that allows the use of scrap tire chips in septic system drainage

fields are examples of such successes. The Department's participation in the Yellow Pages Publishing Association and Newspaper Publishing Association recycled content utilization agreements, as coordinated by the Northeast Recycling Council, are also market development success stories. Notwithstanding the above, the NJDEP remains hopeful that a dedicated source of funding will be created on behalf of recycling that will include funds that the State can use for various market development efforts.

The NJDEP continues to provide technical assistance to prospective recycling businesses, as well as existing businesses looking to expand. For example, the Department recently worked with a new carpet recycling company and provided them, not only with regulatory guidance, but also with industry contacts that have greatly helped the company locate sources of recyclable materials. Among other things, the Department also continues to work with other state agencies to develop recycling end markets. As noted in the Plan, the NJDEP has worked extensively over the years with the New Jersey Department of Transportation (NJDOT) on ways to increase the use of recycled materials, especially recycled materials derived from construction and demolition waste, such as concrete and asphalt rubble, in road construction and maintenance projects. The Department will continue working with the NJDOT in this regard.

Providing market development support to counties is another important function of the Department. Counties may continue to call on the NJDEP to help them with market development issues, as well as issues pertaining to statewide recycling industries. While the Plan does contain market development initiatives, such as the proposed targeted tax credit program for compost derived from food waste and the proposed development of an executive order on state agency procurement, it admittedly focuses more on increasing the amount of recyclable material collected. More specifically, the Department believes that recycling rates have dropped in New Jersey, in large part, due to a lack of education and enforcement of recycling requirements in the residential, commercial and institutional sectors, and not because of end markets. Thus, the Plan concentrates on those recyclable materials not currently being recovered from these sectors.

Comment: A comment was received supporting DEP's proposed initiatives to increase the quantity of mixed paper, cardboard, and office paper generated from multi-family residential units, commercial establishments, schools, etc.

Response: The Department appreciates the support for the Plan's emphasis on increasing the amount of "other paper", cardboard and office paper collected from multi-family housing stock, commercial establishments, schools and elsewhere. As noted in the Plan, a significant amount of these materials are currently not being recovered. As such, a renewed focus on these paper grades is clearly warranted and should lead to higher recycling rates throughout the state.

Comment: The Plan should address the marketing of brown and green glass.

Response: The NJDEP recognizes that container glass recycling poses a problem for local and county recycling programs because there is little or no demand for green glass, and insufficient demand for amber glass in the New Jersey glass manufacturing sector.

Improving end markets for recycled glass, especially those non-container end uses, is essential. An example of such a non-container end use is the use of glass in hot mix asphalt, also known as “glassphalt.” As mentioned in the Plan, the Department played an important role in the development of the New Jersey Department of Transportation’s glassphalt specification in the mid-1990s. Another example is the use of recycled glass in drainage systems. The Department was also instrumental in getting this application approved through the National Standard Plumbing Code. Therefore, the Department has revised the Plan to include a renewed emphasis on the promotion of such non-container end uses of recycled glass.

Comment: Comments were received stating that the State has an opportunity to substantially increase its municipal solid waste recycling tonnage by focusing on several non-traditional materials that appear to be ripe for new management strategies, including dry wall, asphalt shingles, treated wood, and mixed wood.

Response: Recycling rates would increase significantly should certain components of the construction and demolition waste stream become marketable as recyclable materials rather than being disposed of as waste. Based upon recent industry announcements, drywall recycling may become a reality in New Jersey and the northeast in the near future. The Department will provide technical assistance and support to this industry in their pursuit of this goal.

Asphalt shingle recycling is another area with great potential. The NJDEP has worked with the New Jersey Department of Transportation (NJDOT) on proposals that would explore the use of asphalt shingles in hot mix asphalt, however, for various reasons none have moved forward or resulted in the development of a specification for such a blend. The Department agrees that it may be time to revisit this issue with the NJDOT, as well as explore the use of asphalt shingles in other applications, such as in the cement manufacturing process, as suggested in one of the comments received about the Plan. Therefore, the Plan has been revised such that it recommends a reexamination of drywall and asphalt shingle recycling opportunities. While the Department is open to a reexamination of treated wood and mixed wood recycling opportunities, the chemicals, glues and laminates that are found in such wood scrap severely limit the recycling potential for this material. As such, the Plan was not formally amended to address these materials.

Comment: A comment was received recommending that for dry wall recycling; 1) the DEP should enact a ban on landfilling of dry wall from new construction and C&D fines and their use as landfill cover. The ban should go into effect 18 months from enactment of the Plan to allow for time for financing, siting, and construction of dry wall recycling facilities by the private sector; 2) NJ and Massachusetts should reach out to neighboring states to which they export waste and encourage them to enact similar provisions at their landfills; 3) the DEP and Department of Agriculture should work with groups to help in development of a local market for gypsum; 4) the DEP should engage the wall board manufacturer in NJ to set specs and accept recycled calcium sulfate for the dry wall

recyclers; and, 5) the DEP should investigate other sources of sulfur entering landfills to determine the magnitude of their contribution and explore alternatives to landfilling.

Response: The Plan was not revised to include a ban on the landfilling of drywall or ban on the use of construction and demolition waste fines (which typically include drywall) as landfill cover. The suggestion that such a ban be put into effect 18 months subsequent to the adoption of the Plan so as to provide time for the drywall industry to establish recycling facilities is also not reflected in the Plan. The Department believes that it would not be prudent to endorse such recommendations since there is no guarantee that such a recycling infrastructure for this material would be developed during this period of time. As noted in the previous response, the Department has revised the Plan to include a recommendation that drywall recycling opportunities be reexamined, including the use of this material in agricultural applications. Furthermore, while the Department is receptive to the idea of investigating other potential sources of sulfur entering landfills, the Plan was not formally revised to reflect this suggestion since the NJDEP continually assesses its operations and maintenance requirements for landfills.

Comment: The DEP should take inventory of the amounts of chemically-treated wood and mixed wood waste and host a symposium on technologies currently available to convert this material to various forms of energy and chemicals.

Response: As noted in a prior response, the Department is open to a reexamination of treated wood and mixed wood recycling opportunities, however, the chemicals, glues and laminates that are found in such wood scrap severely limit the recycling potential for this material. While the use of this material as an energy source is an accepted practice, it too is a limited option for the same reasons that limit its recyclability. As such, the Department does not believe that a forum on chemically treated wood and mixed wood is warranted at this time. Furthermore, conducting an inventory of these waste materials, as suggested, may be difficult, if not impossible, since these materials are broadly classified as Type 13C Construction and Demolition waste when disposed at solid waste facilities.

Comment: The DEP should promote unused Class B facility capacity.

Response: The NJDEP will continue to promote the source separation and recycling of components of the construction and demolition waste stream, as well as New Jersey's network of recycling centers approved to receive these Class B recyclable materials. The Department will not, however, promote any particular recycling center approved to receive Class B recyclable materials that may have unused capacity at its facility. It is the responsibility of the facility's management team to secure a supply of material for the operation through advertising, industry contacts, networking, etc. Clearly, the management team at these facilities would prefer that day-to-day business concerns, such as unused capacity, be addressed internally and not by the Department. Municipalities can play a role in promoting unused Class B recycling center capacity, however, by establishing ordinances that require contractors to submit recycling plans to the local building office as a condition to obtaining a building or demolition permit. By adopting

such a system, more Class B recyclable material will become available to those facilities approved to receive this material.

Comment: A comment was received asking if Styrofoam can be recycled and if there are ways to recycle plastics other than plastics types 1 & 2.

Response: Polystyrene (often referred to as Styrofoam, which is a registered trade name) is recyclable although its extremely low weight relative to volume makes it uneconomical to transport and ultimately recycle. Consequently, recycling markets for this material are limited in number or non-existent. It is important to remember that while most waste materials are technically recyclable, unless there are end markets for these materials and a demand for the products generated from them, they will not be viewed as recyclable materials. Notwithstanding the obstacle to polystyrene recycling noted above, this material has been recycled in the past. A prime example is the use of polystyrene in the production of the structural recycled plastic lumber that was used to build a bridge in New Jersey's Wharton State Forest.

Generally speaking, plastics other than #1 (polyethylene terephthalate or PET) and #2 (high-density polyethylene or HDPE) are recyclable; however, markets for these other plastics are limited. Plastics with Society of the Plastics Industries (SPI) codes #3 through #7 have been used in recycled plastic lumber mixes, among other applications. In addition, polyvinyl chloride (PVC) used in house siding, flooring and piping is currently being recycled in New Jersey into new PVC floor tiles.

Tires

Comment: Numerous comments were received concerning disbursement of monies from the Tire Tax.

Response: The Department supports the establishment and operation of local scrap tire collection programs, including the holding of local scrap tire “amnesty days” and river cleanups; however, the funds generated by P.L. 2004, Chapter 46 must first be used to clean up scrap tire piles before any other uses can be considered. This position is supported by the program guidelines established by the Department in October, 2004. It is hoped that this approach will result in the rapid cleanup of scrap tire piles and prevention of future scrap tire piles.

Comment: The DEP/Plan should financially encourage the consumer purchase of longer tread-life tires, either by cost incentive for longer tread life or by tax penalty for less durable tire models

Response: The Department supports the use of longer tread-life tires as a way to reduce the number of scrap tires generated. It does not, however, believe that the establishment of a system that rewards consumers for purchasing such tires or penalizes consumers for purchasing less durable tire models is within the purview of the Department. In particular, the suggested institution of a tax penalty for the latter type purchase would be deemed outside the scope of the Department.

Comment: Comments were received recommending that the Plan should address farms as a source of scrap tires.

Response: While the Plan does not specifically address scrap tires generated at farms, the Department can influence county scrap tire management programs during the grant application/review process. Clearly, those counties with large agricultural sectors need to consider this issue when developing their grant applications.

Comment: The DEP should lobby to secure all funds generated through the tire tax for scrap tire pile cleanup and scrap tire recycling development.

Response: The Department realizes that the tire fee established by P.L. 2004, Chapter 46 will generate a significant amount of money beyond that which is allocated to the DEP for the scrap tire cleanup program. It also understands that the Legislature must balance the needs of many competing state programs when determining the allocation of scarce state funds. As such, the Legislature’s decision to provide funds generated by the tire fee to the Department of Transportation for snow removal is not questioned by the DEP. Furthermore, the Department does not believe that it is appropriate for it to lobby the Legislature, as suggested, in the hopes of securing all the funds generated by the tire fee for the scrap tire cleanup program.

HHW

Comment: Costs associated with implementing permanent HHW programs are prohibitively expensive in many districts.

Response: The Department recognizes that funding for needed projects can be problematic.

Comment: Comments were received recommending that the DEP pursue the establishment of a dedicated source of funding for the construction and operation of HHW collection facilities in each district.

Response: The Department responds by noting that should funds become available consideration will be made to fund deserving projects.

Comment: A comment was received recommending that in Section B6, the Department change the sentence referring to the construction of permanent HHW facilities. In addition, the comment notes that the DEP should recommend that counties have a permanent HHW collection program, which could include a permanent drop-off facility, convenience centers, and /or single day events.

Response: The Department responds that the make-up of a county's household hazardous waste program should be determined at the county level; however, the Department still encourages the construction of permanent household hazardous waste facilities.

Comment: Any material that could cross the line from universal to hazardous waste (whole fluorescent tubes to crushed ones) needs to be addressed with recycling coordinators.

Response: The Department will conduct outreach to the recycling coordinators to ensure the coordinators are familiar with the Universal Waste Regulations and how the regulations may effect their recycling programs.

Comment: Every county should be required to have quarterly household hazardous waste days.

Response: The Department responds by noting that the determination of the frequency of household hazardous collection days should remain at the county level provided the service is adequate for the population.

Hg

Comment: A comment was received noting that on page D-6, the Plan talks about reduction of mercury in MSW being due to elimination of mercury in dry cell batteries, but dry cell batteries still contain harmful heavy metals (lead, cadmium, lithium). Thus, Plan should not encourage disposal of dry cell batteries as MSW.

Response: The term “dry cell batteries” refers to a range of batteries that includes alkaline batteries, button cell batteries, nickel-cadmium batteries, and lithium batteries. The Dry Cell Battery Management Act prohibits the sale of dry cell batteries containing mercury above specific levels. The Act also requires the manufacturers of certain types of batteries to provide recycling for the batteries. Battery manufacturers eliminated the use of mercury in alkaline batteries (D, C, AA, AAA, and 9-volt batteries) in 1992, however button-cell batteries do still contain a small amount of mercury. Since alkaline batteries no longer contain mercury, recycling of the batteries is no longer required. However, non-alkaline dry cell batteries, such as button cells, nickel-cadmium, and lithium batteries, do still contain hazardous components and should be recycled. The manufacturers have set up recycling programs through the Portable Rechargeable Battery Association and the Rechargeable Battery Recycling Corporation.

Comment: Parts of the Plan regarding mercury switch removal provide conflicting guidance and are very confusing.

Response: Previous versions of the Draft Plan did provide conflicting guidance; however, those errors have been corrected in the final Draft Plan.

