

Comment re Proposed Expansion of Organic Waste Source Separation Program

Erica Lessem [ericalessem@gmail.com]

Sent: Saturday, October 19, 2019 11:27**To:** NYC Rules (DSNY)

To whom it may concern,

As a citizen concerned about our city and planet, I strongly support the proposed Expansion of Organic Waste Source Separation Program (reference 2019 RG 074).

Restaurants and other food-generating businesses are an important staple of New York City's culture and economy, but unfortunately account for a large proportion of the city's waste. The proposed expansion is a feasible way to help mitigate the unnecessary and deleterious impact of the food service industry on the environment and on the city's budget to deal with waste. New York City is a leader in so many ways, but has been lagging behind other major metropolitan areas in our approach to waste management. I'm pleased to see a small step to right our course and hope that this proposed expansion becomes a rule.

Thank you,
Erica Lessem

Patrick Lempert

Comment:

This is a huge step forward for NYC reaching its zero-waste goals by 2030. When New Yorkers see that businesses are participating in the recycling of food scraps, they might be more mindful of their own consumption. This will, hopefully, lead to an increase in NYC residents' participation in the city's Brown Bin Organics Collection Program. With both businesses and NYC residents working together to reduce food waste, we will be well on our way to Zero Waste by 2030. I am glad to see that DSNY is leading the way, and I will do my part to help spread the word about New York's commitments toward a sustainable, eco-friendly future.

Agency: [DSNY](#)

Questions for DSNY Public Hearing - 11/20

Nicolle Portilla [nicolle@rts.com]

Sent: Tuesday, November 19, 2019 14:05

To: NYC Rules (DSNY)

Good afternoon,

I would like to submit the following questions for tomorrow's DSNY public hearing on proposed expansion on organics.

**DSNY Proposed Organics Legislation Expansion
November 2019**

1.
Does this legislation expansion only include back of house organic waste or does this also cover the front of house organic waste?
2.
If a client is using compostable products, are those required to be accepted within the organics bins with the food waste, despite facilities not being able to properly process them?
3.
The proposed organics legislation requires "any building or premises where food service establishments having total combined floor area of at least 8k square feet are located and where the owner of the building or premises, or its agent, arranges or contracts with a private carter for the removal of waste from food service establishments having at least eight thousand square feet of such building or premises;"
 - a.
For buildings that contain food halls with individual small food vendors and restaurants, if those food vendors/restaurants combined have a combined square footage of 8k square feet, that means they are covered under this legislation if they have a shared hauler?
 - b.
What if the multiple restaurants contract through different carting companies?
4.
The proposed organics legislation requires "a location at which a food preparation establishment has a floor area of at least six thousand square feet" to separate organic waste.
 - a.
Would this include an office space with commercial kitchens that food prep for company employees?

b.

Is this 6000 sq ft include back of house prep area and front of house seating area?

5.

The proposed legislation requires "a retail food store that has a floor area space of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet, which would be lowered from the current requirement of twenty-five thousand square feet, and that operate under common ownership or control and receive waste collection from the same private carter"

a.

Would CVS or something of that nature count as a retail food store?

Thank you,
Nicolle



Nicolle Portilla

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Nicolle Portilla

Comment:

Please see the attachment below for questions for tomorrow's public hearing. Thank you, Nicolle

Supporting Document:

 [dsny organics expansion questions .pdf](#)

Agency: [DSNY](#)

Nicolle Portilla

Comment:

Is the DSNY going to start cracking down on businesses that don't comply? Will the penalty be more severe for businesses?

Agency: [DSNY](#)

Elizabeth Schad

Comment:

I support the expansion of NYC's organics collection for commercial businesses. The current system of commercial waste collection is unsustainable -- it has to change. This expansion is a crucial step toward a functioning 21st century city. Businesses now have an opportunity to shape new systems that work for their business operations, for the customers they serve, and for the communities they operate in and depend upon.

Agency: [DSNY](#)

Denise Whelan

Comment:

I think it is a great idea to have smaller restaurants and catered parties and retail food stores separate food waste from the rest of the garbage. People should encouraged to do this as well.

Agency: [DSNY](#)

Organic Waste Source Separation

Edward Sawchuk [edwardsawchuk@gmail.com]

Sent: Wednesday, November 20, 2019 12:32

To: NYC Rules (DSNY); Edward Sawchuk [edwardsawchuk@gmail.com]

Comments by Edward S. Sawchuk, P.E., Esq.

1. DSNY needs to make publicly available the details of its residential food/organics waste collection program.

1.1. Cost per hour or shift of food/Organics waste collection by DSNY?

1.2. Tracking weight of food/Organics waste - per truck? per shift? Split trucks or regular rear load?

1.3. Where collected i.e. Districts, neighborhoods

2. BTU's produced per pound food/Organic waste converted to biogas (Newtown Creek)?

3. Economic value of biogas produced per pound of food/biogas i.e. \$\$\$ per cf biogas produced?

4. Efficiency of street collection i.e. Cost to produce cubic foot cf of biogas from street collected food/Organics waste?

5. While it is admirable to divert food/organic waste, any rules or program to divert needs to be justified by sound engineering analysis not political feel good policy - what is economic basis for

Proposed regulations?

