

CHAPTER 391

AN ACT concerning the use of postconsumer recycled content in certain containers and packaging products and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.13:1E-99.135 Definitions.

1. As used in this act:

“Beverage” means any of the following products if those products are in liquid, ready-to-drink form, and are intended for human consumption: beer and other malt beverages; wine and distilled spirit coolers; carbonated water, including soda and carbonated mineral water; noncarbonated water, including noncarbonated mineral water; carbonated soft drinks; noncarbonated soft drinks and sport drinks; noncarbonated fruit drinks that contain any percentage of fruit juice; coffee and tea drinks; carbonated fruit drinks; and vegetable juice.

“Commissioner” means the Commissioner of Environmental Protection.

“Department” means the Department of Environmental Protection.

“Food” means articles used for food or drink for consumption by humans or other animals, and articles used for components of any such article.

“Glass container” means a container made of glass that is filled with a food or beverage.

“Hot fill process” means a process to sterilize both a food product and its container during the food packaging process, in which the food product is heated to a temperature between 194 and 203 degrees Fahrenheit and then injected into the container.

“Licensee” means a manufacturer or entity who licenses a brand and manufactures a product under that brand.

“Manufacturer” means: (1) a person that produces or generates a rigid plastic container, paper carryout bag, plastic carryout bag, or plastic trash bag that does not contain a product and that is sold or offered for sale in the State; (2) a person that is the brand owner of a product that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container, unless the brand owner identifies a licensee who agrees to accept responsibility under this act and the licensee informs the department in writing of the agreement; or (3) in the absence of a person meeting the criteria in (1) or (2) of this definition over whom the State may exercise jurisdiction, a person who imports or distributes a product into or within the State that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container. “Manufacturer” shall not include a person who, at a single physical location, produces, packages, and sells a product directly to a consumer at retail, which may include a grocery store, restaurant, bar, cafeteria, café, food truck, food cart, or similar establishment.

“Paper carryout bag” means a bag made of paper that is sold or provided by a store to a customer for the purpose of containing, carrying, and transporting food, beverages, or retail goods.

“Person” means an individual, corporation, company, association, society, firm, partnership, or joint stock company.

“Plastic” means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal. “Plastic” shall not include material that is designed to be composted in a municipal or industrial aerobic composting facility and that is certified by a recognized third-party independent verification body as meeting the standards therefor established by the American Society for Testing and Materials in ASTM D6400 or ASTM D6868.

“Plastic beverage container” means an individual, separate bottle, can, jar, carton, or other container made of plastic that is hermetically sealed or made airtight with a metal or plastic cap,

and that contains a beverage. “Plastic beverage container” shall not include any label, cap, closure, or other item affixed to the container.

“Plastic carryout bag” means a bag made of plastic, of any thickness, whether woven or nonwoven, that is sold or provided by a store to a customer for the purpose of containing, carrying, and transporting food, beverages, or retail goods.

“Plastic trash bag” means a bag that is made of plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded, composted, or recycled, and includes, but is not limited to, a garbage bag, lawn or leaf bag, can-liner bag, kitchen bag, or compactor bag.

“Postconsumer recycled content” means a material or product that has completed its intended end use and product life cycle, and which has been separated from the solid waste stream for the purposes of collection and recycling. “Postconsumer recycled content” shall not include secondary waste material or materials and by-products generated from, and commonly used within, an original manufacturing and fabrication process.

“Rigid plastic container” means a container made of plastic that has a relatively inflexible finite shape or form, has a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, and is capable of maintaining its shape while empty or while holding other products.

C.13:1E-99.136 Calculation of postconsumer recycled content.