Comment: The indication in the Plan that the Proposed Rules will be implemented apart from the Mercury Switch Removal Act is illegal and can not be enforced. The comment states that the Mercury Switch Rules contravene Mercury Switch Removal Act of 2005.

Response: The portion of previous drafts of the Plan that referred to the Proposed Rules have been deleted from the final draft. Since the Mercury Switch Removal Act of 2005 went into effect in March 2005, the proposed rules are unnecessary and the Department will not be adopting the Proposed Rules.

Comment: The Department needs to enact regulations or support legislation that would require smelters to upgrade their environmental management systems to minimize mercury emissions.

Response: The Department adopted rules on November 4, 2004 requiring iron and steel plants to conduct stack tests to determine the effect of source separation and pollution prevention efforts to remove mercury from the scrap metal used by the plants. Under the new rules, if source separation does not succeed in achieving the 35 milligram per ton of steel production (mg/ton), iron or steel melters will be required to install mercury control technology.

District Planning:

Comment: A comment was received supporting the Department's inclusion of landfill closure planning.

Response: The Department appreciates the support of a program that attempts to ensure the environmentally safe closure of landfills.

Comments: Comments were received that stated that the districts should have one year to update their district plans.

Response: The Department agrees with these comments and has revised the State Plan to state that the districts have one year from the adoption date of the State Plan to submit the required revisions to their district plans.

Comment: Local and county approval should be required for facility planning.

Response: The Department responds that according to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-et seq., county/district approval is required for the development of any solid waste or recycling facility. The county/district must amend their county/district solid waste management plan to include a particular facility prior to any solid waste or recycling facility receiving an approval to operate from the Department. Local input is required through the county/district solid waste advisory council, which advises the county board of chosen freeholders prior to the adoption of a county/district solid waste management plan amendment. However, the Solid Waste Management Act and the Recycling Act preempts local land use regulations as implemented through the Municipal Land Use Law, because local regulation would impede the development of solid waste and recycling facilities.

Comment: The counties should be required to review and update their county solid waste management plan every 5 years, not the two years now required.

Response: The Department responds that provisions of the Solid Waste Management Act, specifically N.J.S.A. 13:1E-20, requires that every county solid waste management plan be reviewed every two years after initial adoption. Therefore, the Solid Waste Management Act must be amended by the New Jersey State Legislature for this provision to be changed.

Comment: Facilities with a history of violations should be considered for removal from County Plans and that the DEP should provide legal defense and support to the counties to remove these facilities.

Response: The Department responds by stating that CEHA agencies, as well as the Department, have the authority to enforce the Department's rules and regulations which provide for the removal of permits and authority to operate solid waste facilities should violations warrant it. Furthermore, the counties have the ability through their authority

under the Solid Waste Management Act, to institute removal of a facility from the county plan. However, a solid waste facility's permit to operate cannot be removed based solely upon the county's removal of the facility from the county solid waste management plan. Other substantive permit violations must generally occur.

Comment: The State Solid Waste Management Plan should include a new section regarding the status of County Plans, since most are very outdated. Outdated plans compromise the ability of county solid waste enforcement agencies to effectively address certain solid waste issues such as recycling.

Response: The Department responds by stating the Statewide Solid Waste Management Plan contains a section summarizing all the individual county plans. Also, provisions in the Plan require the counties to update their county plan within one year of the adoption of the State Plan.

Comment: Comments were received concerning the appropriate level of solid waste planning, county level versus waste regions.

Response: The Department responds that provisions of the Solid Waste Management Act, specifically N.J.S.A. 13:1E-20 & 21, gives the solid waste planning responsibilities to county level government. Therefore, the Solid Waste Management Act must be amended by the New Jersey State Legislature for this provision to be changed.

Comment: A comment was received stating that if the updating of the State Plan is changed from 2 to 5 years, there must be a mechanism included in this requirement to allow midcourse adjustments as recycling industry markets change.

Response: The Department responds by stating that like all free markets, the recycling industry markets may change constantly. Therefore, the counties may amend their county plans as necessary to reflect any changes in the recycling market that effect their county plans. It would not be necessary to update the State Plan every time a county plan was amended to address any changes in the recycling industry markets.

Comment: The DEP should make it easier to recycle, by removing inclusion of recycling facilities from the planning process.

Response: The Department responds that provisions of the Solid Waste Management Act, specifically N.J.S.A. 13:1E-21, requires the county plan inclusion of all facilities. To facilitate the county plan inclusion process, the Department has adopted regulations, specifically N.J.A.C. 7:26-6.11 that allows counties to include in their county plans certain recycling facilities through administrative actions. The administrative actions are just letters from the county board of chosen freeholders or the designated implementation agency describing in detail the action to be taken.

Rail Transfer Facilities

Comment: Numerous comments were received stating that Federal legislation represents the most effective way of addressing the problems associated with the operation of non-regulated solid waste rail haul carriers and that the State thus should lobby Congress to enact amendments to the Interstate Commerce Commission Termination Act.

Response: The United States Congress enacted the Interstate Commerce Commission Termination Act of 1995. The Act abolished the United States Interstate Commerce Commission and transferred certain of its functions to the United States Surface Transportation Board, an independent Federal agency with jurisdiction over certain railroad regulatory matters.

The State is concerned that erosion of our solid waste management regulatory controls on rail facilities may lead to adverse environmental impacts. The Department has been cooperating with United States Senators Lautenberg and Corzine in their efforts to enact legislation that would remove this preemption of permitting waste facilities, thereby requiring rail carrier facilities to obtain permits as is required for non-rail facilities.

Comment: Comments were received recommending that in the absence of Federal legislation, and to the extent allowed by law, DEP must enact rules to regulate rail carriers who engage in the transportation of solid waste or operate solid waste transfer stations.

Response: The Interstate Commerce Commission Termination Act recognizes the important role state and local government agencies play in enforcing environmental laws and regulations. On November 15, 2004, the Department adopted solid waste regulations specifically for rail carrier facilities that are preempted from permitting requirements. These regulations, designed to protect human health and the environment, specify construction, operational and record keeping requirements for rail facilities that are based upon those required for permitted facilities.

Comment: Comments were received urging the State to closely review and consider supporting the position adopted by the Mass. DEP with respect to the rail carrier exemption. In addition, comments asked why the State is not challenging the Surface Transportation Board regarding preemption as are other states.

Response: The State determined its ability to require rail carrier facilities to obtain solid waste permits was preempted by the Interstate Commerce Commission Termination Act. The State is concerned about rail facilities operating without permits and is cooperating with Federal officials in an effort to abolish the preemption.

Comment: A comment was received which stated strong objections to the lack of policy regarding rail transfer facilities incorporated in the Plan. The comment goes on to state that the Department must take the lead role in the fight against these non-regulated facilities and that the Plan must require that rail owned solid waste facilities: 1) be

included into each county solid waste management, plan and be required to comply with all conditions in those plans; 2) be subject to all State and local rules and regulations; and, 3) be subject to the same permitting fees and penalties that affect all solid waste facilities in NJ.

Response: On November 15, 2004, the Department adopted construction, operational and record keeping standards specifically for rail facilities that are based upon those required for permitted facilities. Rail facilities that fail to comply with the regulations are subject to penalties. Since rail facilities are not obligated to obtain permits, no permit application is required to be submitted and, therefore, the Department may not assess permit application review fees.

Comment: Rail-owned solid waste facilities will jeopardize the integrity of the new Plan.

Response: The commentor failed to specify the manner in which they feel rail facilities will jeopardize the integrity of the Plan, however, regulations have been enacted to require rail carrier facilities comply with construction, operational and record keeping standards designed to protect human health and the environment.

Comment: The Plan does not address issues and impacts associated with intermodal transport of solid waste by rail. The commentor requested that the Plan describe the DEP's plan to address rail facilities with respect to preemption for state and local permitting, control, and fees.

Response: The rail carrier solid waste regulations adopted on November 15, 2004 addressed both transfer station and intermodal container operations. The standards required for rail intermodal container facilities are based upon those required for Department-approved non-rail facilities.

Sustainable Landfills & Landfill Regulations

Comment: A comment was received strongly supporting our initiatives to maximize available in-State disposal capacity through the use of sustainable landfilling techniques.

Response: Thank you for your support.

Comment: Comments were received recommending that the Department consider revising its regulations for intermediate cover.

Response: New Jersey is one of only a few states that requires the placement of intermediate cover to all landfill surfaces to be exposed for any period exceeding 24 hours. The DEP is already considering changes to the intermediate cover requirements for inclusion in the upcoming re-adoption process for the Solid Waste Regulations which are due to expire on May 17, 2007.

Comment: Tarping systems are beyond the Research Development & Demonstration stage and should be an accepted daily and intermediate cover for landfill operation purposes.

Response: The first uses of automated tarping systems used for daily cover in New Jersey were approved through the RD&D process. Based on the experience gained from these initial uses, the DEP no longer requires the use of the RD&D process and will approve of the use of tarps for daily cover as a modification to the landfill's Operation and Maintenance Manual.

Comment: The Department should consider the blending of alternative cover materials with soil to both reduce the amount of soil used as daily and intermediate cover while also promoting beneficial reuse.

Response: The DEP has approved many alternative covers in the past, such as Kaofin, C&D screenings, biosolids, etc. that required mixing with soil to meet the performance standards for cover material. The performance standards for cover material can be found at N.J.A.C. 7:26-2A.8(b)15-17.

Comment: The Department needs to continue funding support for landfill gas conversion technologies.

Response: The Department will pursue funding support for viable, environmentally sound landfill gas conversion technologies as funding sources avail.

Comment: The expansion of existing landfills should be supported by the Plan in addition to mechanically stabilized walls, vertical and horizontal expansions, installation of bioreactor systems, and landfill mining.

Response: The Department supports the maximum utilization of airspace that is available at existing landfills to take full advantage of existing infrastructure without the

environmental impact of siting new facilities, but it is noted in the Plan that opportunities for expansion of existing landfills are limited. Bioreactor systems and landfill mining are supported in Section C.2 of the Plan.

Comment: A comment was received supporting the pursuit of leachate recirculation as a means to increase the density of the landfill and to create new air space.

Response: Thank you for your support.

Comment: The mining of decomposed solid waste can provide for landfill space into the future.

Response: The Department agrees with this comment; however, landfill mining can only be effectively pursued under very specific circumstances. Many factors, including, but not limited to, the cost of the mining operation, landfill location, and composition and characteristics of mined materials must be considered and be determined favorable prior to conducting a landfill mining project.

Comment: A comment was received supporting the concept of soil-like waste materials, rather than actual soils, as alternate daily and intermediate cover materials.

Response: The DEP has established performance standards for the use of alternative cover material, other than clean soil, at N.J.A.C. 7:26-2A.8(b)15-17. The use of alternative cover material conserves both landfill space and natural resources.

Comment: A comment was received asking if there is an environmental concern with the 578 closed landfills located in the state?

Response: The Department responds that there is an environmental concern in that monitoring for potential problems must be performed at closed landfills for a specific period of time.

Comment: A comment was received asking what it costs to properly close a landfill?

Response: The Department responds that each landfill represents a different situation and that no true figure can be projected.

Organic Waste & “New” Technologies

Comment: The development of new centralized food and organic waste recycling programs will not meet with universal acceptance or success in all districts. Food waste recycling programs should not be presumed to be able to achieve a significant gain in recycling percentages.

Response: The Department recognizes the commentor’s concern; however, food waste and other organic wastes are major constituents, occupying at least 25%, of the solid waste disposed of at our State’s solid waste facilities. In addition, tipping fees in some of the districts in the State are at levels that should make the recycling of food waste an attractive option, especially for large quantity generators of food waste, including supermarkets and large schools.

Comment: Requiring the recycling of food waste, which would lead to a reduction in the quantities of food waste landfilled, would retard the decomposition of the remaining solid waste in the landfill and would have a detrimental effect on methane gas production. The comment also noted that this result is counter to the county’s bioreactor landfill approach and that contracts currently in place for the supply of methane would be negatively affected.

Response: The diversion of food waste from future landfill cells will not affect the production of gas from the closed portions of the landfill where gas is to be collected and used. The production of gas from food and other organic wastes processed in anaerobic digesters and other technologies is more rapid and more complete than the production from a landfill. Further, such technologies are much more efficient at capturing the gas produced when compared to the gas collection system at a landfill where large percentages of gas escape to the atmosphere. Contracts for supply of gas can easily be accommodated with production from digesters.

Comment: Creating a mandate on food waste recycling would increase the CMCMUA’s capital and operating costs and cause the CMCMUA to rely on an, as yet, unproven market for the end product.

Response: The Department responds that it has not placed a mandate on the recycling of food waste; however, for districts not currently attaining the statutory recycling goals of 50% of Municipal Solid Waste and 60% of Total Solid Waste, the recycling of food waste will greatly assist those districts reach the above noted recycling goals.

Comment: The State should allow districts, like Cape May, to assess how best to handle food waste and other organic waste recycling without undermining existing beneficial programs and without causing financial hardship.

Response: The Department agrees with the commentor’s concern, but only if the district in question reaches, and continues to reach, the statutory recycling goals.

