

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C. Ch. 60)

7 DE Admin. Code 1305

FINAL

Secretary's Order No. 2017-WH-0002

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1305 Universal Recycling Regulations

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department") pursuant to 7 Del.C. §§6006, 6010, 29 Del.C. §§10101 *et seq.* and any other relevant authority, the Department issues the following findings of fact, reasons and conclusions as an Order of the Secretary to adopt proposed regulations as final regulations.

BACKGROUND AND PROCEDURAL HISTORY

This Order considers proposed regulations, *Universal Recycling Regulations*, 7 DE Admin. Code 1305 ("Regulation 1305"), which will assist the Department in administering its duties under the Universal Recycling Law ("URL"), *Subchapter III of 7 Del.C. §§6051-59*. The URL sets recycling goals by 2020, which will require increased recycling, particularly from the commercial and multi-family residential sectors.

The Department's Division of Waste and Hazardous Substances, Solid and Hazardous Waste Management Section ("SHWMS") is responsible for the Department's regulation of solid waste recycling. The SHWMS obtained the Department's approval to commence the regulatory development process with Start Action Notice 2016-03 signed April 18, 2016 to develop proposed regulations. The SHWMS thereafter drafted the proposed regulations and held public workshops in Bear, Lewes, and Dover on September 6, 7, and 14, 2016, respectively. The SHWMS also kept the Recycling Public Advisory Council¹ ("RPAC") informed of the regulatory developments. The SHWMS prepared the required Regulatory Flexibility Act forms, and submitted them along with the proposed Regulation 1305 and a public notice of a November 21, 2016 public hearing for publication in the November 1, 2016 issue of the Delaware *Register of Regulations*. In addition, on October 30, 2016, the SHWMS had published public notices of the proposed Regulation 1305 and the Department's public hearing in *The News Journal* and the *Delaware State News*.

The Department's hearing officer, Robert P. Haynes, presided over the public hearing held at the Department's offices at 89 Kings Highway, Dover on November 21, 2016, at 4:00. The Department received public comments at the public hearing and written comments following the public hearing. The public comment period closed on December 9, 2016. The public comments were on the proposed requirement on the type and location of containers provided for recycling and the possible liability for picking up recycling containers that had solid waste commingled in them. Overall, the public comments supported adopting proposed Regulation 1305.

The SHWMS provided Mr. Haynes with its Technical Response Memorandum ("TRM"), which recommended that the Department adopt the proposed Regulation 1305 without any change.

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which established the record, recommended findings and provided reasons in support of the recommended approval of the proposed Regulation 1305 without any change.

FINDINGS OF FACT

The Department finds that the record, as established in the Report, supports adopting proposed Regulation 1305 as Final Regulations attached hereto in Appendix A. The Final Regulations are the same as proposed Regulation 1305.

The Final Regulations will allow the Department to improve recycling by providing definitions for "waste service provider," "commercial sector," "property managers," and "marketplace." These definitions will improve the regulation of recycling and set forth the responsibilities and duties for waste service providers, property managers, and the commercial sector.

The Final Regulations' responsibilities and duties for waste service providers prohibit them from intentionally

1. "[a]dvise the Department... on all aspects of recycling." 7 Del.C. §6058(c).

commingling source-separated recyclables with other waste. The Department recognizes that waste service providers, often called "haulers," contract with customers to collect trash and recyclables, and that their customers may often place trash into the haulers containers that are to receive only recyclable materials. The Final Regulations require that haulers should not commingle sorted recyclable materials with trash. The Final Regulations prohibit any intentional commingling, and places responsibility on the haulers to take steps to end commingling by their customers. The haulers are in the best position to enforce this prohibition in its contracts with customers, in educating and providing notices to customers, and in providing conveniently located and sufficient containers that will encourage their proper use for recycling.

The Final Regulations require haulers to provide notice to customers at least annually of their single stream recycling services, with instruction on participating. The Department finds that this notice requirement is an important mechanism to improve recycling. Notice and instructions should be effective to promote proper recycling and to increase participation in recycling by changing users' behavior. If a user of containers is unaware of the proper use of the haulers' containers, then they are more likely to use recycling containers to dispose of trash, which will commingle and contaminate the recycling containers.

The Final Regulations do not prescribe how haulers may avoid accepting commingled materials, and such methods are best left to the hauler to decide based upon their customers and circumstances. The Department finds that notice and instruction may be the best possible method to get users to recycle properly; i.e., use the correct containers for recyclables and trash. Haulers may determine that in order to avoid commingling that they should provide more frequent notices and instructions on the containers in order to increase users' awareness of proper recycling that will reduce commingling and increase recycling.

The Final Regulations also require the haulers to provide multi-family residential customers with single stream recyclable containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, and so that recycling access is at least as convenient as waste disposal. Again, the Department finds this requirement reasonable to increase recycling. The Department finds that any inconvenience imposed on using recycling containers will decrease recycling. If haulers are unable to locate containers in compliance with the Final Regulations, then, as noted in the SHWMS TRM and in the Report, the URL provides a procedure to seek relief of the location requirements from the Department based upon the submission of a written justification and the Department's approval of it.