5.1. What costs are avoided by landfill avoidance of food/Organics waste?

6. What is total cost to produce one cubic yard cy of compost?

6.1. Cost to collect and deliver food/Organics waste to compost facility?

6.2. Income per cubic yard compost produced and sold?

6.3. Average distance from food/Organic waste collected to compost facility?

Thank you,

Edward S. Sawchuk, P.E., Esq.

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New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11743

From: Pam Elardo, Deputy Commissioner

Re: New York City Department of Sanitation (DSNY) Proposed Rule Relating to the Expansion of Organic Waste Source Separation Program Requirements for Various Commercial Entities

The New York City (NYC) Department of Environmental Protection (DEP) submits these comments in response to DSNY's proposed expansion of the Commercial Organics Waste Rule, published in the City Record on October 3, 2019. DEP appreciates the opportunity to provide comments on these draft rules.

DEP is the NYC agency that collects and treats wastewater.¹ Averaged across the year, DEP's wastewater system treats approximately 1.3 billion gallons of wastewater per day collected through 7,500 miles of sewers and 96 pump stations to one of 14 in-City Wastewater Resource Recovery Facilities (WRRFs). DEP operates four combined sewer overflow (CSO) storage facilities, and treats up to 3.5 billion gallons per day of combined storm and sanitary flow in wet weather. As a result of DEP's investment of over \$10 billion in infrastructure improvements over the past decade, NYC harbor waters are the cleanest they have been in the past 100 years.

DEP has reviewed DSNY's proposed rule for the expansion of the Organic Waste Source Separation Program requirements for certain commercial entities. DEP understands that diverting organic waste, particularly food waste, from landfills for beneficial use is a significant component of the City's sustainability goals as outlined in OneNYC. The program is also an important element in DSNY's efforts to fulfill its obligations under Local Law 146 of 2013 through requiring a larger universe of restaurants, food distributors and arenas (food-generating businesses) to provide for beneficial use of the organic waste they generate.

DEP's focus with respect to the existing and proposed organic waste source separation rules continues to be on keeping NYC's surrounding waterways clean and its sewer system and WRRFs functioning at their best. Following the promulgation of DSNY's initial organics rules, DEP monitored the effluent of on-site food processing units at ten facilities. The results indicated elevated concentrations for fats, oils and grease (FOG) and total suspended solids (TSS). Nine of the ten facilities had TSS concentrations greater than 2,000 milligrams per liter (mg/L), with the highest generating 96,000 mg/L; nine of the ten facilities also had FOG greater than 250 mg/L, with the highest at 9,700 mg/L. These results are significantly higher than results published by the manufacturers of these systems, calling into question the systems' effectiveness and/or indicating improper operation and maintenance of the systems by the facilities.

¹ DEP is also the NYC agency with primary responsibility for overseeing the operation, maintenance and management of the water supply that provides high quality drinking water to nearly half the population of the State of New York – over nine million people.

On-site food processors discharging to the grease traps and sewer system at the observed TSS and FOG levels are not protective of the sewerage system. Furthermore, the receiving WRRF must treat the organic material being discharged. Oxidation of the discharged organics at the receiving WRRF runs counter to other OneNYC sustainability initiatives such as reduction of greenhouse gas (GHG) emissions. This necessary processing by the WRRF presents challenges to the intent of Local Law 146 of 2013 and the immediate DSNY OneNYC goal, as the additional organic loading increases the biosolids generated at the WRRFs which inevitably end up in the landfills.

While DEP currently has the authority (15 RCNY 19-11) to require businesses with on-site food processing units to install grease interceptors, that equipment will not address the observed elevated TSS concentrations discharged by some digesters. As DEP noted in its comments on the last expansion of these rules in 2017, we had concerns as to impacts of any additional loadings and volumes from on-site digesters on our WRRFs. The monitoring results have confirmed that loadings have increase. As a result, the cost of treatment has shifted from the food waste producers to the City's water and wastewater ratepayers.

Accordingly, it is imperative that DSNY expand its rules to include a provision stating that food processing units are subject to additional technical requirements to be set forth in rules promulgated by DEP. Specifically, the DSNY rules should provide that onsite food processing equipment that is installed to achieve compliance with Local Law 146 of 2013, and that discharges into the NYC sewer system must be acceptable to DEP, as further set forth in the DEP rules governing the use of the public sewers. These additional rules will be enacted by DEP to ensure that the use of the onsite food processing units will not negatively impact New York City's wastewater system. DEP anticipates that these rules would include standards with which any onsite digesters would have to comply before an establishment could install such equipment as well as rules related to maintenance of such equipment.

Thank you for the opportunity to comment on the proposed rule expansion. We look forward to continued work with DSNY on the successful and sustainable implementation of this important program while continuing to maintain and protect the critical functioning of the City's wastewater infrastructure and the quality of NYC harbor waters.

Sincerely,

Pam Elardo
Deputy Commissioner
NYC Environmental Protection

Re: DSNY Proposed Expansion of Organic Waste Source Separation Program

Danna DeBlasio [ddeblasio@candm1.com]

Sent: Friday, November 15, 2019 15:13**To:** Comments, Rule (DSNY)**Cc:** NYC Rules (DSNY); Nelson Eusebio [nelsr61@hotmail.com]**Attachments:** Organics Recycling Phase Two.pdf (403 KB)

I'd like to submit the attached comments on Behalf of the National Supermarket Association (NSA) regarding DSNY's Proposed Expansion of Organic Waste Source Separation Program.