Comment: The Plan fails to offer solutions to the counties for processing food waste and organic waste streams.

Response: Because there are differences which affect solid waste management between the counties including, but not limited to, solid waste composition, disposal capacity, and transportation routes, the Solid Waste Management Act and Recycling Act leaves specific solid waste planning issues up to each solid waste management planning district. Thus, how each district attains the statutory recycling goals of 50% of Municipal Solid Waste and 60% of Total Solid Waste is best decided at the County level.

Comment: There is a need for tax credits or other financial incentives to bring food waste recyclers to NJ and therefore, Section B of the Plan should be updated to include a provision and the resources to attract this sector to NJ.

Response: Although the Department agrees that there is the need to attract additional capacity for the recycling of food waste and other organic material to the state, it has not been determined, to the Department's knowledge, what the appropriate form of "financial incentive" there would be for this industry. For example, tax credits are ordinarily only appropriate for companies which are profitable enough to have a significant tax liability, and would not be beneficial to start-up operations. If the commentor were to provide additional rationale for the type of incentive to be applied in this instance, the Department would be willing to consider this.

Comment: A comment was received expressing support for DEP's considerations that would allow for further changes to recycling rules, including reduction of 1000' buffer for receipt and processing of grass clippings.

Response: Thank you for your support.

Comment: Several comments were received concerning potential changes to Class C Recycling Center design and operational requirements.

Response: As stated in the Draft Plan, both the Solid Waste Rules and the Recycling Rules are being reviewed to identify areas that may be hindering the recycling of organic materials. However, any changes to these rules must still be protective of human health and the environment as required by the Solid Waste Management Act.

Comment: A comment was received stating that the commenting county would certainly be willing to mandate the recycling of food waste from supermarkets, if an appropriate level of infrastructure was available. The commentor also stated that food waste composting has too many issues to hold much promise.

Response: The Department disagrees with this comment. Although the siting of outdoor food waste composting facilities in the State may not be a practical or attractive option in many areas, aerobic in-vessel systems and anaerobic digesters can be a very effective

means of transforming organic materials, including food waste, into usable energy sources without many of the potential issues associated with outdoor windrow facilities.

Comment: The State should develop composting facilities in nearly every county as regional facilities and should support them with grants and other incentives in order to develop in-vessel composting systems for food and yard waste.

Response: The Department responds that pursuant to N.J.S.A. 13:1E et seq., solid waste management planning is the responsibility of the 22 solid waste management planning districts within the State. Currently, at least 1 district within the State is actively pursuing such a facility.

Furthermore, the Department does not currently have the monies available to provide the owners of composting facilities with grants. Other project financing and new business incentives are available through the State's Economic Development Authority (EDA). The DEP will work with the districts, compost system developers, and the EDA to assist this process.

Comment: The State needs to actively pursue ways to encourage animal feed production or to supplement funding for other food processors (in-vessel composting, etc).

Response: The Department responds that animal feed is a commodity and thus its production and supply will increase correspondingly to its demand.

The Department also does not currently have the monies available to fund the development and operation of certain solid waste management processes. It is believed, however, that due to increasing tipping fees at regional solid waste facilities, food waste recycling should become an attractive option for many counties and solid waste generators in the State.

Comment: Until there are adequate places to process food waste, the stated goal of increasing food waste recycling is not attainable.

Response: The Department agrees that food waste recycling can not occur without facilities for such activities. One such in-state facility is operating and additional capacity and facilities are in various stages of the planning and/or permitting phases of development.

Comment: There are economic barriers to pursuing in-vessel composting systems.

Response: The Department responds that in-vessel composting is indeed more expensive on a per ton basis as compared to composting in windrows or landfilling in certain regions of the state; however, several important benefits, including optimization of process parameters, total capture of liquid and gaseous emissions, and minimization of odors, can be achieved using in-vessel technologies.

In addition, tipping fees in some of the districts in the State are at levels that should make in-vessel composting of food waste an attractive option, especially for large quantity generators of such materials, such as supermarkets, large institutions, and food processing facilities.

Comment: Numerous comments were received recommending that the Plan address alternative technologies for the production of energy from Municipal Solid Waste such as anaerobic digestion and use of liquefied natural gas and compressed natural gas as a fuel.

Response: The Department erred in the Draft Plan in only identifying composting as the method for managing the recycling of food and other organic materials. The Department is cognizant that other technologies exist including anaerobic digestion. The Department agrees that the use of gas from anaerobic digestion of food and other organic wastes for transportation fuel should be encouraged as should any other use of the gas. Economic incentives currently exist for developing electric production facilities through loans and grants available from the Board of Public Utilities. The Department can certainly explore the potential for establishing similar incentives for other technologies. Certainly, the review of Departmental regulations and their potential impact to the organics recycling industry must take into account all potential technologies that may be used to process food and other organic waste.

Comment: NJ policy and regulation have defined recycling in such a way that it may limit the utilization of new technologies to recycle materials and limit the State's opportunities to develop a sustainable environment and economy.

Response: The Department disagrees with this comment. The Department is granted its authority through statute and employs the definition of recycling provided at N.J.S.A. 13:1E-99.12. This definition is very broad noting that "recycling means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products".

Comment: A comment was received recommending that NJ initiate discussions with other states in the Northeast and Mid-Atlantic regions to explore common interest and benefits of enacting a landfill ban on biodegradable waste (e.g. Massachusetts). Such a ban, by necessity, would need to be national or, at least, regional in nature.

Response: The Department agrees with this suggestion and as a member of the Northeast Waste Management Officials' Association will pursue this recommendation with other member states. However, any ban on the landfilling of biodegradable waste would have to come as the result of Legislative action.

Comment: Figures in the Plan, demonstrate that increased organics recycling could divert up to 55% of the State's remaining unrecycled waste, with other resultant benefits.

Response: The Department agrees with this comment and is and will be working diligently with stakeholders to maximize the capture of easily recycled organic materials, such as office paper and newspaper, while also working to assist in the development of the infrastructure and markets for food waste recycling.

Comment: The Plan needs to recognize the need to create improved means to recycle manures and other agricultural wastes and biosolids.

Response: The Department is working with the Department of Agriculture (DoA) toward the future implementation of DoA's manure management guidance which the DoA is preparing for future rule proposal. Proper management of manure and other biosolids from agricultural areas is critical to maintaining high quality surface and ground water quality and the State's recycling program is fully capable of handling the recycling of these materials. Additionally, the Department and the New Jersey Board of Public Utilities are promoting the use of recent next-generation technological developments for the use of these agricultural biosolid materials for renewable energy production of electricity to increase the amount of electricity generated from renewable resources to help reduce dependency on traditional nonrenewable energy sources.

Comment: Increased food waste/organics recycling on a local basis can reduce negative environmental benefits caused by long haul transport (air pollution, climate change, road wear).

Response: The Department agrees and as stated in the Plan intends to promote the recycling of this material at the point of generation to attain such benefits.

Comment: The Plan must set out a vision for increased food/organics waste recycling in the state, to include the creation of adequate recycling opportunities within the state to handle all food and organic waste and putting systems into place which are successful at diversion of food waste to the recycling opportunities so created.

Response: The Department generally agrees with this comment and will continue to pursue this within its statutory and regulatory authority.

Comment: The Plan should include a reward system, perhaps in the way of credits (climate change, air, tax, rebates), should be provided to commercial businesses, academic institutions, residential communities, municipalities, industrial businesses who participate in food waste/organic recycling.

Response: The Department responds that NJ along with other Northeast states is now developing a regional cap and trade program for CO₂ (the Regional Greenhouse Gas Initiative or RGGI) wherein CO₂ emissions from power plants will be capped at a certain level and where trading of credits for emission reductions will be allowed. It is not certain when, or if, this program might be expanded to include credits for reductions other than CO₂ emissions from covered facilities, or whether it ever will include credits for such things as carbon sequestration projects. It is possible that certain solid waste

recycling projects that clearly reduce CO₂ or CH₄ emissions could be considered if and when RGGI is expanded.

Comment: The Plan needs to create policy, regulatory climate, and mechanisms which actively encourage the development of new viable food waste/organics technologies and enhancement systems.

Response: The waste management hierarchy included in the Plan is meant to establish the policy direction of the state. Clearly, the Plan sets source reduction and recycling above disposal. To that end it further provides a direction that promotes the processing and recycling of food wastes at the point of generation and identifies future tasks to promote the recycling of food waste. Further, as stated in the Draft Plan, both the Solid Waste Rules and the Recycling Rules are being reviewed to identify areas that may be hindering the recycling of organic materials.

Comment: The Department should continue to support the Solid Waste Policy Group's efforts to advance the food waste/organics industry by partnering in projects and providing funding.

Response: The Department responds by stating that should funds become available consideration will be made to fund deserving projects.

Comment: The Department needs to work to create a climate of policy support from the Governor's office on downward.

Response: The Department historically has supported policies to protect and enhance the environment.

Comment: A comment was received recommending that the Department/Plan need to create an agency council/workgroup to include, at minimum: DEP, BPU, EDA, NJDA, DOT, DCA, EPA, SWPG, and other agencies (as appropriate) which would create a regulatory roadmap for creating a climate which encourages development of new and expanded food waste/organics recycling enterprises/options and incentives that could be provided by various agencies.

Response: The Department will take under consideration the concept of an interagency taskforce to promote and facilitate food waste/organics recycling.

Comment: The Department needs to work with the Board of Public Utilities on programs in support of energy creation from food waste.

Response: The Department is willing to work with the Board of Public Utilities to support a legitimate project of energy from food waste.

Comment: A comment was received stating that the Department should use existing protective permits for new food waste facilities instead of creating new permits.

Response: The Department does not “create” permits without a rule or regulation that requires that an approval is applicable to a specific project. The Department does and will only require permits or approvals for food waste processing facilities that are required by current or future law, rule or regulation.

Comment: If a process (conversion of organics to fuel, biodiesel, fertilizer) is planned, any facility using these processes would be manufacturing facilities and these would be exempt from the County planning process.

Response: The Department disagrees with this commentor’s suggestion. Exempting a process which creates a product from the transformation of organic wastes from the county planning process would only exacerbate difficulties inherent to the siting of these types of facilities as zoning and other considerations would fall to the municipal level, creating many potential inconsistencies and obstacles.

Comment: Comments were received suggesting that the Department should perform a complete regulatory review for compatibility for all regulations which apply to organics recycling facilities and streamline the permitting and regulatory processes.

Response: As stated in the Draft Plan, both the Solid Waste Rules and the Recycling Rules are being reviewed to identify areas that may be hindering the recycling of organic materials.

Comment: A comment was received recommending that the DEP, EDA, and other governmental agencies work together to create financial incentives for the development of recycling enterprises/markets, and make appropriate recommendations to the legislature and the Governor for financial provisions in the form of rebates, grants, loans, tax credits, and other incentives (as modeled by Texas, California, Iowa, and New York).

Response: The Department will examine the programs of these other states and determine whether or not they can be effectively employed in New Jersey.

Comment: The Plan should include a section on the importance of further research and education on the importance of food waste recycling as a source of soil amendment and energy generation.

Response: The Department certainly supports the concept of furthering research and education for food waste recycling and energy recovery and believes that these efforts are best conducted through the State’s educational institutions.

Comment: A comment was received recommending that the Department explore systems to cost effectively separate residential food waste.

Response: The Department understands the commentor’s suggestion; however, the collection and recycling of food waste generated at the residential level is a more

complex matter than is the collection and recycling of more traditional recyclables. As in states which are currently actively addressing the recycling of food waste, supermarkets and food wholesalers are the first areas which need to be addressed as their wastes will be generated in large, more readily accessed locations and will have significantly less contamination than would food waste generated in the residential sector. Once these sources of food waste are successfully addressed, similar strategies can be employed with other commercial and residential generators.

Comment: A comment was received suggesting that the Department/Plan create incentives for conversion of vehicles to cleaner fuels produced from food waste/organics. These incentives could include rebates, programs designed to motivate early retirement of more highly polluting vehicles, esp. diesel vehicles.

Response: The creation of such incentives programs would require legislative action. The Statewide Solid Waste Management Plan can only provide policy recommendations. To that end the Final Plan has been revised to include this proposed legislation as an action item for this fiscal year.

Comment: A comment was received suggesting that the State mandate food waste recycling.

Response: The Department does not believe that mandating food waste recycling is feasible at this point. Currently, there is neither the facility capacity nor the markets for the amount of food waste generated within the state. In addition, the Recycling Act gives the counties, as opposed to the State, the authority to designate materials for source separation and recycling.

Comment: Comments were received stating that the Department must work to advance the success of composting facilities in the state with technological support, guidance, encouragement, and a spirit of compliance before new markets evolve.

Response: The Department holds organic waste processing facilities to the same standards as any other recycling businesses in the State. The Department's charge from the Legislature is to evaluate design and potential environmental impacts comparing the project to applicable standards and approve operations accordingly. The success or failure of any specific operation depends on a company's ability to market its services and operate in a cost-effective manner. Operation success further depends on a company's full understanding and compliance with any and all applicable laws, rules and regulations. The Legislature has not given the Department powers to "prop up" industries for the sake of recycling.

