

# **A LOCAL LAW ESTABLISHING SOLAR PANEL RECYCLING REGULATIONS**

WHEREAS, Legislator David Godfrey presents in writing the following proposed Local Law:

A Local Law of the County of Niagara, New York, a local law establishing Solar Panel Recycling Regulations

Be it enacted by the County Legislature of the County of Niagara as follows:

A new Niagara County Local Law is hereby enacted to read as follows:

## **SOLAR PANEL RECYCLING REGULATIONS**

### Section 1. Regulations Established.

There has been a rise in the use of solar panels which in turn leads to an accumulation of photovoltaic waste when they reach the end of their life. Photovoltaic modules contain various valuable materials and rare metals, and providing for their proper recycling will not only ensure that these materials and metals are able to be reused, but also that the panels do not prematurely enter the waste stream where they can have potential negative environmental effects.

The legislature finds that a convenient, safe and environmentally sound system for the recycling of photovoltaic modules, minimization of hazardous waste, and recovery of commercially valuable materials must be established. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the takeback and recycling system.

Beginning August 1, 2022, no manufacturer, distributor, retailer or installer may sell or offer for sale a photovoltaic module in or into the County unless the manufacturer of the photovoltaic module is in full compliance with this Local law.

### Section 2. Definitions

1. Brand: a name, symbols, words or marks that identify a photovoltaic module and attribute the photovoltaic module to the manufacturer of the photovoltaic module
2. Consumer Electronic Device: any device containing an electronic circuit board that is intended for everyday use by individuals, such as a watch or calculator
3. County: Niagara County, New York
4. Distributor: a person who markets and sells photovoltaic modules to retailers in the County
5. Environmentally Sound Management: includes the following management practices, implemented in a manner that is designed to protect public health, safety, and the environment
  - a. Adequate record keeping
  - b. Detailed documentation of methods used to
    - i. Manage end-of-life photovoltaic modules collected as part of a photovoltaic module stewardship program and
    - ii. Track and document the fate of end-of-life photovoltaic modules from collection through final disposition within this state and outside the state
  - c. Performance audits and inspections of recyclers, haulers, and other parties as determined by a stewardship organization
  - d. Compliance with worker health and safety requirements and
  - e. Maintenance of adequate liability insurance for a stewardship organization and contractors working for the stewardship organization
6. Installation Components: any materials used to install and hold photovoltaic modules in place or collect energy from these modules, such as bracketing, wiring, inverters or batteries

7. Installer: a person who assembles, installs, and maintains photovoltaic module systems
8. Manufacturer: any person in business or no longer in business but having a successor in interest who, irrespective of the selling technique used, including by means of distance or remote sale:
  - a. Manufacturers or has manufactured a photovoltaic module under its own brand names for use or sale in or into this County
  - b. Assembles or has assembled a photovoltaic module that uses parts manufactured by others for use or sale in or into this County under the assembler's brand names
  - c. Resells or has resold in or into this County under its own brand names a photovoltaic module produced by other suppliers, including retail establishments that sell photovoltaic modules under their own brand names
  - d. Manufactures or has manufactured a cobranded photovoltaic module product for use or sale in or into this County that carries the name of both the manufacturer and a retailer
  - e. Imports or has imported a photovoltaic module into the United State that is used or sold in or into this County. However, if the imported photovoltaic module is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer
  - f. Sells at retail a photovoltaic module acquired from an importer that is the manufacturer and elects to register as the manufacturer for those products, or
  - g. Elects to assume the responsibility and register in lieu of a manufacturer as defined under (a) through (d) of this subsection.
9. Market share: a manufacturer's percentage of all photovoltaic modules sold in the County
10. Panel: a solar photovoltaic panel including an approximate size range of 39" to 48" wide to 60" to 82" long with an intended use to generate electricity
11. Photovoltaic module: the smallest nondivisible, environmentally protected assembly of photovoltaic cells or other photovoltaic collector technology and ancillary parts intended to generate electrical power under sunlight, except that "photovoltaic module" does not include a photovoltaic cell that is part of a consumer electronic device for which is provides electricity needed to make the consumer electronic device function. "Photovoltaic module" includes but is not limited to interconnections, terminals, and protective devices such as diodes that
  - a. Are installed on, connected to, or integral with buildings
  - b. Are used as components of freestanding, off-grid, power generation systems, such as for powering water pumping stations, electric vehicle charging stations, fencing, street and signage lights, and other commercial or agricultural purposes; or
  - c. Are part of a system connected to the grid or utility service
12. Predecessor: an entity from which a manufacturer purchased a photovoltaic module brand, its warranty obligations, and its liabilities. Predecessor does not include entities from which a manufacturer purchased only manufacturing equipment
13. Rare-earth element: lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, yttrium or scandium
14. Recovery: the collection of photovoltaic modules and installation components
15. Recycling: the series of activities by which a covered material is collected, sorted, and processed; converted into a raw material with minimal loss of material quality; and used in the production of a new product, including the original product. Recycling does not include energy recovery, energy generation by means of combustion, use as a fuel, landfill disposal or use as alternative operating cover or within the footprint of a landfill
16. Retailer: a person that offers photovoltaic modules for sale at retail through any means, including but not limited to remote offerings such as sales outlets, catalogs or the internet
17. Reuse: any operation by which a photovoltaic module or component of a photovoltaic module changes ownership and is used for the same purpose for which it was originally purchased
18. Stewardship organization: a corporation, nonprofit organization or other legal entity designated by a manufacturer or a group of manufacturers to implement a photovoltaic module stewardship program