2. a. A manufacturer shall achieve compliance with the postconsumer recycled content requirements of this act based on the average amount of postconsumer recycled content, by weight or another metric, as determined by the department, contained in its products. A manufacturer shall calculate the average amount of postconsumer recycled content contained in its products using data specific to products sold or offered for sale in New Jersey, if such data are available. If a manufacturer demonstrates to the department that State-specific data are not available or feasible to generate, then the manufacturer may utilize national data to calculate the average amount of postconsumer recycled content contained in its products. The calculation of averages may be based on a manufacturer's entire product line or separated into product sub-lines, provided that all of the manufacturer's products are accounted for in the calculations.

b. If a manufacturer relies on national data to calculate the average amount of postconsumer recycled content contained in its products, the manufacturer shall:

(1) prorate the national data based on market share or population, to ensure that the percentage of postconsumer recycled content calculated for products sold in New Jersey is the same percentage as calculated for the nation; and

(2) document the methodology used to prorate the national data in the report required pursuant to paragraph (1) of subsection a. of section 14 of this act.

c. For the purposes of this section, “product” means a rigid plastic container, plastic beverage container, glass container, paper carryout bag, plastic carryout bag, or plastic trash bag that is subject to the postconsumer recycled content requirements of this act.

C.13:1E-99.137 Rigid plastic containers, percentage of postconsumer recycled content increase; certain exemptions.

3. a. (1) Beginning two years after the effective date of this act, all rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer shall contain, on average, at least 10 percent postconsumer recycled content.

(2) Beginning five years after the effective date of this act, and every three years thereafter, the percentage of postconsumer recycled content required for rigid plastic containers pursuant to this section shall increase by 10 percent, until reaching 50 percent.

b. A rigid plastic container shall be exempt from the postconsumer recycled content requirements of subsection a. of this section if it:

(1) is a plastic beverage container, to which the requirements of section 4 of this act shall apply;

(2) is associated with a product produced in or brought into the State that is destined for shipment to a destination outside the State, and that remains with the product upon shipment;

(3) contains drugs, dietary supplements, medical devices, or cosmetics as those terms are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.;

(4) contains toxic or hazardous products regulated under the “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C. s.136 et seq.;

(5) is manufactured for use in the shipment of hazardous materials and is: (a) prohibited from being manufactured with used material by federal packaging material specifications set forth in 49 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R. s.178.609, or (c) is subject to the recommendations of the United Nations on the transport of dangerous goods; or

(6) is a refillable container or a reusable container. For the purposes of this paragraph, “refillable container” means a rigid plastic container that is routinely returned to and refilled by the manufacturer with the same product packaged by the container; and “reusable container” means a rigid plastic container that is routinely reused by consumers to store the original product packaged by the container.

C.13:1E-99.138 Plastic beverage containers, percentage of postconsumer recycled content increase.

4. a. (1) Beginning two years after the effective date of this act, all plastic beverage containers sold or offered for sale in the State by a manufacturer shall contain, on average, at least 15 percent postconsumer recycled content.

(2) Beginning five years after the effective date of this act, and every three years thereafter, the amount of postconsumer recycled content required for plastic beverage containers pursuant to this section shall increase by five percent, until reaching 50 percent; except that the postconsumer recycled content requirement for manufacturers who utilize a hot fill process shall not exceed 30 percent.

b. The provisions of subsection a. of this section shall not apply to a refillable beverage container. For the purposes of this subsection, “refillable beverage container” means a beverage container that holds 150 fluid ounces or less of beverage, and which is routinely returned to the manufacturer to be refilled and resold.

C.13:1E-99.139 Glass containers, percentage of postconsumer recycled content increase.

5. a. Beginning two years after the effective date of this act, all glass containers sold or offered for sale in the State by a manufacturer shall contain, on average, at least 35 percent postconsumer recycled content; except that, if a manufacturer certifies to the department that its use of postconsumer recycled content is made up of at least 50 percent mixed-color cullet, then the glass containers shall only be required to contain, on average, at least 25 percent postconsumer recycled content.

b. As used in this section, “mixed-color cullet” means cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for the color mix of color-sorted, post-filled glass as a raw material for the manufacture of glass containers.

C.13:1E-99.140 Paper carryout bags, percentage of postconsumer recycled content increase.

6. Beginning two years after the effective date of this act, all paper carryout bags sold or offered for sale in the State by a manufacturer shall contain, on average, at least 40 percent postconsumer recycled content; except that a paper carryout bag that holds eight pounds or less shall only be required to contain, on average, at least 20 percent postconsumer recycled content.

C.13:1E-99.141 Plastic carryout bags, percentage of postconsumer recycled content increase.