Please confirm receipt.

Thank you for your time.

Danna DeBlasio*Vice President*

CMW

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*A Public Affairs Firm for Today*

From: "Comments, Rule (DSNY)" <rulecomments@dsny.nyc.gov>**Date:** Wednesday, October 2, 2019 at 7:02 AM**To:** "Comments, Rule (DSNY)" <rulecomments@dsny.nyc.gov>**Subject:** DSNY Proposed Expansion of Organic Waste Source Separation Program

Please be advised that this e-mail is being sent to you in accordance with the Citywide Administrative Procedure Act ("CAPA"). Amendments to CAPA require that every City agency publishing a proposed rule or an emergency rule in the *City Record* transmit that rule by e-mail to the following: the Speaker of the City Council; the Office of Legislative Documents of the City Council; each member of the City Council; every community board; the news media and civic organizations.

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Danna DeBlasio*Vice President*

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*A Public Affairs Firm for Today*



Testimony before the New York City Department of Sanitation
Proposed Rules on Organic Waste Recycling
November 20th, 2019

The National Supermarket Association (NSA) thanks you for the opportunity to submit comments to the Department of Sanitation on the proposed expansion of organic waste source separation program that would expand organics recycling to supermarkets 10,000 square feet or more in the City. The NSA is a trade association that represents the interest of independent supermarket owners in New York and other urban cities throughout the East coast, Mid-Atlantic region and Florida. In the five boroughs alone, we represent 400 stores that employ over 15,000 New Yorkers.

Some quick background on our industry – beginning in the late 1970s, supermarket entrepreneurs began opening stores in areas abandoned by the large chains, as they were economically depressed and mostly in communities of color. These men and women had the vision and the commitment to fill a vacuum in those communities, at a time when the term “food desert” had not even been coined. Currently, many NSA members continue to serve those areas by offering healthy foods and full service supermarkets.

Regarding the expansion: We understand the importance of such programs, however, we hope that you may consider rolling out the program gradually by expanding it to stores between 15,000 and 18,000 square feet before doing so with supermarkets smaller than 15,000 square feet. Supermarkets in this range are generally considered mid-size supermarkets, compared to small store that tend to be less than 15,000 square feet.

We believe the program makes more sense when implemented on a rolling basis. Just like medium sized supermarkets have the opportunity to learn from their larger counterparts, we believe that smaller supermarkets should have the opportunity to observe the way that the program is implemented in stores that resemble them more closely. Not only that but also this type of roll out would align more closely with the state wide program that is set to go into effect in 2022. Making these two programs align ensures that smaller supermarkets in New York City are not implementing programs sooner than large supermarkets in other parts of the state.

Small businesses across the city are suffering. With a combination of sky-high commercial rent, rising minimum wage, predictive scheduling and paid sick leave, many of us are barely able to keep our doors open. The implementation of this program can be costly and a logistically complex endeavor and as much as we support the program and understand it will eventually reach all of our stores, we



believe the program would be much more effective if we were first able to learn from our mid-level counterpart's implementation of these programs.

Thank you for your time and please do not hesitate to contact us if you have any questions.

**Sincerely,
Nelson Eusebio**

**Testimony of
the NYC Hospitality Alliance
Before the New York City Department of Sanitation
November 20, 2019**

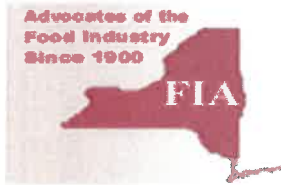
The New York City Hospitality Alliance ("The Alliance") is a not-for-profit trade association representing restaurant and nightlife establishments that will be impacted by the proposed rule that would expand organic waste source separation requirements to additional food service establishments.

The Alliance is an advocate for sustainable business practices in the restaurant industry, such as organics separation. To help ensure the Department of Sanitation's proposed rule will not unreasonably burden restaurants, we ask you consider the following points:

- If the intent of this Rule was to regulate larger food service establishments and gradually include smaller ones, then it takes a giant leap, not a gradual one. For example, mandating chains/franchisees with three or more locations down from the 100-location requirement is a significant expansion of the Rule. It will impact many small businesses. And, just because they are a franchisee, doesn't mean they necessarily have greater capacity than a non-franchisee of the same size to implement organic separation. Many independent restaurants operate in hotels and do not have the resources of the larger hotel company, yet they will be mandated under the Rule while similarly sized restaurants located outside of hotels will not. We are concerned about the expansion of this mandate as it seems arbitrary and we believe the Rule should be implemented in a more equitable manner.
- A food service establishment that is less than 8,000 square feet, but located in a property where the combined square footage of food service establishments exceeds 8,000 and the property owner contracts with a carter for their garbage removal shall not be deemed in violation of the Rule for failure of the property owner to comply.
- We request that all first-time violations of the Organic Waste Separation Rule be provided a warning or cure period before a fine is levied, not just during the implementation period of the Rule. We strongly believe the City of New York should focus on education and compliance first and levying fines as a last resort.
- Given the passed the Commercial Waste Zone legislation, there will be a major overhaul of the way waste is picked up and managed. We are concerned that implementing this large Organic Waste Separation Rule just prior to a very complex systemwide overhaul, adds additional complexity. What assurances can the Department of Sanitation provide the restaurant industry that the two related matters will not create burdens for them?
- In 2020, we ask the Department of Sanitation convene a stakeholder meeting to provide details of this expansion, answer questions, and provide insights into future expansions of the organic separation requirement.