The Final Regulations also regulate property managers in single or multi-family residential sectors by requiring that their tenants have single stream recycling services. The property managers can make single stream recycling available to their tenants by contracting with a hauler. The Department finds it reasonable to regulate property managers, which includes owners and their surrogates. Property managers determine where their complex's waste and recycling containers should be located. In addition, property managers may be able to establish rules governing the conduct of their tenants, which can include rules for proper use of recycling and trash containers to prohibit commingling. The property managers also are appropriate to communicate with tenants, and the URL and the Final Regulations require at least annual notices to tenants. The Department anticipates that more frequent notices may be required to get the users properly recycling, and, as noted in the comments, property managers can send notices when a tenant moves in and thereafter until a tenant properly recycles.

The Final Regulations also set forth the commercial sector's duties to participate in the comprehensive recycling program and to report on its recycling, which the Department can review to determine if sufficient under the URL and the Final Regulations.

The members of the public who attended the public hearing were from the regulated community of haulers and one representative from a recycling center. There were comments on the proposed requirement to locate recycling containers in multi-family residential complexes. The SHWMS TRM and the Report fully address these public comments, and explain that the Final Regulations are consistent with the URL and its intent to make recycling as convenient as waste disposal. The Department anticipates that both the SHWMS and the persons regulated by the Final Regulations will work in good faith to resolve any implementation problems.

The Department's interpretation of the law is that the General Assembly intended that recycling should be encouraged by offering single stream recycling to the residential single family, the multi-family residential and the commercial sectors and that it should be just as easy for users to recycle as it is to dispose of trash. The Final Regulations allow property managers and haulers discretion on how they will stop the commingling and thereby increase recycling, particularly within the multi-family residential and commercial sectors.

The Department finds that the Final Regulations are a reasonable regulatory effort to increase recycling to achieve the goals set forth in the law, which requires by January 1, 2015 the diversion of disposal of 72% of solid waste and 50% of municipal solid waste. 7 Del.C. §6056. The law requires annual reporting and the last report submitted, which showed that the recycling rates were 72% for solid waste and 42.6% for municipal waste in 2015 and imposes further increases in recycling by 2020, which the Final Regulations should help achieve.

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, the Department finds that SHWMS has supported the Final Regulations as reasonable and consistent with the law, which

requires increased recycling to meet the law's goals. The Department hereby approves the Final Regulations and directs that they be sent to the Delaware *Register of Regulations* for publication in the next available issue with an effective date eleven days after their publication. The Report is hereby adopted to the extent it is consistent with this Order.

The adoption of these Final Regulations will allow Delaware to (1) provide greater environmental protection and reduce human health risks associated with solid waste disposal at landfills; (2) allow the Department to administer the recycling law with regulations designed to promote more recycling, particularly by those who live in multi-family residential apartment complexes and commercial sectors that share with others containers for waste disposal and recycling; and (3) provide notice and reporting requirements that will improve the understanding of recycling and to evaluate the implementation of the Final Regulations.

In conclusion, the Department enters the following ordering paragraphs:

1. Pursuant to 7 **Del.C.** Chapter 6010, the Department has the statutory authority to adopt this Order approving the Final Regulations to promote recycling consistent with 7 **Del.C.** §§6051-59;
2. The Department considered the record developed to support the Final Regulations, as established in the Report, and finds that it supports the adoption of the Final Regulations as a reasonable method to increase recycling to meet the goals set forth in 7 **Del.C.** §6056;
3. The Department provided proper public notices of the proposed regulations and of the public hearing, and the Department properly allowed the public the opportunity to comment on the proposed regulation beginning November 1, 2016 and ending December 9, 2016, including at a November 21, 2016 public hearing, in compliance with the public comment period required by the law;
4. The Report established the record for this decision and recommended adoption of the Final Regulations set forth in Appendix "A" hereto, which also provides additional reasons and findings supporting this Order;
5. The Final Regulations will: (a) encourage greater use of source separated recycling so that recyclable materials are not included with solid waste disposed in landfills; (b) specify that waste service providers and property managers shall provide at least annual notice to their customers and tenants of the availability of recycling at single or multi-family residential apartments and commercial entities; (c) regulate how property managers provide single stream recycling collection services; (d) implement improved recycling in a manner that does not unduly interfere with small businesses, multi-family residential apartment complexes and commercial entities; and (e) to clarify the requirements for commercial sector entities;
6. The Department has reviewed the Final Regulations in the light of the Regulatory Flexibility Act, 29 **Del.C.** Ch. 104, and determines that they are lawful, feasible and desirable, and shall apply to all Delaware citizens equally;
7. The Final Regulations, as set forth in Appendix "A" hereto, are the same as published in the Delaware *Register of Regulations* and shall go into effect by operation of law not less than ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving the Final Regulations as 7 **DE Admin. Code** 1305: *Universal Recycling Regulations*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and the Department's regulations require and as the Department determines is appropriate.