Comment: The Department should link any increases in solid waste processing capacity to diversion of organics and other recyclables.

Response: The Department agrees with this comment and will explore this recommendation internally.

Comment: A comment was received recommending that the Department appoint a person in the Department to be the liaison to organics recycling facilities.

Response: Personnel within the Department's Solid and Hazardous Waste Program, specifically the Bureaus of Recycling and Planning and Resource Recovery and Technical Programs, are the appropriate liaisons for organics recycling facilities.

Comment: Several comments were received suggesting that the role of food waste disposers as a solid waste management tool is remarkably absent from the Plan despite research that shows that they are the principal means by which most households divert food waste from the solid waste management system. These comments also suggested that the Plan should discuss the potential for an expanded role that food waste disposers can play in achieving State's recycling goals.

Response: Putting food waste down the drain to collect in a septic tank where the solids are later pumped out and hauled to a sewage treatment plant or directly piped via sanitary sewer to a sewage treatment plant, does not divert the waste from the solid waste management system. The residuals collected at the treatment plant still require management in the same system. Further, while products from the recycling of source-separated organic materials are easily accepted into the market, the use of treatment plant residuals can be more problematic. As such, the Plan focuses on the processing of food waste and other organics to create soil amendments and energy as the preferred tool.

Comment: The diversion of food waste from landfills contributes significantly to reaching the Plan's goal to promote the State's Greenhouse Gas Reduction goals.

Response: Food waste and other organic materials decompose into various gases, water, and minerals. In a landfill setting, most of this decomposition is anaerobic and progresses at a slow rate evolving mostly methane with small amounts of hydrogen sulfide and other more complex organic gases over long periods of time. When this same food waste is processed in an aerobic composting or digestion operation or an anaerobic digestion system, the rate of decomposition is purposely increased causing the evolution of the gases at a much higher rate. In an aerobic process such as composting, the majority of the gas released is carbon dioxide, one of the greenhouse gases. In an anaerobic process, the majority of the gas released is methane. However, since the gas from the anaerobic process is burned in a gas turbine or engine to make electricity, the resultant gas is again carbon dioxide. As such, to truly determine if Greenhouse Gases are reduced, the annual production of methane from the food waste placed in the landfill must be compared with the annual production of carbon dioxide produced from the processing of the same food waste applying the appropriate weighting factors to the two different gases.

Comment: The Plan should encourage increased methane collection and recycling as a fuel source for liquefied natural gas (LNG) and compressed natural gas vehicles.

Response: The Department will evaluate the means of encouraging the beneficial use of methane for recycling purposes.

Comment: Landfill gas to LNG technology should be funded by the State.

Response: The Department responds by stating that should funds become available consideration will be made to fund deserving projects.

Comment: A comment was received recommending that the Department encourage counties through the planning process to implement the development of in-vessel composting systems.

Response: The Department will continue to work with stakeholders, including the counties, to encourage the development of in-vessel systems for food waste recycling.

Comment: A comment was received recommending that grass collection should be banned in the state.

Response: The Department's "Grass – Cut It and Leave It" program has been a very effective source reduction tool and yard waste management strategy. A collection and/or disposal ban may require specific statutory authority, much like the current statutory ban on landfilling leaves. The Department, however, will investigate the possibility of accomplishing such a ban through the rule-making process.

Comment: Organic waste could be utilized to produce energy or to compost.

Response: The Department agrees with this comment and supports the conversion of not currently recycled organic waste into useable products, such as energy and compost.

Other Recommendations and Legislative Initiatives

a) Convenience Stores

Comment: The Plan should expand the concept of targeting convenience stores to make sure that containers are available for garbage and recyclables in all public places.

Response: The Department agrees with the commentor that containers should be available for garbage and recyclables at all public places. To that end, the Department has taken steps to broaden this initiative to include gasoline retailers who offer convenience shops, and private gyms and fitness centers. The Department is working with NJ Transit to place containers on rail platforms, and will require dual collection at athletic fields.

Comment: Targeting convenience centers for recycling enforcement is troublesome. Since many convenience stores are leased, there is no obligation to provide outdoor recycling receptacles because that is the responsibility of the landlord.

Response: The Department agrees that leasing arrangements may make recycling enforcement more complicated. Recycling, however, is mandatory. The party responsible for providing outdoor trash receptacles is obligated to also provide recycling containers. Therefore, any difficulty in determining the responsible party should have no effect on whether or not an enforcement action should be taken. If the entity responsible is the landlord, then it is the landlord that will be cited for the violation.

Comment: Recommendation 15 on page B-22 (regards education and enforcement of recycling responsibilities of convenience stores) could be positive for older cities and inner suburbs that are attempting to clean up areas around these establishments.

Response: The Department agrees with the commentor and appreciates support for this initiative.

Comment: Wawa had previously provided recycling containers for their customers, but found that there was too much contamination in the recyclables collected to continue to provide containers.

Response: Recycling is mandatory in New Jersey. Therefore despite the difficulties, Wawa is obligated to provide for recyclable collection if it is providing for trash collection from its customers. To address the issue of contamination, Wawa needs to ensure that the recycling container provided has proper signage and is designed to distinguish it sufficiently from nearby trash receptacles. The Department has found that recyclable containers with lids, ones with a small round opening in the middle of the lid just wide enough for a can or bottle, work best to eliminate or reduce contamination.

Nevertheless, another convenience chain is finding only occasional contamination, and a gasoline retail chain reports excellent separation in a pilot study. Apparently, the public will separate adequately, given distinct collection containers with different openings and

good labeling. Repeated exposure to paired containers should improve public performance over time.

b) Brown and Green Glass Deposit

Comment: Numerous comments both for and against the proposed brown and green glass bottle deposit legislation were received.

Response: As proposed in the Plan, this would be a targeted bottle bill, focusing solely on a commodity which has caused difficulties for many government recycling programs. Glass, especially brown and green, as well as the resulting tri-color mixed cullet, has become a financial burden on recycling programs in New Jersey. Bottle deposit legislation would essentially be a producer responsibility act, placing more accountability on the producer, thereby reducing the burden on local governments.

While there are clearly a number of merits associated with this proposal, as elaborated in the Plan, the Department has removed this recommendation from the final Plan.

The Department will continue to explore and promote alternative markets for glass cullet and strongly encourages county and municipal governments, as well as glass bottle manufacturers, bottling companies, and others to collaborate on this problem

Comment: Section L: Legislative incentives should be made available to municipalities who desire to consolidate the control of their solid waste.

Response: The Department feels that economic incentives should be realized whenever local resources are pooled together for municipal services. Therefore, the Department encourages local governments to explore these options and does not believe that the a legislative recommendation is necessary.

c) Consumer Electronics

Comment: Numerous comments were received regarding the proposal to mandate consumer electronics manufacturer responsibility for recycling.

Response: The New Jersey Department of Environmental Protection (DEP) positively favors the notion of a system designed to facilitate environmentally sound as well as financially feasible, mechanisms for collecting and recycling electronic/electrical equipment.

The DEP has been working in conjunction with stakeholders including but not limited to manufacturers, recyclers, retailers, distributors and governments at all levels, on this issue, for a number of years. Although no national solution has been developed, the DEP is aware of the necessity for legislation.

The DEP does support the idea that the financial burden of ensuring the safe and proper end-of-life handling of these materials should not be borne by local governments, which have been bearing considerable costs for some time.

In May of 2005 a group of the electronics industry released a new proposal that would expand on recent similar state efforts throughout the nation. A fee would be charged to consumers at the point of sale and will go to a fund managed by a third party organization to cover the costs of collection, recycling, transportation and education.

Since it is our position to eliminate government from financial responsibilities, we perceive administration of an advance recovery fee (ARF) as a step to address the issue. An ARF could be administered, either by the retailer or manufacturer. In conjunction with the ARF, manufacturers/retailers should develop/design a product that maintains market value at its end-of-life. In so doing, the ARF will eventually decrease and pay for itself and the government will discontinue its financial involvement.

There are no plans for the DEP itself, to introduce legislation in the imminent future. We believe that **S-1861 the "Electronic Waste Producer Responsibility Act"** strikes the appropriate "checks and balances" of a practical program. Manufacturers are provided the flexibility to design industry-wide plans which will address funding mechanisms and management logistics.

The DEP serves in a plan review and approval mode to ensure the development and implementation of equitable, well-balanced programs. It is imperative that the link between the manufacturers and waste management is focused. Shifting the financial responsibility for proper end of life management to the manufacturers should ensure that design standards would be geared towards increasingly more cost effective recycling/end of life management of these products.

It is also our intention to reduce the toxic components and increase the recycled content and recyclability of this type of very quickly obsolete products. This legislation will place the obligations to reduce toxicity of products, design for recyclability and design for the environment as well as to ensure proper end-of-life handling of spent consumer electronics on the producers. Perception of this responsibility needs to shift from being a cost to the realization that the system will eventually lead to profit gains. The requirement to phase out those toxic constituents can only benefit environmental quality for the future.

Commitment on part of the manufacturers to work with processors, demanufacturers and recyclers to continue to develop value-added uses for the residual materials is another important element within the process. Furthermore, if manufacturers identified the non-hazardous components of the product, then waste would be disposed of properly as solid waste and not universal or hazardous waste.

d) Pay As You Throw

Comment: Several comments were received stating that Pay As You Throw programs should be more widespread. A comment was also received suggesting that Pay As You Throw programs should be on a voluntary basis and the State should be very discrete with funding and assisting “targeted communities”.

Response: Pay As You Throw (PAYT) has shown startling failures and successes. When municipal residents favor the collection scheme, it improves diversion of recyclable materials. In some cases, when residents have not supported it, they sabotaged the program. The Department understands the conditions that favor acceptance of these programs: a mix of elderly residents and growing families and a desire for parity, the need for other changes in garbage collection, a preponderance of single or twin homes. Conditions that forestall acceptance are abundance of multifamily housing, lack of understanding among residents that they pay for disposal already, desire to “steal” service from neighbors, and anger at local government for unrelated recent policy. The Department asks assistance in identifying 5-10 municipalities statewide that would support PAYT. The Department anticipates that some fiscal assistance might aid towns in adjusting to the new system, but has no funding at this time.

Comment: A comment was received suggesting that the Department consider providing a Pay As You Throw exemption to food companies that already pay the Litter Tax.

Response: As the Department envisioned PAYT, it would place no burden on commercial generators. Most food producers do not receive municipal trash removal, although they pay municipal property taxes, because their volume of waste and the need for frequent removal require private pickup. Thus, food companies already experience a “Pay-as-you-throw” economy, in which the more service they need, the more they must purchase.

e) Class B Fugitive Air Emissions

Comment: Several comments were received regarding fugitive air emissions generated at Class B Recycling Centers during the course of their operations.

Response: The Department acknowledges the economic and practicality issues raised regarding the Plan’s recommendations to reduce Class B fugitive air emissions. Prior to initiating changes to the Class B operational regulations, the Department will further investigate the feasibility of the recommendations and an opportunity to comment on the requirements will be provided prior to implementation.

Comment: A comment was received suggesting that the Department be more flexible with Class B and Class C Recycling Center design and operational requirements.

Response: The Department does allow flexibility in the design and operation of Class B and C Recycling Centers provided the minimum requirements of the Recycling Regulations are met. If a recycling center requires flexibility in the design or operation of the facility, it should be addressed in the application for the Recycling Center Approval,

so that the Department may take the needs of the facility into consideration when drafting the General Approval.

f) Miscellaneous

Comment: Given the lack of long-term disposal capacity in NJ and the mandate of the SWMA to county solid waste management planning primacy for such facilities, the DEP should not use “smart growth” as a principal factor for rejection of any future request for expansion of an existing solid waste facility.

Response: The Department is concerned with the lack of long-term disposal capacity in the State and will work with the counties to ensure that expansions of existing facilities are achieved. However, not every facility can be expanded beyond its current limits and certain areas preclude expansions for various environmental reasons.

Comment: A comment was received expressing a lack of support for air emissions legislation calling for fleet owners to upgrade their vehicles by retrofitting necessary controls for fine particulates unless legislation is expanded to require the same for all on-road fleet vehicles. The commentor urges the DEP to support A-3182 instead of the proposed air emission legislation.

Response: The commentor is correct that the draft Air Emissions Legislation portion of Section L is not consistent with the legislative bills A-3182 and SCR113. These bills were modified after the Draft Plan was publicly noticed for comments. Therefore, this paragraph shall be revised to be consistent with the bills passed by the full Senate and Assembly in June 2005. It is also noted that these bills do not include a differential fee system but rather contain a provision for full reimbursement to the regulated community for the cost of control strategies. Since a portion of the legislation targets garbage trucks that are publicly owned, or privately owned and used in a public contract, it is important that the Plan be consistent with bills A-3182 and SCR113. The intent of the Air Emissions Legislation portion of Section L is to recognize the dangers to human health and the impact to air quality of diesel exhaust emitted from vehicles transporting solid waste materials, particularly in urban areas. Therefore, the Department will also revise the language to support other Departmental initiatives that target these emissions, such as the existing idling regulation found at N.J.A.C. 7:27-14 and the proposal to reduce the opacity standard used in the inspection process for heavy duty diesel vehicles.