Respectfully submitted,

NYC Hospitality Alliance (arigie@thenycalliance.org)



FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.

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**Testimony by
The Food Industry Alliance of New York State, Inc.
in Opposition to
Expansion of Organic Waste Source Separation Program, Reference Number 2019 RG 074**

Thank you for the opportunity to testify on the proposed rule titled “Expansion of Organic Waste Source Separation Program,” Reference Number 2019 RG 074 (Proposed Rule). My name is Jay Peltz and I am the General Counsel and Senior Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout New York. Our members include chain and independent grocers that account for a significant share of the city’s retail food market and the grocery wholesalers that supply them.

Proposed language changes are highlighted in yellow.

Background. Neighborhood grocers have never faced a more difficult operating environment. Operating expenses are increasing due to high rents, rising health insurance premiums and the \$15.00 minimum wage. On top of that, local grocers are attempting to manage the costs and burdens of recently enacted city and state benefit mandates, including paid sick, safe and family leave. Neighborhood grocers are trying to meet these challenges while losing market share to nontraditional retailers (that are largely nonunion operators) such as internet grocers and natural/organics food retailers. In this context, cost increases could cause marginal neighborhood grocers to close their doors, thus exacerbating the food desert problem in the city.

Evaluation and Designation. Under section 16-306.1(b) of the New York City Administrative Code (the Organic Waste Law), “The commissioner shall...no less than annually, evaluate the capacity of all facilities within the designated area and the cost of processing organic waste by composting, aerobic or anaerobic digestion...If the commissioner determines that there is sufficient capacity and that the cost of processing organic waste consistent with this section is competitive with the cost of disposing of organic waste by landfill or incineration, he or she shall designate by rule all covered establishments or a subset of covered establishments...that generate a quantity of organic waste that would not exceed the evaluated capacity...In addition, the commissioner shall include in his or her evaluation the capacity of any facilities outside of the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste generated by and collected from covered establishments.”

The foregoing provisions give rise to important questions:

- What is the basis for the commissioner's determination that there is sufficient capacity so that the quantity of organic waste generated by the newly proposed covered establishments, together with the covered establishments designated under the 2015 and 2018 rules, will not exceed the evaluated capacity?;
- What is the basis for the commissioner's determination that the cost of processing organic waste consistent with the Organic Waste Law is "competitive" with the cost of disposing organic waste by landfill or incineration? How does the commissioner define "competitive"? Does it mean a decline in the cost of collecting, removing, disposing or recycling organic waste? Does it mean that such cost will be about the same? Or does it mean that costs will increase by up to, say, 10 percent?;
- To what extent does the commissioner's evaluation include the capacity of facilities outside the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste from covered establishments? What is the distance, measured in road miles (rather than "as the crow flies"), from the city to facilities inside and outside the designated area? To the extent the commissioner's evaluation is based on the capacity of facilities outside the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste, the cost of transporting organic waste will increase and therefore become *less* competitive with current disposal costs. In addition, to the extent the commissioner's evaluation is based on processing facilities being within the designated area on an "as the crow flies" basis, rather than road miles travelled, actual collection and disposal costs will be higher, possibly much higher, than projected costs;
- How much of the projected processing capacity is speculative – in other words, not yet fully operational?; and
- While the commissioner "...shall designate by rule all covered establishments or a subset of covered establishments...that generate a quantity of organic waste that would not exceed the evaluated capacity," there is a duty to be reasonable in establishing the criteria used to select specific establishments. What criteria were used and why? Are they reasonable?

To our knowledge, the department's full capacity assessment has not been provided to and discussed with proposed covered establishments. Accordingly, and considering the foregoing important questions, we respectfully request that the rule be withdrawn so that impacted establishments can obtain and review the full evaluation. Such withdrawal will remove the CAPA prohibition on consultations between the department and affected stakeholders. We believe that such discussions are necessary to ensure that the Organic Waste Law's requirements regarding processing capacity and cost are satisfied. Upon completion of such consultations, the department could propose a revised rule reflecting the reasonable concerns of proposed covered establishments.

Circuit Breaker. The Proposed Rule does not contain a "circuit breaker" provision that would protect grocers in the event of significant, unanticipated cost increases. The commissioner's determination that there is sufficient capacity so that the quantity of organic waste generated by the newly proposed covered establishments, together with the covered establishments designated under the 2015 and 2018 rules, will not exceed the evaluated capacity could, at any time after the Proposed Rule is adopted, be incorrect. In that circumstance, the cost of processing organic waste consistent with the Organic Waste Law will be higher than anticipated and not competitive with the cost of disposing

organic waste by landfill or incineration. As a result, the standards for designating new covered establishments under the Organic Waste Law will not be met and neighborhood grocers will suffer avoidable economic harm.

Accordingly, we respectfully request that the Proposed Rule be revised to provide that "In the event of a significant increase in prices, over a sustained period, that private carters charge retail food stores to collect, remove, dispose or recycle organic waste as required under section 16-306.1(b) of the New York City Administrative Code, the designation of retail food stores as covered establishments shall be suspended by the commissioner until the standards for the designation required under section 16-306.1(b) of the New York City Administrative Code are satisfied." This proposed relief is not intended to cover ordinary course price fluctuations that occur in the organic processing market.