7. All plastic carryout bags sold or offered for sale in the State by a manufacturer shall:

- a. beginning two years after the effective date of this act, contain, on average, at least 20 percent postconsumer recycled content; and
- b. beginning five years after the effective date of this act, contain, on average, at least 40 percent postconsumer recycled content.

C.13:1E-99.142 Plastic trash bags, percentage of postconsumer recycled content increase.

8. a. All plastic trash bags sold or offered for sale in the State by a manufacturer shall:

- (1) beginning two years after the effective date of this act, contain the following proportion of postconsumer recycled content:
 - (a) for plastic trash bags greater than 0.70 mils thick but less than 0.80 mils thick, at least five percent;
 - (b) for plastic trash bags greater than 0.80 mils thick but less than 1.00 mils thick, at least 10 percent; and
 - (c) for plastic trash bags equal to or greater than 1.00 mils thick, at least 20 percent; and
- (2) beginning five years after the effective date of this act, contain the following proportion of postconsumer recycled content:
 - (a) for plastic trash bags greater than 0.70 mils thick but less than 0.80 mils thick, at least 10 percent;
 - (b) for plastic trash bags greater than 0.80 mils thick but less than 1.00 mils thick, at least 20 percent; and
 - (c) for plastic trash bags equal to or greater than 1.00 mils thick, at least 40 percent.

b. The provisions of subsection a. of this section shall not apply to a bag that is designed and manufactured to hold, store, or transport hazardous waste or regulated medical waste. For the purposes of this subsection, “hazardous waste” means any solid waste defined as hazardous waste by the department pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.); and “regulated medical waste” means the same as that term is defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3).

C.13:1E-99.143 Adjustment of postconsumer recycled content requirements, authority.

9. a. Notwithstanding the provisions of this act to the contrary, the department may, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any of the postconsumer recycled content requirements established in sections 3 through 8 of this act. In making an adjustment pursuant to this section, the department shall consider:

- (1) changes in market conditions, including supply and demand for postconsumer recycled content, collection rates, and bale availability both domestically and globally;

- (2) recycling rates, as may be determined by the department;
 - (3) the availability of recycled material suitable for manufacturers to meet the postconsumer recycled content requirements, including the availability of high-quality recycled plastic or glass, and food-grade recycled plastic or glass;
 - (4) the capacity of recycling or processing infrastructure;
 - (5) the progress made by manufacturers in meeting the postconsumer recycled content requirements; and
 - (6) any other factors as determined by the department pursuant to rule, regulation, or guidance.
- b. Any adjustment to the postconsumer recycled content requirements made pursuant to this section shall be only for a time-period, and only under such conditions, as the department may by rule or regulation establish.

C.13:1E-99.144 Certain exemptions for postconsumer recycled content requirements.

10. a. A package or container that contains milk products, plant-based products with names that include the names of dairy foods such as “milk,” medical food, food for special dietary use, or infant formula shall be exempt from the postconsumer recycled content requirements of this act.

b. (1) A package or container that contains food shall be exempt from the postconsumer recycled content requirements of this act for a period of five years beginning on the effective date of this act, except that the exemption provided in this paragraph shall not apply to a plastic beverage container or a glass container filled with a beverage.

(2) The department may, in its discretion, extend the five-year exemption provided in paragraph (1) of this subsection. Upon expiration of the exemption, a manufacturer shall be subject to the applicable postconsumer recycled content requirements in effect at the time of the expiration, unless the manufacturer applies to, and receives from, the department a waiver pursuant to section 11 of this act.

c. As used in this section:

“Food for special dietary use” means the same as the term is defined in 21 U.S.C. s.350.

“Medical food” and “infant formula” mean the same as those terms are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.

“Milk product” means the same as that term is defined by the United States Food and Drug Administration.

C.13:1E-99.145 Waivers, criteria.