Comment: The State needs to carry out the recommendation that calls for working with Department of Community Affairs (DCA) to ensure that municipal master plans include provisions for recycling at new developments of multi-family housing and/or commercial establishments. The DEP also needs to ensure that new developments have adequate resources and infrastructure to accommodate their recycling needs.

Response: Pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-38 et seq., municipalities must have ordinances in place regarding standards of collection and

storage facilities for recyclables in all new multi-family housing developments which require subdivision or site plan approval.

Local land use ordinances are generally self policing and in the absence of a complaint, the DCA does not actively enforce a municipal ordinance. Therefore, it is the responsibility of local officials to ensure that multi-family housing developments are in conformance with their respective recycling ordinances. If they are not, a complaint should be made to DCA so that appropriate action can be taken.

Comment: The DEP should devise a set of recycling standards based on the size of certain developments (e.g. Burlington County).

Response: The Department responds that the Recycling Act requires municipal master plans to be revised to include provisions for the collection, disposition and recycling of designated recyclable materials within any development proposal for the construction of 50 or more units of single family residential housing, 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land.

Comment: The Plan recommends, but should enforce, inclusion of source reduction themes in State government procurement contracts and altering existing contracts to require greater recycled content, items that generate lesser amounts of disposable materials, and items with toxic constituents.

Response: The Department appreciates the comment that suggests that the Plan should establish and enforce a state agency procurement practice based upon the principles of environmentally preferable purchasing (EPP), but cannot do as suggested through the Plan. An executive order or law governing state agency procurement would be needed to establish such an EPP program. The Plan is merely a guidance document that attempts to set forth the path that the State needs to take to better manage its solid waste. As such, this document cannot be used to order the adoption of a new state agency approach to purchasing.

Comment: A comment was received supporting proposed initiatives including: I) Model legislation to eliminate non-essential uses of mercury in consumer products (the proposal is not well explained in Section B); II) Toxic Packaging Reduction Act modifications; III) A-4075; IV) in principal an initiative to remove the cost of electronics recycling from the governments' shoulders; V) proposal for State enforcement of recycling requirements with State-imposed penalties; VI) changes to make it easier to site and operate compost facilities; and, VII) better sharps management to protect from injury the workers who collect and sort recyclables.

Response: Thank you for your support.

Comment: State standards establishing special recycling content in plastic bottles would be unproductive and overreaching.

Response: The Plan does not make any recommendations regarding the establishment of recycled content in plastic bottles. The commentor is likely referring to Senate bill S2578, in which case any comments should be directed to their appropriate legislative representative.

Comment: A comment was received supporting DEP's efforts to hold generators accountable for recycling.

Response: The Draft Plan focuses on only a few generator strategies: increased fiber collection and attention to institutions such as colleges. These were placed in the Plan because enough is known about these problems to allow all counties and municipalities to take action. Outside the Plan, the Department has also coordinated generator compliance "sweeps" and greater routine compliance inspection. Moreover, the Department will propose regulations which gather and clarify statutory requirements for generators. This will expedite education and enforcement.

Comment: School construction funds should be contingent on that school having a recycling plan in place.

Response: The Department had not considered this innovative approach when drafting the Plan. The Department agrees that such interagency cooperation would be a powerful incentive and will investigate a mechanism for implementing this proposal.

Comment: The Plan needs to address how to collect plastic beverage containers at ball games, flea markets, concerts, and amusement parks.

Response: The Department is undertaking this effort, but this initiative is still expanding. Collection will involve a mixture of public and private pickup. Meanwhile, the Department will add language to its upcoming model ordinance, in response to this suggestion, to strengthen municipalities' ability to collect plastics and will require the counties to amend their county solid waste management plans to address recycling at these venues.

Comment: The Plan should require recycling opportunities at bus depots as well.

Response: Page B-19 of the Plan states that "Bus and train poster advertisements should be developed that instruct users to either deposit their newspapers in the recycling bin at the train or bus station or to bring their newspapers home with them for recycling." The Department is currently working with NJ Transit to provide recycling at train stations. Once this is established, the Department will then work together with NJ Transit to expand the program to include bus depots.

Comment: The timeframe for updating the State Plan should be changed to every 3 years (not 5 years).

Response: The Department responds that pursuant to the provisions of N.J.S.A. 13:1E-6, the Department is required to update not less than every 2 years the Statewide Solid Waste Management Plan. Historically, this requirement has been unmet. The Department is recommending that this legislative requirement for updating the Plan be expanded to once every 5 years.

Data Errors and Suggested Updates to Plan

Comment: The Summary of County Solid Waste Debt Assistance included in Section F of the Plan should be updated to reflect information through December 31, 2004. Cape May's would be \$21,045,000.

Response: The Department responds that when all the data is updated a new chart will be developed.

Comment: The DEP must recognize that the priorities as set forth in the hierarchy established in the Plan may not be appropriate or achievable in all districts.

Response: The hierarchy of source reduction, recycling, including composting, incineration and landfilling has been the established hierarchy for at least the past twenty years, not only in New Jersey, but essentially nation-wide. Of course the Department recognizes that those districts utilizing landfilling as their disposal option are not going to begin planning for incineration, but in general, reducing the amount and toxicity of the waste produced, recycling as much as practical, and disposing of the remainder is an established policy that can be utilized by all districts. As far as recycling goals not being achievable in all districts, as these goals are set forth in state law, the Department has no flexibility to lower these goals.

Comment: The Plan needs to clarify the requirement to include truck routes for solid waste facilities and recommending that it be optional to include truck routes for facilities and that the matter be handled on a case-by-case basis.

Response: The State Plan requires the counties to adopt a subsequent district plan amendment to address the State Plan initiatives. The counties are required as a part of the submission to identify truck routes for all solid waste facilities. This requirement is also contained in the Solid Waste Management Act.

Comment: Thought should be given to listing particular problem facilities that have been abandoned or continue to operate without prior permits in the Plan.

Response: The Department is not certain the reason the commentor believes these facilities should be listed in the Plan. County planning agencies can already get facility compliance history through the Department's web site using "Data Miner." The Department is also concerned that there will be inconsistencies in how a "problem" facility is defined. Therefore, the Department has not amended the Plan as the commentor suggested.

Comment: There needs to be more of a focus on the effective separation and collection of existing, easily identifiable materials in the Plan.

Response: The Department does not agree with this comment, and points out that not only does Section B of the Plan identify the total number of tons of additional recycling that

would need to occur to achieve the mandated recycling goals statewide, but the Plan also identifies target recycling tonnages by commodity, by county, and describes what it believes to be the primary points of generation of the additional tonnages of material to be targeted for increased recycling.

Comment: The Plan should include specific statutory and regulatory citations.

Response: The Department responds that the State Plan does contain statutory and regulatory citations where appropriate.

Comment: The Plan should provide average costs and basic requirements for waste disposal and recycling to aid elected officials and average citizens.

Response: Due to the variety of waste collection and disposal options (frequency of collection, use of transfer stations, out-of-state vs. in-state disposal,) there are virtually no “average” costs that could be useful on a statewide basis. Likewise, there are a variety of recycling program scenarios as well, so there is virtually no way to provide “basic requirements” for the education of the average citizen. On the other hand, the Department has produced a slide show presentation which, among other things, sets out the basic public policy issues related to solid waste management in the state. This slide show presentation has been shown statewide during the spring and summer of 2005, and is available for use on the website of the Solid and Hazardous Waste Program.

Comment: The Plan needs to better convey an understanding of the siting/NIMBY issue.

Response: The Department understands the controversy siting solid waste facilities can produce and the State Plan attempts to balance the need for facilities to handle the solid waste generated within the State and the possibility of local reluctance to these facilities.

Comment: A comment was received stating that the State spends substantially more money on subsidies for disposal (\$371 million in debt forgiveness over last 5 years) than recycling (~ \$20 million). This commentor also suggests that the Plan explain this discrepancy since recycling is higher up in the hierarchy.

Response: The State has provided financial assistance to counties that had established solid waste debt based upon waste flow and other factors and that have had difficulty in repaying that debt. The financial assistance does not elevate one disposal policy over another. The State supports proposed legislation that would greatly increase the funding for recycling initiatives.

Comment: In the Forward, the Plan notes that current transfer and disposal system in the state is not sufficient to provide for the management of waste generation in NJ; however, with the waste flow decision, solid waste can not be kept in state. Why is this important and this fact alone should not warrant construction, siting of new facilities.

Response: It is not entirely true that it is impossible to keep waste generated within New Jersey in state for disposal. At least 8 counties in New Jersey have waste disposal strategies that include some form of waste flow. These waste flow systems, based on non-discriminatory procurements of solid waste services, have not been ruled unconstitutional by the courts.

Having the capacity to handle the great majority of recyclables and solid waste generated within New Jersey is considered by the Department to be crucial for several reasons.

For one, as the quantity of solid waste imports received by neighboring states increases, so to do these states' calls for legislation limiting or banning the importation of solid waste. Although a limit or ban has yet to gain Congressional approval, a \$4.00 surcharge on all solid waste disposed of was adopted in Pennsylvania in 2002 partly to discourage the importation of out-of-state waste, with that state contemplating the assessment of additional surcharges.

Also, with the increasing price of fuel, driving large trucks greater distances to haul either recyclable materials or solid waste proves to be very costly financially and environmentally.

Comment: The Plan needs to define how recycling goals are measured (what will and will not count towards recycling and source reduction numbers).

Response: The Department's Bureau of Recycling and Planning receives recycling data from the municipalities and industry and determines the amount of materials that are recycled in each county. The State Plan notes this process for determining recycling data.

Comment: The Plan makes no reference to the effectiveness of materials recovery as a recycling technique. The Plan should explicitly define at what levels it enhances/hinders source separation recycling.

Response: This issue interests the Department. Recent review of Material Recovery Facilities (MRFs) and their reports reveals that some MRFs effectively reclaim large proportions of material (as happens with diversion of construction waste), while others, such as those located at the Par Troy and Mount Olive facilities in Morris County, diverted less than one percent of waste delivered there in 2004. Adoption of the proposed change would certainly cancel the county's MRF approvals.

The Department observes that any MRF operating at percentages of separation higher than its county's average MSW diversion is increasing that diversion, while Morris County's MRFs are evidently lowering the county's performance, given that the county average is substantially more than 1%. But it is important to understand that MRFs accept out-of-state waste, over which we exert no control on source separation. Any material pulled from this waste represents an environmental benefit. The Department hesitates to take action that would inadvertently disallow diversion.

Nevertheless, it is correct in stating that MSW is reclaimed poorly, and that source separation of MSW is preferred. For most waste streams, source separation is more effective than reclamation could ever be. The Department is considering measures to enforce source separation of waste, or obtain better separation at MRFs. The establishment of a minimum diversion standard as recommended by Morris County is one solution, and others exist as well, including more judicious use of the municipal exemption from source separation at commercial premises (N.J.S.A. 13:1E-99.16), better oversight of generators who have not received exemption, and enforcement against transporters who encourage shipment of unseparated waste without the exemption. Before setting policy, the Department will examine the accuracy of the reports upon which policy will be based, and study which waste streams are most amenable to separation at MRFs. The Department and counties must decide, in this time of relatively low tipping fees and high labor costs, what role MRFs should play within the framework of waste management in New Jersey.

Comment: The Plan should include a section discussing payback of \$21 million low interest business recycling loans and how this money was spent. The Plan should also include a report of the effectiveness of this loan program.

Response: The Department responds that the State Plan does not go into the detail that such an accounting procedure would require. The Department will provide any information concerning the low interest business loan program to any interested party.

Comment: The Plan needs to include an outline and description of the solid waste hierarchy.

Response: The Department responds that the State Plan adequately describes the solid waste hierarchy.

Comment: DEP should state that its preference for recycling is source separation as opposed to having mandated materials mixed with solid waste and then sorted.

Response: The “default” preference for source separation is statutory based, and not DEP policy based. As detailed in the “New Jersey Statewide Mandatory Source Separation and Recycling Act”, the only allowance for the separation of designated recyclable materials from mixed solid waste is by municipal action allowing either commercial or institutional waste generators to be exempted from the source separation ordinance under certain conditions, and only when the designated recyclable materials are ultimately recycled.

Comment: The Plan should be updated to reflect that the County contracted for the closure of the Southern Ocean County Landfill, Inc. Landfill in Ocean Township.

Response: The Department responds that the Plan will be updated to reflect the current situation at the Southern Ocean County Landfill.

Comment: The Plan should require each school district to prepare and implement an approved recycling plan as a condition for the receipt of state funding. The Plan should target recyclable commodities, procedures for separation/collection, and methodology for marketing/recycling.

Response: The Department concurs that interagency cooperation would be a strong incentive, but can not be brought into effect in time for the implementation of this Plan. Meanwhile, counties may, upon revising their own solid waste management plans, implement other approaches and these approaches will be evaluated during our review of the County's updates to their respective plans.