Floor Area Space. Section 16-306.1(b) defines "covered establishment" to include "...any location at which a retail food store has a floor area of at least ten thousand square feet..." The Statement of Basis and Purpose of Proposed Rule provides that "...'floor area' of an establishment [will] have the same meaning as defined...under Section 12-10 of Chapter 2 of Article 1 of the Zoning Resolution, which is the sum of the gross areas of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings...."

Accordingly, gross area is counted, rather than selling area. However, this does not reflect reality in the marketplace. It is the amount of selling area, rather than gross area, that determines how much product is offered, which results in a certain level of sales, which determines the amount of organic waste generated. Gross area other than selling area does not determine sales, since customers do not have access to it. In addition, as used in the retail food industry, the term "floor area" – the floor being the only area that customers can access to select products to purchase - refers only to the selling area of a store, not the gross area. Thus, the term "floor area" excludes those portions of gross area, such as back rooms, break rooms and offices, used for purposes other than directly offering product to consumers.

We therefore respectfully request that the Proposed Rule be revised by deleting the last paragraph of section 1-11(a) of Chapter 1 of Title 16 of the Rules of the City of New York in its entirety: "For purposes of this section, the 'floor area' of an establishment has the same meaning as defined under Section 12-10 of Chapter 2 of Article 1 of the Zoning Resolution." We request further that the following language be inserted in its place: "Floor area of a retail food store means the space where products are offered for sale to the public, without counting all other sections of the gross areas of the several floors of a building or buildings."

In addition, should the department decide not to so revise the definition of "floor area," we request that the Proposed Rule be amended so that the "...several floors of a building or buildings..." specifically exclude basement space where product is not offered for sale to the public. If such space is counted, then nearly every grocery store in the city would be covered, which would render the square footage threshold meaningless. It would also threaten the viability of small grocers that are struggling in the current business climate. Accordingly, please revise the Proposed Rule to provide that

"Basement space where products are not offered for sale to the public shall not be part of the gross areas of the several floors of a building or buildings."

Decal and Instruction requirements. Over time, the retail food industry has paid millions of dollars in fines for violating federal, state and local sign requirements. This money could have been invested in job growth, wage growth, store renovations or the construction of new grocery stores in food deserts.

In addition, very little feedback is provided to grocers from customers regarding signs, which indicates that very few customers read them. Required signs are also taken down by customers or simply loosen and fall over time, which it makes very difficult for food retailers to comply with sign requirements.

Respectfully, we cannot ascertain the policy need for the decal or instruction posting requirements. Covered establishments have obligations under the Organic Waste Law and implementing rule that must be satisfied. Informing the public and employees of these obligations via *finable* posting mandates has nothing to do with compliance. We therefore respectfully request that section 1-11(d) of Chapter 1 of Title 16 of the Rules of the City of New York be deleted in its entirety.

If the department's view is that establishments that meet such posting obligations are likely to otherwise comply with the Organic Waste Law, then we respectfully request that the Proposed Rule be amended to provide that if an establishment complies with the posting requirements under section 1-11(d), a rebuttable presumption is created that the establishment has complied with all other requirements of the Organic Waste Law and the implementing rule.

Should the department decide not to change section 1-11(d) as requested, we respectfully ask that the Proposed Rule be revised to provide that retail food stores have twenty (20) days to cure any alleged violation of section 1-11(d). This will ensure that the purpose of proposed section 1-11(d) is to facilitate compliance with the Organic Waste Law rather than raising revenue for the city.

Chains. The Statement of Basis and Purpose of Proposed Rule provides that, under the Proposed Rule, "...any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet...and that operate under common ownership or control and receive waste collection from the same private carter" will be covered. As a result, individual stores that do not meet the floor area requirement but are part of a chain that satisfies such requirement will be covered. This mandate is not in the 2018 rule that designated some grocery stores as covered establishments and will threaten the viability of small, neighborhood food retailers that are struggling in a very competitive market.

In addition, to protect neighborhood grocers in the event the assessment of processing capacity and cost is inaccurate, which will result in cost increases that local grocers cannot afford, we ask that the floor area threshold be reduced incrementally, with the requirement initially decreased from 25,000 to 18,000 square feet.

Accordingly, we request that section 1-11(a)(7) of Chapter 1 of Title 16 of the Rules of the City of New York be revised as follows: "(7) a retail food store that has a floor area of at least **18,000** square feet."

Under this proposed language, the text covering individual retail food stores that do not meet the floor area requirement but are part of a chain that satisfies such requirement would be deleted.

We believe that the foregoing proposed revisions to the Proposed Rule are consistent with the intent of the Organic Waste Law. We look forward to working with the department on the proposed changes.

Thank you for your time and attention to FIA's concerns.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.