11. a. A manufacturer may apply to the department for a waiver from the postconsumer recycled content requirements established pursuant to this act. The department may grant a waiver pursuant to this section if the manufacturer demonstrates, and the department finds, in writing, that:

(1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other State or federal law, rule, or regulation;

(2) it is not technologically feasible for the manufacturer to achieve the postconsumer recycled content requirements;

(3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or

(4) the manufacturer cannot comply for another reason as determined by the department pursuant to rule, regulation, or guidance.

b. In order to qualify for a waiver from the postconsumer recycled content requirements of this act, a manufacturer shall submit to the department documentation from a federal or State agency or certified third-party expert, as appropriate, demonstrating that the manufacturer cannot comply with the postconsumer recycled content requirements for one of the reasons set forth in subsection a. of this section, and pay a \$1,000 waiver fee. The department may modify the amount of the waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s costs to administer, monitor, and enforce the provisions of this section. Notwithstanding the provisions of this subsection to the contrary, a manufacturer that demonstrates to the department that the manufacturer’s gross revenue is below \$5,000,000 shall not be required to pay the waiver fee established pursuant to this section.

c. The department may grant a waiver from the postconsumer recycled content requirements for a period of not less than two years, as determined by the department. The department shall publish any determination to grant a waiver from the postconsumer recycled content requirements on its Internet website. The department shall develop a standardized form and procedure for manufacturers to apply for a waiver pursuant to this section.

C.13:1E-99.146 Alternative compliance plan, requirements.

12. a. The department may require a manufacturer that is temporarily exempt from the postconsumer recycled content requirements of this act pursuant to subsection b. of section 10 of this act, or that has submitted a request for a waiver pursuant to section 11 of this act, to prepare and submit to the department an alternative compliance plan that demonstrates that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, collection, recycling, and reuse of rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, or plastic trash bags made from virgin plastic, glass, or paper, as applicable, and to ensure the use of postconsumer recycled content.

b. The department shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations setting forth the substantive requirements for an alternative compliance plan required pursuant to subsection a. of this section.

c. The department shall have the authority to approve or disapprove an alternative compliance plan prepared and submitted pursuant to this section, and to require a manufacturer to make any revisions or modifications to its alternative compliance plan as the department determines necessary, consistent with the provisions of this act and the rules and regulations adopted by the department.

d. A manufacturer shall undertake all of the actions described in the alternative compliance plan. Failure by a manufacturer to comply with an approved alternative compliance plan shall constitute a violation of this act.

e. The department may enter into a contract or other legally binding agreement with one or more trade associations representing manufacturers, which shall allow the trade association, in lieu of the manufacturers, to prepare and submit an alternative compliance plan pursuant to this section and to undertake the actions described in the alternative compliance plan.

C.13:1E-99.147 Registration, fees, certain exemptions.

13. a. Beginning six months after the effective date of this act, and annually thereafter, each manufacturer shall register with the department, in a form and manner as prescribed by the department, and pay an annual registration fee of \$1,000. The department may modify the amount of the registration fee, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s costs to implement, administer, monitor, and enforce the provisions of this act. The department shall establish an electronic

registration process on its Internet website; however, the lack of an electronic registration process shall not negate the requirement for a manufacturer to register pursuant to this subsection. Notwithstanding the provisions of this subsection to the contrary: (1) a manufacturer that demonstrates to the department that the manufacturer's gross revenue is below \$5,000,000 shall not be required to pay the registration fee established pursuant to this section; or (2) a manufacturer that produces or generates only products that are exempt from the provisions of this act shall be required to register with the department only once, and shall be exempt from the registration fee.

b. Notwithstanding the provisions of section 16 of this act to the contrary, a manufacturer that fails to register with the department pursuant to subsection a. of this section shall first receive a written warning. A manufacturer that receives a written warning shall register with the department no later than 90 days after receipt of the warning. A manufacturer that receives a written warning and that fails to register with the department within 90 days of receipt of the warning shall be subject to the penalties set forth in section 16 of this act.

C.13:1E-99.148 Compliance, certification, proof of exemption.

14. a. (1) Beginning three years and six months after the effective date of this act, and annually thereafter, each manufacturer shall certify, in writing, to the department whether or not the rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, or plastic trash bags, as applicable, sold, offered for sale, or used in association with the sale or offer for sale of a product in the State, are in compliance with the postconsumer recycled content requirements of this act, or are otherwise exempt or have been approved for a waiver from the requirements. If the manufacturer claims an exemption from the requirements of this act, the manufacturer shall set forth the specific basis upon which the exemption is claimed, and submit such proof as the department determines necessary. The certification shall be signed by an authorized representative of the manufacturer. A manufacturer shall submit the certification, in the form and manner determined by the department, under penalty of perjury. The certification shall include the amount, in pounds, of virgin plastic, glass, or paper and the amount, in pounds, of postconsumer recycled material used by the manufacturer for any products subject to the requirements of this act, and any other information as the department deems necessary. The department shall establish an electronic certification process on its Internet website; however, the lack of an electronic certification process shall not negate the requirement for a manufacturer to certify its compliance pursuant to this subsection.