David S. Small
Secretary

1305 Universal Recycling Regulations

1.0 Declaration of Intent

- 1.1 The purposes of these regulations are to ensure the following:
 - 1.1.1 The proper collection services for recyclable materials are implemented, maintained, and consistent with 7 **Del.C.** Ch. 60 Subchapter III.
 - 1.1.2 Recyclables enter the marketplace.
 - 1.1.3 Every residence has access to, and the commercial sector participates in, recycling programs that are both convenient and cost effective, through a comprehensive statewide system of resource recovery in which recycling is maximized and the necessary economies of scale are realized.

2.0 Scope and Applicability

- 2.1 Authority
 - 2.1.1 These regulations are enacted pursuant to 7 **Del.C.** §6010(a).
 - 2.1.2 These regulations shall be known as "Universal Recycling Regulations."
- 2.2 Applicability
 - 2.2.1 These regulations apply to:

- 2.2.1.1 All persons providing municipal solid waste collection services in the State of Delaware;
 - 2.2.1.2 All persons engaged in the collection, aggregation, transportation, processing, or marketing of source-separated recyclable materials. This includes but is not limited to all contractors, subcontractors, and those who contract for service;
 - 2.2.1.3 Commercial sector entities required by 7 Del.C. §6053(4) to participate in comprehensive recycling; and
 - 2.2.1.4 All property managers that are waste services providers in the single and multi-family residential and the commercial sectors.
- 2.3 These regulations exist in addition to Universal Recycling requirements and definitions specified in 7 Del.C. §§6051-6059.

3.0 Definitions

Notwithstanding any definitions in Chapter 60 or 64 of Title 7 or any other regulatory definitions found in the Delaware Regulations Governing Solid Waste to the contrary, the following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise.

"Commercial sector" means any for-profit or not-for-profit retail or wholesale stores, offices, food service establishments, hospitality, utility, warehouses, and other manufacturing, industrial or processing activities, and institutions such as social, charitable, educational, health care, professional and government services.

"Marketplace" means a person or persons that utilize the majority, if not all, of the recyclable materials it receives to produce a marketable product. Incinerators, landfills, and other methods of disposal are disqualified as an acceptable marketplace.

"Property manager" means the person or persons responsible for supervision, management or administration of the physical maintenance or the financial matters of real property. This includes but is not limited to the owner of the property.

"Waste services provider" means the person or persons engaged in providing solid waste collection service to the consumer. This applies to the persons or entities that arrange or contract for the service and the persons or entities that provide that service. The meaning shall be the same for 'Provider of waste service'.

4.0 General Provisions

- 4.1 Waste services providers shall:
 - 4.1.1 Not commingle source-separated recyclables with other solid waste;
 - 4.1.2 At a minimum, provide annual notification to their customers that single stream recycling services will be provided, with instructions on participation; and¹
 - 4.1.3 Provide multi-family residential customers with single stream recyclables collection containers that are located adjacent, or as close as possible, to the complex's waste disposal containers, so that recycling access is at least as convenient as waste disposal.
- 4.2 Property managers:
 - 4.2.1 In the single or multi-family residential sectors shall ensure that single stream recycling services are available for tenants in accordance with 7 Del.C. §6053;
 - 4.2.2 In the commercial sector shall ensure that single stream recycling services are available for tenants in a manner that is convenient and cost effective;
 - 4.2.3 At a minimum, provide annual notification to their tenants that single stream recycling services will be provided with instructions on participation; and¹
 - 4.2.4 Are not precluded from requiring tenants to source-separate their single stream recyclable materials and place them in the appropriate recycling collection containers.
- 4.3 The commercial sector shall participate in a comprehensive recycling program. To accomplish this, all commercial sector persons shall:
 - 4.3.1 Perform an annual review of the solid waste generated and maintain records of the review for three years;
 - 4.3.2 Identify recyclables in the solid waste;
 - 4.3.3 Subsequently keep recyclables separate from the solid waste stream; and
 - 4.3.4 Ensure the recyclables enter the marketplace or are collected for recycling.

1. In those instances where the property manager and the waste service provider are one and the same, only one annual notice shall be required.

- 4.4 If a commercial sector entity has no recycling program or if they regularly have a significant portion of recyclables in their waste stream that are not source separated, they are not participating in a comprehensive recycling program and are subject to enforcement and penalties per Title 7 Chapter 60.
- 4.5 The exemption for persons who transport solid waste and recyclables from their own property as described in 7 Del.C. §6053(5) shall not include persons who act as a waste services provider to residences or tenants on their own property.

20 DE Reg. 648 (02/01/17) (Final)