Jay M. Peltz, General Counsel and Senior Vice President of Government Relations

Metro Office: 914-715-1750 | jay@fiany.com

November 20, 2019

Testimony
of the
NYC Chapter
National Waste and Recycling Association
for the
NYC Department of Sanitation
Public Hearing
on the
Proposed Expansion of the City's Commercial Organics
Management Program

November 20, 2019

Submitted
By
Steve Changaris
NYC NWRA Chapter Director
800 679 6263
schangaris@wasteretycling.org

NYC NWRA Chapter Testimony
Expansion of DSNY Commercial Organics Program
November 2019

The NYC member companies of the National Waste and Recycling Association (NWRA) endorsed and testified on both the original NYC commercial organics law; and, the DSNY set of regulations adopted regarding commercial organics management. At the original CAPA hearing on the roll-out of the commercial organics program which focused, in part, on large scale organics generators we also made a series of specific requests, suggestions and recommendations as a significant issue stakeholder under a best-wishes for success set of oral and written submissions. It is important to note here, since the time of that hearing, NY State has adopted a new statewide organics management law that will become effective early in 2021. We see both this new state organics management law and NYCs commercial and residential organics initiatives as one sub-set of many new alternative waste management programs that are evolving and coming into their own. We believe the build out of the state's and city's source separation organics initiative are much like those for adopted for paper and bottles and cans recycling -- some 35+ years ago now.

We need to use this public hearing opportunity, in-spite of our earlier very positive and encouraging comments about this new law, to call for serious pause and reconsideration since critical issues have now emerged and been identified as missing as the city endeavors to continue its second tier commercial organics generator roll out. We continue to support generally the city's efforts to divert organics from disposal and we will bring to bear our expertise in working with organics generators (our customers) in collecting their organic materials and in finding suitable sites for the end-of-life management sites of their organic materials. Never-the-less we come forward today with the following concerns and challenges we see on the immediate horizon for both the DSNY -- and the proposed growing universe of

commercial organics generators -- that are to be regulated under the city's source separation organics management laws, regulations and programs.

Currently private carters operate under a strict regulatory and "rate cap" system in the city. All carters must be approved for integrity and fitness -- and be licensed by the Business Integrity Commission (BIC) -- before they can work with any city business in managing their wastes, recyclables, organics and other discards. That said, there are growing questions emerging now about new "micro-haulers" and how they are regulated by BIC and whether the rates they charge for organics service are appropriate per BIC regulations. Ostensibly, the BIC rate cap for NWRA NYC traditional and licensed carters who endeavor to collect the city's commercial organic materials currently and under these proposed new regulations, means effectively that any rate charged by such a carter to an organics generator is "rate regulated" and is considered fair and reasonable by appropriate city governing authorities. While we are an industry with firm principles about choice and competition in the marketplace, we need to express our serious concerns here about the participation of unregulated or non-BIC fully regulated "micro-haulers" in the management of organics for safety reasons; for reasons of scale; and, for the above mentioned competitive financial reasons among others.

As the city's commercial organics regulation continues its expansion and roll-out, the vision we have for the collection and movement of commercial organics over the next few years is still one by fit and licensed BIC regulated carters. We will use this this opportunity to say NWRA BIC regulated members will be in a much better position to do so if they are no longer subject to any BIC "rate cap" controls for the organics they are to collect from this new expanded group of organics generators. We believe the best path forward here is for BIC licensed carters to compete for organics customers without rates for those services being BIC rate regulated. This new competitive commercial working relationship between generator and carter will insure that their organics are collected properly and are managed at sites in the city and the region pursuant to the new standards being implemented by this proposed regulation. There is a distinct possibility, and a great concern amongst NWRA members, that

if traditional BIC "rate cap" regulation remains in place for this new expanded group of organics generators requiring alternative management of their materials, that the BICs restrictive pricing controls will prevent our members from providing service to customers with these new source separated organics management needs.

This call for true free market based collection and management of organics of NWRAs NYC Chapter will likely evolve in the future as the new commercial waste zone (CWZ) legislation, just signed by the Mayor, takes hold. In the new CWZ system, it is unknown at this time how the cost for organics management services are to be paid, whether as blended component of a new CWZ rate or as a separate item on a list of approved rates to be charged in the CWZ for those with organics management needs.

There are many successful traits of well-run solid waste programs, whether the programs are a commercial collection route for recyclables or DSNY route for the collection of residential wastes. On the commercial organics front, for the proposed expanded group of smaller quantity organics generators, we continue to believe that in order for them to embrace this new program, that the DSNY will have to provide both an ample amount of informational and technical assistance to all of them; and, it will need also to allocate ample resources to support its programs that will assist them in converting their internal "back of business" waste operations to comply with the new proposed DSNY organics management requirements. NYC NWRA carter members will play an active role here and will work to competitively provide customers the service of collecting and transporting these organic materials to appropriate sites. But, by any measure though, success going forward here will require this next group covered by the city's commercial organics program individually to step up and do the right thing. These businesses, as organics material generators, will more likely best change their waste management behaviors when a strong combination of information, technical assistance and enforcement are in play by DSNY.

We also believe the city should continue efforts to try and provide incentives and economic support programs for those companies interested in siting, building and operating organics management facilities within its boundaries. The creation of city funded economic development programs as well as the city's work with the state legislature and Governor to direct existing green funding resources into regional organics facilities or to the creation of new funding programs would certainly be on point. Working with "green and innovative" outside of traditional waste service programs too is a good thing; for example, helping springboard anaerobic digester capacity at local wastewater treatment plants as a market for source separated organic materials. A historical recap will show that organics facilities in the region -- the very facilities absolutely needed to make NY's new organics diversion programs work -- have had a tough go of it being sustainable for many reasons. Economic support and incentives will be essential elements of the successful expansion of organic material diversion program.