(2) The department may, in consultation with manufacturers, study: (a) whether there exist independent, third-party verification organizations that can verify manufacturers' compliance with the requirements of this act; and (b) appropriate accreditation standards for such organizations. The department may prepare and submit a report including its findings to the Governor, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the members of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors.

b. Each manufacturer shall maintain records, in a form prescribed by the department, that demonstrate, for all rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, or plastic trash bags generated or produced by the manufacturer, whether and how the manufacturer has complied with the postconsumer recycled content requirements, or whether the manufacturer qualifies for an exemption or waiver from the postconsumer recycled content requirements. The department may adopt specific requirements for the records required to be maintained pursuant to this subsection and may request the records from a manufacturer at any time. A manufacturer shall submit records

to the department no later than 30 days after receipt of a request, unless the department extends that timeframe.

c. The department may audit or investigate a manufacturer, at any time, to assess the manufacturer's compliance with the requirements of this act. Each year, the department may audit, or cause to be audited, a random sample of manufacturers in order to determine compliance with this act. A manufacturer shall cooperate fully with any audit or investigation conducted pursuant to this section. The department may require a manufacturer to pay the costs of an audit conducted pursuant to this subsection.

d. The department shall annually publish a list of registered manufacturers, their compliance status, and other information the department deems appropriate on the department's Internet website.

C.13:1E-99.149 Restriction on polystyrene loose fill packaging.

15. a. Beginning two years after the effective date of this act, no person shall sell or offer for sale in the State any polystyrene loose fill packaging.

b. As used in this section:

"Polystyrene foam" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

"Polystyrene loose fill packaging," commonly known as packing peanuts, means a void-filling packaging product made of polystyrene foam that is used as a packaging fill.

C.13:1E-99.150 Violations, penalties.

16. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of this act, the commissioner may take one or more of the following actions:

(1) issue an order in accordance with subsection b. of this section requiring the person to comply;

(2) bring a civil action in accordance with subsection c. of this section;

(3) levy a civil administrative penalty in accordance with subsection d. of this section;

(4) bring an action for a civil penalty in accordance with subsection e. of this section;

(5) require a manufacturer to submit a corrective action plan pursuant to subsection f. of this section; or

(6) notify the public of a manufacturer which, at any time during a reporting period, was not in compliance with the requirements of this act.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of this act, the commissioner may issue an order: (1) specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation; (2) citing the action that caused the violation; (3) requiring compliance with the provision of this act or the rule or regulation adopted pursuant thereto of which the person is in violation; and (4) giving notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief from a violation of this act. This relief may include an assessment against the violator for the costs of any investigation, inspection, or audit that led to the discovery and

establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection.

d. (1) The commissioner is authorized to impose a civil administrative penalty of not less than \$1,000 and not more than \$25,000 for each violation of this act or any rule or regulation adopted pursuant thereto, and each day of the violation shall constitute an additional, separate, and distinct offense. Any amount imposed under this subsection shall be assessed pursuant to rules and regulations adopted by the commissioner for violations of similar type, seriousness, and duration. The commissioner shall have the authority to assess penalties prior to the establishment of rules and regulations governing penalties to the extent that such penalties are reasonable and based on other violations of a similar type, seriousness, and duration. No civil administrative penalty shall be imposed until after the person has been notified by certified mail or personal service. The notice shall include: a reference to the section of the act, rule, regulation, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil administrative penalties to be imposed; and a statement of the person's right to a hearing. The person shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon finding that a violation has occurred, the commissioner may issue a final order or civil administrative penalty after imposing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order or a final civil administrative penalty upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order or a final civil administrative penalty. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. A civil administrative penalty imposed under this subsection may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon terms and conditions the commissioner may establish by rule or regulation.