Comment: The Plan should recommend review and approval procedures for municipal and county planning boards.

Response: The Department agrees with this recommendation and will address this recommendation in guidance documents to counties which will come out after the Plan's adoption.

Comment: The Plan offers no long-term disposal strategy. The DEP's goal of keeping landfills open must not conflict with Warren County's plan to close their landfill at the end of 2006.

Response: The Department responds that pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E et seq., it is the responsibility of each of the 22 solid waste management districts in the state to formulate and implement a 10-year plan for the handling of solid wastes generated within that districts respective borders. Accordingly, the State has no intention of mandating that a particular district maintain its current strategy as long as that district has an adequate 10-year plan in place.

Comment: The Forward and Executive Summary of the Plan are inconsistent and lack sufficient data regarding declining recycling rates.

Response: The Department responds that the Forward and Executive Summary are consistent and additional data regarding the declining recycling rates can be found in Section B of the Plan.

Comment: The Plan's historical official data documents a different trend in solid waste projections.

Response: Without a specific indication of what the "different trend" is, the department cannot respond to this comment.

Comment: The DEP should reconvene to review the methodology of how solid waste generation rates were estimated for the next 10 years.

Response: If the commentor is referring to the statement that “given recent data regarding waste generation, one can predict a total solid waste stream for New Jersey of 33 million tons in 2015”, it should be noted that the statement speaks for itself, and the department does not intend to revisit this statement at the present time.

Comment: The Plan does not, but should, address concrete solutions for the management of recyclables, compostables, or solid waste.

Response: The Department responds by stating that the Plan cannot address individual local situations with one solution. Local situations dictate differing means to address problems.

Comment: The put-or-pay refuse contracts that municipalities are locked into are disincentives to recycling and the Plan needs to address this.

Response: The responsibility to contract for solid waste disposal may be on the municipal level or the individual homeowner. Local governments should carefully examine any proposed put-or-pay contract to ensure that there will be no disincentives to recycle.

Comment: It would be helpful if the charts, particularly the “Scrap Tire for 2000”, could be updated to reflect more recent data.

Response: While the Department strives whenever possible to provide the most recent data to the regulated community and public, there are certain instances where the resources put into such endeavors outweighs the benefits derived from them. As such, the Department will not act upon the suggestion that it update the “New Jersey Scrap Tire Trail for the Year 2000” chart as found in Table E-1 of the “Scrap Tire Management” section of the Plan. The purpose of this chart was merely to illustrate the large number of facilities that manage New Jersey’s scrap tires, as well as the vast distances that scrap tires travel on their way to recycling and reuse. Compiling this chart was a time-consuming task that need not be repeated at this time as an updated chart would show a similar distribution of scrap tires throughout the region. Of course, the actual numbers of scrap tires received at these facilities would change, but such information is not considered especially important for the purposes of the Plan.

Comment: Specific material recycling goals may need midcourse adjustments based on changed material market and economic conditions.

Response: The Department agrees with the comment that midcourse adjustment may be required in certain instances.

Comment: There is an error on p. A-19 regarding Union County’s recycling rate (total vs. municipal).

Response: The Department has revised the recycling numbers and rates to reflect the latest available data for the year 2003.

Comment: The Plan should communicate methods and basis for calculating listed recycling rates. Materials recovered from MRFs should be included as a separate line item in a County's recycling rate.

Response: Currently, the Department's recycling rates include the total annual amount recycled for each county in the state, as well as the total MSW recycled in each county. Historically, these two recycling rates have been considered the most important recycling rates to best determine meaningful recycling accomplishments in New Jersey and have continued to provide a basis for comparison through the years. However, since the Department's database contains information on materials recovered from MRF's, anyone interested in receiving this data should contact the Bureau of Recycling and Planning within the Solid and Hazardous Waste Management Program and this data can be made available to them.

Comment: Calculated recycling statistics in Plan should take successful source reduction into consideration.

Response: While source reduction continues to be a cornerstone to New Jersey's recycling initiatives and a major component of the Statewide plan, the statistical development of source reduction data would be very difficult to document in each municipality throughout New Jersey. Also, since other states don't currently include source reduction tonnage as a component of their recycling rate, to include additional source reduction tonnage as part of New Jersey's recycling tonnage total or rate could make statewide comparisons more difficult.

Comment: A comment was received disputing the accuracy of the information in Appendix table B-2. The participant numbers for Monmouth and Morris Counties are for their 2002 household hazardous waste events, not their permanent facilities. The information for Middlesex is only for their sites which handle paint.

Response: The Department will attempt to obtain complete data sets for all county facilities prior to publication.

Comment: The Plan should include a mechanism to fully implement a Research, Development and Demonstration component into the Plan.

Response: In general, the Department agrees with this comment; however, without specificity as regards to the research, development and demonstration needs of the state in this field, it would be impractical to offer a detailed answer. The Department invites the commentor to further elaborate on this comment in a separate communication. It should be noted, moreover, that one component of the distribution of funds from the proposed "Recycling Enhancement Act" would provide some level of funding for recycling market development activities, which could include research, development and demonstration of new/emerging recycling technologies.

Comment: The Plan does not adequately acknowledge role of waste to energy (WTE) in NJ's solid waste infrastructure.

Response: The Plan does indeed contain data which indicates the major role of waste-to-energy facilities in the disposal of solid waste generated in New Jersey.

Comment: WTE is not recognized in Section B of the Plan as a part of the solid waste hierarchy.

Response: The hierarchy of solid waste management highlights the recycling aspect of solid waste management and is not intended to negate other solid waste disposal options.

Comment: A comment was received stating that the DEP should eliminate mixing of terminology in the Plan. The 5 resource recovery facilities (RRFs) in NJ should not be referred to as incinerators.

Response: The Department agrees with this comment and has made the necessary changes to the Plan.

Comment: The Plan should include a cohesive media roll-out with one message.

Response: The Department agrees that an updated recycling message is needed; however, the Department does not currently have the resources to accomplish this. The Department is hopeful that proposed legislation will be enacted that will include, among other things, funding for this activity.

Comment: The Plan/DEP should identify a list of materials that could be mandated and offer businesses, institutions, and commercial entities the option of recycling the items most prevalent in their waste stream.

Response: It is the responsibility of the counties to identify designated recyclable materials in their county plans. The State Plan is requiring the counties to update their list of designated recyclable materials as a response to the State Plan.

Miscellaneous

Comment: DEP should expedite the completion and distribution of model ordinances or delay the submission date for updated district plans.

Response: The Department is currently in the process of completing a model municipal ordinance and once complete the ordinance will be distributed accordingly.

Comment: Source reduction and achievement of the 50% MSW recycling goal may not be possible due to the tremendous influx of tourists in the summer months (difficult to educate and enforce recycling requirements with vacationers).

Response: The Plan contains no specific source reduction goals, so this comment cannot be specifically responded to. Regarding achievement of the 50% MSW recycling goal, inasmuch as that is a statutory goal, the DEP has no authority to unilaterally reduce that requirement for any county in the state.

Comment: Comments were received recommending allowing districts to focus on attainment of total solid waste recycling goal of 60% rather than 50% MSW goal, which should be eliminated to increase program flexibility and optimize utilization of available financial resources.

Response: Inasmuch as both goals are contained in statute, the DEP does not have the authority to unilaterally revise these goals for any county in the state.

Comment: Origin and destination (O&D) Forms need to have a way to split loads that contain MSW and bulky waste. Some townships in Cape May County collect and dispose of such types of waste in one compactor truck and thus MSW disposal numbers in Cape May are elevated.

Response: The Department has reviewed the current O&D form and believes it is already suitable for the commentor's purpose. Transporters can circle more than one waste type and list the % of each in Item 8 on the form. The Department believes, however, that the forms could be modified to make it easier to split loads. Therefore, the Department will consider changes to the O&D form to address this and other data tracking issues in its upcoming regulatory proposals.

Comment: The Plan should expand the definition of recycling to include reuse initiatives when such techniques result in the disposal of less waste.

Response: Normally, the Department considers reuse to be closer to source reduction, since it diminishes new purchase and therefore new manufacture. That is why the Plan notes the desirability of State and County support for materials exchanges. Nevertheless, the Department has no theoretical opposition to counting tonnage reused as being equivalent to tonnage recycled, if that is the purpose intended by the commentor.

Comment: Inequities exist with repayment of debt service. Any financial assistance to counties to assure repayment of solid waste debt should be distributed in a manner which ensures that tipping fees are equalized across the State and specifically within regional areas.

Response: The Department responds that due to Federal Court rulings regarding solid waste flow control, counties that expended public funds to construct solid waste facilities have had difficulties modifying their systems and still pay the debt incurred. The State has assisted counties to ensure the viability of their solid waste management systems. However, the assistance given to the counties has not been utilized as a tool for rate averaging since most counties receiving assistance are not located in a single region but throughout the State.

Comment: Controlled production of CO₂ and CH₄ from anaerobic digestion of organic solid waste should count towards recycling goals.

Response: The Department agrees with this comment and will update the Plan to reflect this position upon adoption.

Comment: The DEP needs to provide incentives to those residents that recycle. Similar to programs in other states, DEP could partner with the local business community to provide coupons to residents that are redeemable for products in local businesses. Similar schemes should be developed for the commercial sector.

Response: The Department generally agrees with this comment and notes that these new incentive programs warrant further research. However, the Department feels that such partnerships would be most effective at the county and local government levels. Since most recycling programs are done on a county or municipal basis, incentive programs should be implemented in a similar way.

Comment: On page B-5, DEP proposes to supply or underwrite compost units to promote home composting. Middlesex County has been doing this for years and would rather the DEP spend the majority of their money on a statewide ad/education campaign promoting home composting.

Response: The Department agrees that counties should lead promotion of composting. The Department wants the ability to offer such an incentive to towns planning to undertake the move to a Pay As You Throw (PAYT) program, at which time it would be an addition to other disposal minimization strategies. Municipalities changing over to PAYT have other expenses, such as that of a study to see how much money might be saved, and how to set the unit and the price, and that of changes to software and tax forms.

Comment: High fees to operate recycling and solid waste facilities create a disincentive to recycling.

Response: The operating fees associated with recycling and solid waste facilities are necessary to fund compliance inspections to ensure that the facilities are operating in an environmentally safe manner. The Department disagrees that these fees are a disincentive to recycle, which generally is much less expensive than disposal options.

Comment: The DEP should make it easier to re-permit or expand existing solid waste facilities.

Response: The Department responds by stating that every attempt will be made to expedite and facilitate the permitting and expansion processes; however, the Department is bound by laws and regulations that dictate certain time consuming procedures be undertaken.

Comment: Mandating additional materials for recycling could add unanticipated complexities and substantial costs to existing collection systems.

Response: The Department responds by stating that the counties mandate which materials to designate for recycling in order to reach the 50% and 60% recycling goals established by State law. Counties have various options to achieve these goals, one of which is mandating additional materials. These additional designated materials may increase the cost for some counties; however, the counties are ultimately responsible to determine the programs to establish to meet the recycling goals.

Comment: The DEP should schedule meetings and discussions with individual interest groups (disposal & recycling facility operators, sewer plan operators, medical waste generators, HHW coordinators, etc.) prior to Plan adoption.

Response: The DEP conducted a total of 17 public presentations on the draft Plan throughout the state during May, June and early July, 2005. In addition, the DEP held two public hearings and provided a 60-day public comment period.

Comment: The Plan needs to address planning issues (preemption) concerning Class A-D recycling facilities through explanations of case law, regulations, and procedure.

Response: The Department agrees with this recommendation and will address this recommendation in the adopted Plan.

Comment: The DEP needs to draft solid waste generator regulations.

Response: The Department is drafting such regulations now, although they are not addressed in the plan. Such regulations will expand and clarify requirements in state law and will allow the Department to issue penalties against generators who do not comply with local recycling requirements. The Department notes that increased emphasis on generator compliance should be supported by increased outreach by municipal coordinators, and that non-compliant generators should first be approached by their own coordinators, then by county staff, and lastly by the Department's inspectors. However,

the simplification of the use of state staff may ultimately assist local agencies in popularizing compliance. Penalties for non-compliance will commonly begin at \$3,000.

Comment: The State should reconsider “Carry In/Carry Out” policies at State Parks because they don’t allow for proper disposal and/or recycling at State Parks.

Response: The Department has contacted the Department of Parks and Wildlife to address recycling at State Parks and will work to facilitate the recycling of materials and litter control.

Comment: To promote reaching 50% recycling goal, the State needs to take the lead and place a recycling container next to every garbage container located in every State administered facility or park.

Response: The Department has contacted the Department of Parks and Wildlife to address recycling at State Parks and will work to facilitate the recycling of materials and litter control.

Comment: The Plan should include a project implemented by the DEP (establishing a food waste market, tire recycling facility in NJ). This would help DEP gain a greater understanding of the impediments created by the State’s regulatory structure.

Response: Although a novel idea, the DEP does not agree with this comment. Instead, we believe the state would be better served if the commentor were to specifically indicate those regulations which are felt to cause the “impediments” alluded to.

Comment: The DEP should create a chart featuring all recycling regulations to see if they promote or hinder recycling as related to the Plan’s goals.