We would recommend that the organics to be managed under these regulations continue to be "pre-consumer" materials. We believe some of the facilities and businesses covered under these proposed regulations may well produce "post-consumer" organics. The ability to manage ostensibly source separated clean "pre-consumer" organics will be inherently less difficult than trying to "clean-up" what is often-times severely contaminated "post-consumer" organics. In simple words, for example, managing "clean" kitchen or back of business generated organics from a stadium will be more manageable than having to tackle "contaminated" organics from stadium organics containers filled by the public attending a football or baseball game. Continue your roll-out and focus on the "pre-consumer" organics stream and in time, as organics management systems evolve and stabilize, tuck-in and add on additional "post-consumer" streams still make the most sense to us as daily managers of these organic materials.

While it is most important to have good technical assistance and economic incentives to make the continued roll-out of the city's commercial organics program work, the city must have

some new program, at some future time to effectively enforce this regulation. As time passes and program needs evolve and focus on compliance, any such enforcement protocol adopted by DSNY to achieve compliance should be primarily focused on the generator, not on the carter. This thinking applies over the next several years before the CWZs are implemented – as well as after CWZs are implemented. Even the designated carter or carters, in a CWZ system, cannot control all actions of generators (meaning what generators actually put in what container, etc) when it comes to waste or recycling or organics management behaviors.

Recently, on Monday November 18, 2019, the New York State Department of Environmental Conservation chose to hold its first of what is going to be an on-going series of multi-stakeholder meetings on the implementation of the state's new organics law to become in force in early 2021. We believe, since the state is engaging all stakeholders affected by its new organics management law, that the DSNY should launch a similar stakeholder process to engage all citywide stakeholders affected by the expanding coverage and roll-out of its currently on the books and effective organics management law and regulations. Ideally DSNY should put this city based organics stakeholder group and meetings schedule together immediately and should schedule it to get together as soon as possible as this proposed regulation continues its path forward for adoption.

Thanks for your review and consideration of these comments.

Statement to the Department of Sanitation Regarding Expansion of Rules Regarding Organic Waste Source Separation

Submitted November 20, 2019

By

Kendall Christiansen

Executive Director



As submitted

This statement is submitted on behalf of **New Yorkers for Responsible Waste Management**, a trade association of approximately 25 local companies licensed and in good standing with the Business Integrity Commission which are engaged in various services managing waste, recyclables and organics generated by New York City's business sector. Our companies are operationally and logistically oriented, and implement whatever the laws and regulations require – including organics management; nearly all of our members collect organics, and several operate processing, consolidation and transfer operations, some of which preceded adoption of current law.

Similar to our testimony in 2017, NYRWM believes that the Department of Sanitation (DSNY, or the Department) should call a "time out" with respect to this proposal for massive expansion, and conduct a proper consultation with various stakeholders with the goals of fully understanding what the Department is proposing, increasing the likelihood of its success, and avoiding increases in the cost of removing, collecting, disposing or recycling organic waste.

That consultation could be conducted within a period of 90 to 120 days, and would not delay effective implementation of what is currently proposed.

Upon completion of such consultations, the Department can then propose a revised rule reflecting a consensus with stakeholders about how best to advance this system, and move forward with broad support instead of frustration related to the failure to consult.

Just this week I participated in a stakeholder workshop organized by New York State DEC in anticipation of the implementation of the new State organics diversion law – that does not take effect until 2022. On behalf of a client, I have previously been an active participant in extended stakeholder engagement processes in major Canadian cities as they considered how best to organize their organics diversion bylaws and programs.

To be clear, NYRWM members understand, support and daily perform the work to meet the city's commitment to the diversion of organic waste from disposal and incineration to beneficial use, and its relationship to the city's zero waste (0x30) and greenhouse gas emission reduction goals (80x30). It has supported the initial phases of this initiative, targeting 285 large-volume generators of food waste, and an estimated 2,000 added over the course of the last two years – even though many of the generators added did not necessarily make the best sense because of the very small amounts generated.

This year, prior to the initial public announcement of this proposal, NYRWM formally requested via FOIL the underlying assessment of regional organics processing capacity, followed by supplemental request based on the lack of information and analysis from the initial response. A response to that request was received late last Friday, and was largely non-responsive and inadequate.

In particular, the legally-required “economic assessment” was not included; several “numbers” were included, but nothing approaching analysis or an assessment.

And, as in prior years, my request for a “decision memorandum” was ignored.

We are especially interested because NYRWM members are actively engaged – in some cases for a decade or more - in the collection, pre-processing and transport to regional processing facilities of organics generated by food-related businesses, and are especially aware of what facilities currently exist, issues associated with their operations, and facilities under development – and the logistics and economics of engaging with them.

The notes associated with the table that was provided to me provided limited information that is necessary to confirm DSNY’s decision-making, and assumptions associated with the conclusions drawn from it.