(2) With respect to violations related to the amount of recycled content contained in a manufacturer's products, in lieu of the penalties provided for in paragraph (1) of this subsection, the department shall assess a civil administrative penalty on a per-pound basis for each pound of virgin material that is used by a manufacturer in its products where recycled material is required pursuant to this act. The department shall establish the per-pound penalty in the rules and regulations adopted to implement this act.

(3) In addition to the assessment of a civil administrative penalty, the commissioner may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs of any investigation, inspection, or audit which led to the establishment of the violation.

e. Any person who violates this act, an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty not to exceed \$50,000, and each day of the violation shall constitute an additional, separate, and distinct offense. Any penalty imposed pursuant to this subsection may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and the municipal court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. The department is authorized to require a manufacturer that violates the provisions of this act, or any rule or regulation adopted pursuant thereto, to submit a corrective action plan describing how the manufacturer intends to come into compliance with the provisions of this act. The

department shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations setting forth the substantive requirements for corrective action plans.

g. In addition to the penalties and remedies provided above, a person who knowingly, purposely, or recklessly makes a false or misleading statement on any certification or registration submitted to the department pursuant to this act shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000 and restitution. The department shall refer the provider of any false or misleading statement to the Attorney General for prosecution.

C.13:1E-99.151 Protection of proprietary information, trade secrets.

17. Any proprietary information or trade secrets included in any registration, certification, alternative compliance plan, corrective action plan, or any other record submitted to the department pursuant to this act shall not be made available to the general public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open public records act.

C.13:1E-99.152 “Recycling Enhancement Penalty Account” established, Department of the Treasury.

18. a. There is established in the Department of the Treasury a special, non-lapsing account to be known as the “Recycling Enhancement Penalty Account.” The account shall be credited with all penalties collected pursuant to section 16 of this act, and any interest or investment income earned on monies in the account. Moneys in the account may be utilized by the department for administrative expenses incurred in connection with the enforcement or implementation of this act, for the public education program required pursuant to subsection b. of this section, and for other efforts to support recycling markets in the State as the department may determine.

b. The department, in consultation with the Association of New Jersey Recyclers and the organization under contract with the department to administer the Clean Communities Program pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and implement a Statewide public information and education program to encourage, support, and increase the recycling of rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, and any other containers or packaging products, which may include, but need not be limited to, television, radio, and print advertisements, signage, or classroom education.

C.13:1E-99.153 Act supersedes local laws.

19. A municipality or county shall not adopt any rule, regulation, code, or ordinance regulating the postconsumer recycled content of rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, or plastic trash bags after the effective date of this act. The provisions of this act shall supersede and preempt any municipal or county rule, regulation, code, or ordinance regulating the recycled content of rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, plastic carryout bags, or plastic trash bags that was enacted prior to the effective date of this act.

C.13:1E-99.154 Liability on news media.

20. Nothing in this act shall be construed to impose liability on any news media that accept or publish advertising for any product that would otherwise be subject to the provisions of this act.

C.13:1E-99.155 P.L.2020, c.117 not affected.

21. Nothing in this act shall be construed to alter, limit, or otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-99.126 et al.).

C.13:1E-99.156 Rules and regulations, incentives to collect, reuse polyethylene film.

22. a. No later than two years after the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this act. The rules and regulations shall also establish incentives, to the extent that funds are appropriated therefor, for manufacturers, recyclers, and retailers to collect and reuse polyethylene film.

b. Prior to the adoption of rules and regulations, and as necessary thereafter, the department may develop guidance as necessary for the implementation of this act. The department shall publish any such guidance on its Internet website.

C.13:1E-99.157 Assessment of implementation, report to the Governor, Legislature, Senate Environment and Energy Committee, Assembly Environment and Solid Waste Committee.

23. No later than five years after the effective date of this act, the department shall prepare and submit a report to the Governor, to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the members of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors, assessing the implementation of this act, evaluating the act's effectiveness in stimulating the recycling markets in the State, and making any recommendations for legislative or administrative action necessary to further the purposes of this act, including recommendations for whether and how the State should encourage, require, or support other uses of recycled material.

24. This act shall take effect immediately.

Approved January 18, 2022.