19. Stewardship plan: the plan developed by a manufacturer or its designated stewardship organization for a self-directed stewardship program
20. Stewardship program: the activities conducted by a manufacturer or stewardship organization to fulfill the requirements of this Local Law and implement the activities described in its stewardship plan

### Section 3. Stewardship Organization

A stewardship organization may be designated to act as an agent on behalf of a manufacturer or manufacturers in operating and implementing the stewardship program required under this Local law. Any stewardship organization that has obtained designation must provide to the County a list of the manufacturers and brand names that the stewardship organization represents within 60 days of its designation by a manufacturer as its agent, or within sixty days of removal of such designation.

### Section 4. Stewardship Plan

The Stewardship Plan must provide for takeback of photovoltaic modules and installation components at convenient locations within the County to minimize the release of hazardous substances into the environment and maximize the recovery of other components, including rare earth elements and commercially valuable materials.

In developing a stewardship plan to ensure the convenient, safe, and environmentally sound takeback and recycling of photovoltaic modules and installation components and materials, a manufacturer or stewardship organization must consult with the County and other interested stakeholders. This should include, at a minimum, one meeting with the County prior to submitting the stewardship plan for initial review.

Each manufacturer or Stewardship organization must prepare and submit a stewardship plan to the County by the later of August 1, 2022, or within thirty days of its first sale of a photovoltaic module in or into the County. A stewardship organization may prepare, submit, and implement a stewardship plan on behalf of one or more manufacturers. A stewardship plan must, at a minimum:

1. Describe how manufacturers will finance the takeback and recycling system, and include an adequate funding mechanism to finance the costs of collection, management, and recycling of photovoltaic modules and residuals sold in or into the County by the manufacturer with a mechanism that ensures that photovoltaic modules can be delivered to takeback locations without cost to the last owner or holder
  - a. No retailer may charge a point-of-sale or other fee to consumers to facilitate a producer to recoup the costs associated with meeting the obligations under this title.
  - b. Funds directly collected by the stewardship organization shall not be used to carry out lobbying activities on behalf of the stewardship organization.
2. Describe how manufacturers will accept all of their photovoltaic modules sold in or into the County
  - a. Should a manufacturer or stewardship organization establish any photovoltaic module recycling facilities or infrastructure within the County, the establishment of said facility or infrastructures shall be subject to rules and regulations promulgated by the County pursuant to Section 9 of this Local law.
3. Describe how the program will minimize the release of hazardous substances into the environment and maximize the recovery of other components, including rare earth elements and commercially valuable materials
4. Provide for takeback of photovoltaic modules at convenient locations within the County. At a minimum, takeback must include ongoing drop-off locations as well as quarterly on-site pickup and/or drop off events that are accessible to all residents of the County
5. Provide information to relevant stakeholders to enable stakeholders to properly dismantle, transport and treat end-of-life photovoltaic modules in a manner consistent with environmentally sound management practices

- a. Manufacturers or a stewardship organization representing them must establish and maintain a public website that provides information about collection sites under the program and lists manufacturers participating in the stewardship organization under the program plan and the brands of photovoltaic modules that are sold or offered for sale in this state by participating manufacturers. They must also conduct outreach efforts to inform all covered entities about the photovoltaic module stewardship and takeback program and the opportunity to return and recycle photovoltaic modules at no cost.
6. Establish performance goals, including:
  - a. A goal for recovery and responsible management of photovoltaic modules and installation components as a percentage of the total weight sold, which must be no less than one hundred percent by August 1, 2026 and
  - b. A goal for the rate of combined reuse and recycling of collected photovoltaic modules and installation components as a percentage of the total weight collected, which must be no less than sixty-five percent by August 1, 2026 and no less than eighty-five percent by August 1, 2031
7. Include a plan for maintaining a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner in the event of stewardship organization closure.

A manufacturer must implement the stewardship plan pursuant to Section 4 of this Law. A manufacturer may periodically amend its stewardship plan in the form and manner prescribed by the County. The County shall approve or reject a program plan and program plan amendment pursuant to Section 7 of this Law.

In lieu of preparing a stewardship plan and as provided in this section, a manufacturer may participate in a state program for the convenient, safe and environmentally sound takeback and recycling of photovoltaic modules and installation components and materials, if substantially equivalent to the intent of the County program. The County may determine substantial equivalence if it determines that the state program adequately addressed and fulfills each of the elements of a stewardship plan outlined in the Section and includes an enforcement mechanism reasonably calculated to ensure a manufacturer's compliance with the state program. Upon issuing a determination of substantial equivalence, the County must notify affected stakeholders including the manufacturer. If the state program is discontinued or the County determines the state program is no longer substantially equivalent to the County program, the County must notify the manufacturer and the manufacturer must provide a stewardship plan to the County for approval within thirty days of notification.