Response: The Department has adopted recycling regulations pursuant to the Recycling Act, and these regulations promote recycling in the State.

Comment: The Plan needs to explain how locating facilities fits into smart growth initiative.

Response: The Department responds that pursuant to the Solid Waste Management Act, it is the responsibility of the counties to site and/or develop solid waste and recycling facilities. Those counties located with areas designated as smart growth should consider the smart growth initiative prior to siting any facility.

Comment: There is a need for regional recycling centers. The State should subsidize their construction and operation.

Response: The Department responds that pursuant to the Solid Waste Management Act it is the responsibility of the counties to site and/or develop solid waste and recycling

facilities. The Solid Waste Management Act provides a mechanism for counties to collectively develop facilities.

Comment: The State needs to encourage and assist private industry with incentives to create reliable, realistic, actual solutions to the management of solid waste.

Response: The Department responds that tipping fees generate considerable revenue which should enable private industry to manage solid waste operations in a legal and environmentally sound manner and so that tax payer assistance is not warranted.

Comment: Support must be given to provide financial incentives for manufacturers, retailers, and consumers to reduce, reuse, refill, and recycle products without adding additional financial burdens on local governments.

Response: The Department supplies technical support for recycling initiatives within the State. Financial assistance, while desirable in certain circumstances, is not possible due to the current lack of funding.

Comment: Haulers, through the permitting and licensing process, should ensure that the generator is in compliance with recycling regulations during collection of solid waste.

Response: The Department agrees with the commentor that haulers should bear some responsibility for ensuring that generators of solid waste comply with the recycling regulations. After all, transporters are prohibited under N.J.A.C. 7:26H-4.4 from picking up commingled loads of solid waste and recyclable materials. Additionally, the Department is currently drafting new and amending other regulations regarding the generation, transportation, and disposition of recyclable materials. Hauler responsibility as it respects to recyclable collection will be addressed in this upcoming proposal.

Comment: Several comments were received regarding the lack of recycling at transfer stations/MRFs.

Response: The solid waste regulations do not require transfer stations/materials recovery facilities to recover recyclable materials from the incoming waste streams. Recovery of materials at transfer stations/materials recovery facilities is generally driven by a combination of market conditions and site specific factors such as having enough floor space available to operate recovery operations and maintain efficient waste transfer functions. If a facility finds it economically advantageous and viable to recover specific types of materials, then facilities will invest in processes to do so.

Comment: The State needs to support a deposit law for and provide incentives for private industry to create new types of reusable containers.

Response: The Department understands the commentor's position, but does not feel that a bottle deposit law is feasible at this time. Glass, especially brown and green, as well as the resulting tri-color mixed cullet, has become a financial burden on recycling programs

in New Jersey. Bottle deposit legislation would essentially be a producer responsibility act, placing more accountability on the producer, thereby reducing the burden on local governments. However the adoption of a bottle bill would conflict with A-4075, “The Recycling Enhancement Act” as it is proposed.

If passed, A-4075 would provide a stable funding source for recycling. The proposed legislation intends that a portion of this funding be used to provide incentives to private industry.

Comment: The State should implement discretionary surcharges to discourage the use of single food and beverage containers.

Response: The Department appreciates the commentor’s concerns; however, a tax on certain food and beverage items already exists in New Jersey. Commonly referred to as the “Litter Tax,” this tax funds the Clean Communities Council. The Department feels that additional surcharges to discourage the use of single serve containers would be redundant and is therefore not necessary.

Comment: The State needs to work with private industry to site and build recycling mills to handle all mandated recyclables.

Response: The Department has provided technical assistance to private industry to assist in the siting of recycling mills; however, due to the large financial investment necessary these efforts have not yet been successful.

Comment: If funding is not found and the State moves forward with the Plan’s education and outreach programs, improved enforcement and compliance plan, additional recycling mandates, etc., how will the municipalities pay for the increased personnel, equipment, supplies, and facilities necessary for compliance with the State Plan without exceeding the 2.5% budget cap?

Response: The Department responds that the recycling mandate has existed in law for over 10 years and the State Solid Waste Management Plan is not mandating anything that has not already been required under provisions of the Recycling Act. Also, the Department is hopeful that a new funding source to fund recycling programs will be forthcoming from the Legislature.

Comment: Under Section H, a clause that requires the collector to notice the municipality of discontinuance of service at the same time that it is transmitted to the customer; town officials would then be in position to monitor any disruption of collection services should be added.

Response: The Department responds that under current regulations the collector/hauler is required to notify the Department of a discontinuance of service. The Department contacts the municipality and coordinates with that municipality for the replacement collector/hauler.

Comment: The State should include a dedicated funding source for all municipal owners of solid waste vehicles that would require upgrades by retrofitting existing diesel powered vehicles to control air emissions.

Response: The Department responds by stating that a proposal that would provide a funding source for the upgrading of garbage trucks diesel emissions is on the ballot for the November 2005 elections.

Comment: The DEP should clearly classify the production of recycled landfill cover as recycling.

Response: The Department will take this comment under consideration.

Comment: The Plan needs to devise a formula for recycling tonnage for diversion achieved through home composting.

Response: Although it would be beneficial to understand the impacts on home composting on the solid waste stream, the formula mentioned could be extremely complex due to the variety of organic materials that could potentially be included in such systems. Additionally, since these materials do not actually enter the solid waste management system of the State, it is unclear what a diversion formula would actually measure.

Comment: The DEP should focus on increasing Class B recycling, as it will take years for the development of additional Class C facilities due to funding and siting issues.

Response: The Department agrees that Class B recycling has a greater potential for increases in the short term and the unused capacity at NJ Class B recycling centers is documented in the Plan; however, the Department also feels that gains need to be made in the field of recycling of organic materials.

It should also be noted that the Uniform Construction Code (N.J.S.A. 52:27D-119 et seq.) grants the authority to issue permits for construction and demolition to local entities. Within the administration of the site plan approval process and building permitting process, local bodies are in a position to require, by ordinance, the recycling of materials generated during the construction and demolition activities within their boundaries.

Comment: A comment was received supporting the concept of restructuring bonus grants to promote certain types of recycling. The DEP's recommendation to limit bonus grant awards to Class A materials recycled from strictly commercial settings is problematic as accurate data reporting of Class A tonnage by the commercial sector is severely lacking and calls into question the validity of awards based on poorly estimated tonnages. In addition, this concept penalizes municipalities with a small commercial base. The commentor also requests that the DEP research this matter further before adopting the restructuring of the bonus grant program.

Response: The Department generally agrees with the comment and will look into the matter further before proceeding. Practically speaking, however, with the current tonnage grant program limited to less than four million dollars per year, such a bonus grant program would probably not achieve the results contemplated. Therefore, the Department will wait until such time as a more significant grant program is available to reinvestigate this issue.

Comment: The DEP should in fact underwrite compost units through local government agencies.

Response: The Department agrees, as noted on page B-5 of the Draft Plan. Middlesex County already offers such a program, and other counties may choose to use their Solid Waste Services Tax grants for this purpose.

Comment: Future bid notices for non-discriminatory procurement should not have geographical caveats listed within their terms.

Response: The Counties, should they choose to undertake non-discriminatory bidding, are responsible for setting up the terms for the bidding process. The Department does not participate in the process or set up the procedures that are necessary for submitting bids.

Comment: The State should initiate roundtable discussions with DOT, product manufacturers, retail stores, and supermarkets to evaluate feasibility of using standardized reusable plastic totes for the shipment of amenable products.

Response: The Department seeks additional clarification of what the term “amenable products” refers to.

Comment: The DEP’s recycling statistics should include percent recycling of the total solid waste stream in addition to percent of MSW and efforts should be focused on increasing recycling of both total and MSW streams.

Response: The Department agrees with the commentor that it is important to continue to include the percent recycling of the total solid waste stream and the percent of MSW rates as well as continuing to promote initiatives to increase recycling of both total and MSW waste streams.

Comment: A comment was received which disagreed with the Plan’s goal of 50% recycling of MSW since waste composition in each county is different. The goal should be to divert the most waste from disposal sites as possible regardless of waste type. If the 50% MSW recycling goal is eliminated from the Plan, the total waste stream goal could be increased to 65%.

Response: The 50% MSW recycling goal and the 60% total waste stream goal was established by the legislature through the Recycling Act. Any amending of the recycling goals would have to be by the New Jersey legislature.

Comment: Additional disposal capacity in NJ should come from the expansion of existing RRFs and landfills.

Response: The Department supports the expansion of existing RRFs and the maximum utilization of airspace that is available at existing landfills to take full advantage of existing infrastructure without the environmental impact of siting new facilities, but it is noted in the Plan that opportunities for expansion of existing landfills are limited.

Comment: The State should mandate that all plastic products which are labeled as “biodegradable”, “compostable”, or “degradable” meet ASTM Specifications (D 6400 and D 6868).

Response: A mandate will require specific legislation. Additionally, it is unclear at this time whether federal statute and regulation regarding labeling preempt the state.

Comment: CO₂ credits should qualify for use in the northeast Regional Greenhouse Gas Initiative.

Response: The Department will take the comment under advisement and pursue this further.

Comment: Fees for recycling centers should be less than those for solid waste facilities.

Response: The operating fees associated with recycling and solid waste facilities are necessary to fund compliance inspections to ensure that the facilities are operating in an environmentally safe manner. Fees for certain recycling facilities are less than those of major solid waste facilities. The scope of the operations has a bearing on the amount of compliance inspections that are required.

Comment: The Plan should not suggest mandating additional materials for recycling, but rather focus on education and enforcement of currently mandated materials.

Response: While the Department states several times in the Plan that a renewed emphasis on education and enforcement for recycling is needed, the Department believes that in order for the recycling goals to be met, counties will need to consider designating additional materials as mandatory recyclable items. By mandating corrugated in the residential sector, for example, counties would be recognizing the significant growth in Internet and catalog sales that has taken place over the last decade, while at the same time recovering a significant amount of fiber. Undoubtedly, education and enforcement will be a key to making this a success just as it is for those materials already designated for recycling.

Comment: In reference to Section H, the State should conduct a comprehensive review of Statewide litter control methods.

Response: Although the commentor offers a valid comment, litter and litter control are not addressed in the Plan.

Comment: Salem County only has two recycling centers. This makes transportation costs prohibitive to recycling.

Response: The Department responds that pursuant to the Solid Waste Management Act it is the responsibility of the counties to site and/or develop solid waste and recycling facilities.

Comment: To save on the collection costs of recyclables, the State should mandate that recyclables be crushed prior to pickup.

Response: The Department has no data that crushing recyclables would significantly reduce the collection costs. A mandate like this may put an undue burden on the elderly.

Comment: DEP should consider tiered rates for different types of wastes at landfills to create incentives to recycle.

Response: The Department responds by stating that facilities generally do charge different rates for difficult waste types based on the cost incurred in dealing with each waste type. Creating a disincentive based on cost to encourage recycling would ultimately cost the solid waste customer more and create a windfall profit for the facility.

Comment: Anti-littering laws should be revised to increase the penalty for littering if the litter is found to be a recyclable material. The additional monies collected could go towards promoting/funding recycling.

Response: The Department does not have the regularity authority to increase a fine to more than one hundred dollars for each violation, refer to N.J.S.A. 13:1 E-221.

Comment: A comment was received asking what the county responsibilities are with respect to the medical waste sections of the Plan?

Response: County responsibilities for medical waste facility capacity planning and other requirements are specified in the Comprehensive Regulated Medical Waste Management Act at N.J.S.A. 13:1E-48.1. The plan does not outline specific requirements for counties.

Beneficial Reuse

Comment: If the Department wants to push beneficial reuse, it needs to increase the number of staff reviewing applications for BUDs, so they're processed in a timely fashion.

Response: The Department recognizes the importance of prompt processing of beneficial use applications and has assigned adequate resources for reviewing these applications. Any delays, most typically, occur due to incomplete applications, lengthy sampling/analytical time and materials failing to meet nominal criteria for the proposed beneficial use.

Comment: The DEP should compile an inventory of the various types of BUDs and when and if these activities would count as recycling.

Response: In general, beneficial use activities do count towards recycling. Regarding the inventory suggested, the Department would pursue this further.

Comment: The Plan should include a section which documents that the State supports any endeavors to facilitate legitimate, cost effective, and environmentally sound beneficial use and recycling of hazardous waste.

Response: The Statewide Solid Waste Management Plan does not cover hazardous waste. Hazardous waste is regulated by federal rules which New Jersey has adopted by reference.

Sludge/Biosolids

Comment: Comments were received stating that while the Draft Plan reaffirms the State's support for beneficial use of biosolids and continues to promote this practice, the NJDEP also continues to over-regulate the use of what is defined by both the USEPA and the NJDEP as "exceptional quality residual".

Such regulations provide an unfair advantage to other agricultural products such as manures, commercial fertilizer, yard and leaf composts, etc. which can be sold and used with much fewer restrictions.