#### Section 5. Administrative Fees

The County shall establish and collect the following fees from a manufacturer or stewardship organization:

- (a) A fixed, one-time fee reasonably calculated to cover the costs of reviewing the photovoltaic module stewardship program plan.
- (b) An annual fee charged to each stewardship organization or manufacturer reasonably calculated to cover the costs of administering, implementing, and enforcing this law.

The fee calculated for each stewardship organization or manufacturer under subsection (b) of this section must be proportionate to the market share of all photovoltaic modules sold in the County by the manufacturers registered with the stewardship program. The County may make a reasonable estimate of the market share of a manufacturer for any year for which market share information for that manufacturer has not been provided to the County.

#### Section 6. Enforcement and Penalties

Should the manufacturer or Stewardship Organization not be in compliance with this Law, the County must send a written warning to a manufacturer that is not participating in a plan. The written warning must inform the manufacturer or stewardship organization that it must submit a plan or participate in a plan within thirty (30) days of the notice. The County may assess a penalty of up to \$100.00 per panel per day of violation

sold by a manufacturer that occurs in or into the County of photovoltaic module for which a stewardship plan has not been submitted by the manufacturer or stewardship organization or has not been approved by the County after the initial written warning. A manufacturer or stewardship organization may appeal a penalty issued under this section to a court of proper jurisdiction in Niagara County, New York within one hundred eighty days of receipt of the notice.

The County must send a written warning to a distributor, retailer or installer that sells or installs a photovoltaic module made by a manufacturer that is not participating in a plan. The written warning must inform the distributor, retailer, or installer that they may no longer sell or install a photovoltaic module if a stewardship plan for that brand has not been submitted by the manufacturer and approved by the County within the thirty days of the notice.

### Section 7. Implementation Timeline

1. The County shall approve a plan if the stewardship organization or manufacturer submits a completed plan, the proposed plan meets the requirements under Section 4 of this Law and the stewardship organization pays the fee established by the County in Section 5
2. No later than sixty (60) days after receiving the plan under this Law, the County shall approve or reject the plan. If the County rejects the plan, the County shall inform the stewardship organization of the reason(s) for rejection.
  - a. Should the County reject the plan, no later than sixty (60) days after the rejection, a stewardship organization must submit to the County a revised plan. No later than ninety (90) days after receiving a revised plan under this Section, the County shall approve or reject the revised plan
3. A stewardship organization must implement a stewardship plan approved under this section within 90 days of the date on which the County approve the plan.

### Section 8. Annual Report

Beginning April 1, 2023 and by April 1<sup>st</sup> in each subsequent year, a manufacturer, or its designated stewardship organization, must provide to the County a report for the previous calendar year that documents implementation of the stewardship plan and assesses achievement of the performance goals established in this section

The report may include any recommendations to the County and County legislature on modifications to the program that would enhance the effectiveness of the program, including management of program costs and mitigation of environmental impacts of photovoltaic modules

The Annual Report submitted must include, at a minimum:

1. The name and address of each manufacturer represented by the stewardship organization
2. The makeup of the stewardship organizations Board of Directors
3. The total cost of implementing the program, including a breakdown of administrative, collection, transportation, and disposition costs, as determined by an independent financial audit funded by the stewardship organization
4. A description of program operations and activities including collection services. If collection site requirements were not fully met, explain how requirements will be met the following year
5. Documentation of program outreach to stakeholders conducted that year
6. The number of photovoltaic modules already in use within the County
7. The number of photovoltaic modules placed onto the market and/or installed within the County that year

The County shall not require public reporting of any confidential information that the County finds to be protected proprietary information. Protected proprietary information shall mean information that, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of manufacturers or information that would reasonably hinder the manufacturer's competitive advantage in the marketplace.

## Section 9. Authority

The County may adopt rules as necessary for the purpose of implementing, administering and enforcing this Local law.

## Section 10. Storage

As described in NYS 6 CRRNY, collected photovoltaic modules and installation components may not be stored within the County for a period exceeding one fiscal quarter (three months).

## Section 11. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

RESOLVED, that the Niagara County Legislature shall continue to accept comments up to and including a final public hearing upon said proposed Local Law at the Legislative Chambers, Niagara County Courthouse, Lockport, New York, on the 15<sup>th</sup> day of June, 2021 at 5:45 p.m., and be it further

RESOLVED, that the Clerk of the Niagara County Legislature, at least six days in advance of such hearing, shall post a notice upon the bulletin boards in the Courthouse at Lockport and the Civic Building at Niagara Falls, and shall publish such notice in the Lockport Union Sun & Journal and the Niagara Gazette; such notice shall contain the title of the Local Law and an abstract of the text to be prepared by the Clerk of the Legislature, with the assistance of the County Attorney's Office.

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Legislator David Godfrey