Response: Farmers, nurseries, homeowners, and others today are faced with an array of products that they can use to improve the fertility of their lands. Many farmers are aware of the benefits that organic products offer, especially in terms of improved crop yields. Fertilizers and organic soil amendments, including sewage sludge, benefit agriculture when they are used appropriately, but they can also pose potential environmental risks if managed improperly. The attention directed toward sewage sludge and concerns regarding their use may be disproportionate, especially considering the fact that these regulated materials are applied to less than 1% of the agricultural land in this nation. It is critical to remember, however, that mineral fertilizers and organic soil amendments are applied to the land at dramatically different rates, and any comparison of their potential impact must account for this difference. Although their role in recycling nutrients in the environment and replenishing soil organic matter has long been recognized, sewage sludge has historically been viewed as a waste product. The reasons for some of these more stringent regulations are set forth in the responses to the subsequent comments.

Comment: In the Land Application section, Scenario 1 – Exceptional Quality (EQ) residual; this section states that "EQ residual meet pollutant, pathogen reduction and vector attraction reduction criteria such that the risks of land applying them are commensurate with other types of fertilizers or soil amendments", but then goes on to state that the Department is considering rule changes that would necessitate Department site approval or general permits for certain large operations such as "Topsoil Blending Facilities". If land application of exceptional quality biosolids in fact represents the same risk, why are additional restrictions being considered? If topsoil blending operations are problematic, then all such operations should be regulated, not just the ones utilizing EQ biosolids.

Response: The Department has identified numerous sites that store exceptional quality residual or material derived from blends of exceptional quality residual and other material, such as soil, on the ground prior to off-site distribution. These sites have operated under exemptions at existing N.J.A.C. 7:14A-20.2(b) and (c). The storage of exceptional quality residual and material derived from exceptional quality residual on the ground and exposed to precipitation generates significant potential for losses of pollutants (most specifically nutrients) to the surrounding environment. In addition, the activity has significant potential for creating nuisance conditions. Finally, the operators of certain sites have not developed a marketable blended material, or have failed to develop a

market for their blended material, leading to ongoing and uncontrolled storage of material derived from residual. Since the adoption of existing N.J.A.C. 7:14A-20, the Department has expended significant resources addressing documented negative environmental impacts associated with residual blending and distribution activities and, at times, has initiated enforcement action. As a result of this experience and based on observed and measured negative impacts to the environment, the Department will be proposing new rules to address residual blending and distribution activities.

However, the Department will be proposing conditions establishing a de minimis quantity under which, under normal circumstances, no permit will be required. Operations that remain under this de minimis amount will be subject to storage, distribution and use guidelines found in the Department's Technical Manual for Residuals Management, as is currently the case. The Department has not identified significant problems with residual blending and distribution sites that store below the de minimis amounts and that operate in conformance with these guidelines.

Comment: The Draft Plan states that NJDEP rules are more stringent than the USEPA regulations and specifically lists the following differences: "Agronomic rate applies to Exceptional Quality materials", and "Agronomic Rate is based on any nutrient (including phosphorus)". The NJDEP does not restrict other competing products (manures, peat moss, leaf compost, etc.) to these requirements. It has been shown in the field that, due to high organic content and ion exchange capability of products like CMCMUA compost, nutrients are released slowly over a long period of time in comparison with chemical fertilizers, etc. It should be the users' responsibility, based on information provided by the product producer, to determine the application rate suitable for the purpose in hand. Users will not intentionally incur higher costs and/or harm their land or crops by over applying product.

Response: Applying agronomic rate (including phosphorus) to Exceptional Quality residuals is not a new requirement. As stated in the 1996 proposed revisions to the New Jersey Pollutant Discharge Elimination System, "it is the Department's position that such materials must also be applied at an application rate that does not exceed the agronomic rate". See 28 N.J.R. 482-483 (February 5, 1996). Crops typically remove much less phosphorus than nitrogen, therefore, any user applying product at the nitrogen rate will drastically over apply phosphorus (since the P application rate is double and the P crop removal is approximately half that of N). This over application does not cause the user to incur higher costs nor does this over application harm the crop because phosphorus applied beyond the agronomic need will accumulate in the soil and not be taken up by the crop.

Comment: The NJDEP policy on Agricultural Conservation Plans states that, "The Department requires Agricultural Conservation Plans for all non-EQ and EQ agricultural and Horticultural applications". If an Agricultural Conservation Plan is required for some reason, the use of EQ product should be included in the plan. However, the use of an EQ product should not, in itself, trigger an Agricultural Conservation Plan any more than the

use of the other competing products. The Department should address this concern by clarifying this requirement in the final Statewide Plan.

Response: The Department requires Agricultural Conservation Plans for all Non-EQ and certain EQ agricultural and horticultural applications. The use of an EQ product does not by itself trigger an Agricultural Conservation Plan. It is the use of an EQ product on agricultural or horticultural fields that have a soil test phosphorus level greater than 200 ppm (400 lbs/acre) or are closer than 200 feet to surface water that have the potential to cause surface water impacts and therefore trigger the need for an Agricultural Conservation Plan.

The Department agrees that conservation plans should not apply exclusively to farmers wishing to utilize sewage sludge. The Department strongly recommends implementation of Conservation Plans prior to the application of bulk quantities of any fertilizer or soil amendment. Recognizing the need to manage nutrient inputs, agricultural institutions are beginning to incorporate nutrient management on a broad scale. For example, the NRCS recently revised Code 590, its nutrient management standard. The NRCS revisions are meant to address concerns regarding manure applications in particular, but are appropriate for any nutrient source applied to the land.

When an Agricultural Conservation Plan is required by the NRCS (farmers participating in an NRCS program, seeking federal assistance, etc.) the application of all organic wastes, including sewage sludge and manures, trigger additional requirements for Code 590 (Nutrient Management). Additional requirements include the need to determine if the application will be nitrogen or phosphorus based (using a Phosphorus Index), and the requirement to comply with Standard 633 (Waste Utilization), which is not applicable to inorganic fertilizers. Therefore, the application of organic products such as manure, trigger, by themselves, nutrient management practices that are not applicable to competing products such as inorganic fertilizers.

Comment: The Department's policy with respect to phosphorous in biosolids is presented in the Draft Plan as follows: "The Department has historically required soil fertility test results be obtained from each agricultural or horticultural field prior to distribution of Class B marketable residual products (and annually thereafter) and is moving to require the same level of testing for distribution of Class A bulk marketable residual products."

Assuming that there is a phosphorous problem in areas of the State, then a phosphorous control program should be put in place for such areas that covers all sources of phosphorous, not just the phosphorous potentially originating from EQ biosolids. In other words, the use of EQ biosolids itself should not trigger a requirement for a soil test unless the use of competing products (leaf and yard composts, manures, chemical fertilizers, etc.) also require a soil test. The Department should address this concern by clarifying how it intends to impose this requirement/proposal with respect to Class A and B biosolids in the final Statewide Plan.

Response: Recognizing the need to manage agricultural phosphorus inputs, agricultural institutions are beginning to incorporate phosphorus management on a broad scale. For example, The Natural Resources Conservation Service (NRCS) recently revised its nutrient management standards to incorporate phosphorus management tools (such as the phosphorus index). The NRCS revisions address concerns regarding manure applications in particular, but are appropriate for any phosphorus source (or other nutrient) applied to the land.

The areas of the state addressed by this change are agricultural or horticultural operations where soil testing is already an essential part of fertility programs and profitable crop production systems. All agricultural or horticultural sites developing a nutrient management plan are required to do soil fertility testing regardless of the type of nutrients applied. Agricultural Conservation Plans consider all potential sources of nutrients including, but not limited to animal manure and other organic by-products (sewage sludge), waste water, commercial fertilizer, crop residues, legume credits, and irrigation water. The Department is using these commonplace inexpensive tests to require conservation plans in areas with the greatest potential to cause environmental harm.

Comment: The Plan should address how existing and new solid waste and sludge facilities fit into the Highlands Preservation area.

Response: All new residual management permit applications which are submitted to the Department will need to undergo a Highlands review for consistency. Some general permits issued under the New Jersey Pollutant Discharge Elimination System have been considered to be exempt because they do not involve “major development” as defined by the Act.

Comment: Beneficial reuse of sludge processing facilities have operated in Warren County. All have been cited and shut down by the NJDEP and/or court order. Making it more difficult for acceptable beneficial reuse is that contaminants in sludge will increase, as water purification standards at sewage treatment plants are intensified. More contaminants are removed from the water and end up in the sludge; thereby degrading the overall quality of the sludge product. While beneficial use sounds good, the environmental and quality of life impacts that result outweigh purported benefit.

Response: Improving the productivity of land using the soil conditioning properties and nutrient content of sewage sludge has human health and environmental advantages beyond those that are directly associated with applying sewage sludge to the land. Due to its organic nature, sewage sludge is well suited to agronomic purposes and the Department encourages its use as a soil amendment in preference to inorganic fertilizers. With proper application, sewage sludge will increase soil organic matter content, which decreases nitrate nitrogen leaching due to ammonium fixation, decreases soil compaction, increases soil cation exchange capacity, increases plant available water in soil, increases the substrate for soil microbes, and enhances soil structure.

The Department has active pretreatment and pollution prevention programs which affect sewage sludge quality through both enforced reductions in contaminant discharges to sewerage systems and through voluntary reduction/reformulation of raw material inputs to industrial manufacture (which in turn leads to reduced contaminant discharges to sewerage systems). Under the Sludge Quality Assurance Regulations (N.J.A.C. 7:14C), every generator must monitor sewage sludge quality regardless of the management method used. Approximately 90 percent of the sewage sludge generated by volume is monitored on a monthly basis for over 120 constituents. The Department has also undertaken independent monitoring for over 200 additional compounds. In addition, under N.J.A.C. 7:14A-20, every person who prepares sewage sludge for land application must monitor the final product. This requirement is in addition to the requirements of the Sludge Quality Assurance Regulations. Combined with wastewater and influent monitoring, a treatment works has various mechanisms to monitor and maintain consistency in pollutant levels in sewage sludge produced by the treatment works. Therefore, there is a comprehensive system of monitoring in place to assure that the quality of land applied sewage sludge does not degrade and is protective of public health and the environment.

The facilities the commentor alludes to that operated in Harmony Township were shut down, in part, due to quality of life impacts and their inability to mitigate the effects. In these instances, the Department would concur that the impacts from the facilities cited outweighed any benefits. Thus, the Department did not move to renew their discharge permits. However, such facilities are more of the exception rather than the rule. All over New Jersey, many sewage sludge facilities continue to operate with no complaints, and many of these facilities have operated for decades.

Comment: The Plan should take at least a cursory look at the capacities of the State's wastewater treatment facilities to handle additional volumes of food waste for conversion into biosolids, and the in-state (and out-of-state) capacity to accept properly certified biosolids products.

Response: Specifically, the commentor recommends that the plan discuss the potential for an expanded role that food waste disposers can play in achieving the State's recycling goals. While expanded use of food waste disposers may have merit in some areas, the Department believes that whether such food waste disposers are appropriate is best reserved to local communities. For example, if wastewater goes to a municipal sewer system, the local sewer authority should be contacted to ask questions about its food waste disposer policy. Some require a permit to use a disposer, while others discourage them because of limited water and sewer capacity. If a septic tank is used for wastewater disposal and a garbage disposer is intended to be installed, N.J.A.C. 7:9A-8.2(d) requires capacity be added to a septic tank (50% greater), and also requires that the tank have multiple compartments. As an alternative, composting non-animal-based food waste not only reduces the amount of material headed for the sewer or the landfill but can also provide excellent fertilizer for home gardens or flowerbeds.

With regards to the request that the Plan should discuss in-state (and out-of-state) capacity to accept marketable residual products, such an undertaking is beyond the capabilities of Department resources at this time. The last time the Department attempted to evaluate the potential for beneficial use of marketable residual products was in November 1990, when the Department released its *White Paper on Beneficial Use of Sewage Sludge*. Although useful in identifying potential land that could be used, it is more valuable for prospective product generators to complete an independent market survey based on the specific type of product planned to be generated. Nevertheless, Table K-10 of the State Plan provides a brief overview of available agricultural land versus the quantity of sewage sludge generated, and the unique pressures that make beneficial use of sewage sludge in New Jersey more challenging.

Emergency Management

Comment: The Department should review procedures with the solid waste management agencies throughout the State for Emergency Management.

Response: The Department concurs with this comment and procedures with the solid waste management districts shall be reviewed for development of emergency management plans.

Comment: Each municipality, in conjunction with the county solid waste management plan should designate a staging area within their borders to handle material in the event of an emergency.

Response: The Department concurs that designating staging areas to handle material in the event of an emergency are needed to be included within the district solid waste management plans.

Comment: A comment was received supporting the recommended legislation regulating the disposal of sharps/needles use in home health care to prevent them from washing up on the beaches.

Response: Thank you for your support.

Comment: The section of the Plan dealing with legislative initiatives & regulatory reform would be more useful if the appropriate sections of the Plan, where these proposals are made, were actually provided.

Response: The sections of the State Plan that cover specific topics of legislative and regulatory initiatives are covered in the texts as well as the summary section containing all the recommended legislative and regulatory initiatives.