1. Several of the facilities are located well beyond the 100-mile boundary, rendering them out-of-bounds.
2. One facility is permitted for just 500 tons per year, or just more than one (1) ton per day, rendering it irrelevant. Two more are permitted for just 5,000 tons per year, or just more than ten (10) tons per day – less than one truckload.
3. Several facilities are located just at the 100-mile mark, depending in part on whether the distance is measured from the city’s borders or from the city’s geographic center. [While one hundred miles is statutorily determined, every additional mile adds to the costs for transportation of this material.]
4. While the permitted capacity for each is noted, no explicit mention of “available capacity” is offered.
5. It is good to hear that the long-awaited Trenton Biogas facility is now open for receipt of feedstock; it does not appear in the 2019 capacity assessment (nor in 2017 and 2018), although it has been in development for as much as a decade – which affirms the long lead-time for facility development, especially for anaerobic digester facilities. [Trenton is approximately 60 miles from NYC, but only 30 miles from Philadelphia; its location ensure that it will attract feedstock from the tri-state region.]
6. No information is provided regarding the term of a facility’s permit, e.g., when issued/expiration date, etc.
7. The Newtown Creek arrangement is mentioned, but it is not clear whether it meets the requirements of the law and regulations given that its biogas is being flared and its digestate is being landfilled – neither of which constitute beneficial us.
8. No information is provided regarding the “risk” of a facility, e.g., how long has it been in operation? has it been closed for any period during the past year, and for what reasons? Has it been the subject of any NIMBY-related considerations, such as odors and trucks? Is it engaged in a permit-renewal/expansion process?

New Yorkers for Responsible Waste Management

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9. Approximately one-half of the permitted capacity is associated with facilities that rely on an existing business relationship with a single local transfer station, raising concerns about access to those facilities by other generators and their haulers, and the risks associated with a restricted relationship – should the transfer station be constrained for any reason in accepting incoming material.
10. Related to risk, as presented, the table does allow for essential redundancy of capacity. Organics processing facilities are somewhat more susceptible than other types of recycling facilities to occasional shut-downs – when inbound material is restricted or limited. Organics processing facilities servicing other cities regularly experience risks of this sort; Harvest Power's facility near Vancouver is a prominent example, which resulted in a severe reduction in its operating capacity before it subsequently ceased operations.
11. The table does not attempt to identify nor assess the region's growth in organics diversion initiatives that will compete for the same capacity – especially keen given the adoption by New York State of an organics diversion law that becomes effective in 2022.
12. The table does not attempt to assess New York City's own competing need for capacity at regional organics processing facilities for biosolids produced by the Department of Environmental Protection (DEP), which is struggling to re-start its beneficial use program.
13. The table does not attempt to quantify or assess the use of on-site food waste processing systems as a form of "capacity."
14. The table does not provide information about "tipping fees" at each of the referenced facilities so as to assess comparative costs.
15. With respect to measurements, no information has been provided regarding collections to date.
16. With respect to future estimates, no information has been provided regarding what the newly-designated categories are expected to generate.
17. The overall lack of a comprehensive organics management plan – integrating residential, commercial and biosolids – undermines the prospects of this effort being as successful as possible, with all stakeholders and partners pulling in the same direction, problem-solving along the way, and planning for infrastructure development for the future.

As a consequence, NYRWM is primarily concerned that the expansion proposed by the Department may be advanced ahead of when actual usable capacity will be available within the region, and as a consequence will lead to growing pains that will increase costs.

Before I conclude, this proposal should not be regarded in a vacuum: particular challenges to considering this proposal at this point in time are BIC's bi-ennial rate-cap setting process, and how the commercial organics law and regulations will be integrated into the commercial waste zones system that will be planned and implemented over the next several years.

Presuming that DSNY will issue the proposed Regulation with minimal or no changes, we respectfully request that DSNY organize and facilitate one or more roundtable events for the purpose of engaging all stakeholders – food waste generators, collectors, processors, regulators, engaged citizens and others – in a comprehensive and structured discussion assessing the successes and challenges to date of the city's commercial organics diversion efforts. It is vitally important to develop a consensus about additional steps that learn from and will improve its overall efficacy including but not limited to how current efforts will be integrated into the commercial waste zones system.

A steering committee should be organized immediately to guide planning for the roundtable(s), with the goal of holding the first within the first quarter of 2020. In the process of its planning, DSNY should make available all relevant information and data necessary.

Thank you for your consideration of this statement.



November 20, 2019

Department of Sanitation (DSNY)
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, NY 10013

To Whom It May Concern;

Good morning. My name is Christina Grace. I am here today representing my company, Foodprint Group. We work with restaurants, food service and hotels to reduce and recycle wasted materials, including food, with a mission to get our clients to zero waste. Thank you for the opportunity to speak with you about the expansion of the regulations under Local Law 142.

On behalf of myself and my partner, Laura Rosenshine, we applaud the administration for your efforts to divert organic waste from landfills. We strongly support these efforts and the expansion of the commercial organics rules.

Organics make up about a third of the city's estimated 12,500 tons per day of commercial waste. Today only a fraction of this organic waste is being captured. The vast majority goes to landfills miles away where it emits methane - a potent greenhouse gas. EPA estimates that methane has a global warming potential 28 to 36 times greater than carbon dioxide.

Separating food scraps for beneficial use is a very straightforward shift in operating practices in even the busiest, most space-constrained restaurant kitchens. Many of our clients including Dig Inn, Breads Bakery, and west~bourne, launched compost programs voluntarily. They were motivated by their own missions to operate as sustainably as possible, from the food they source to the waste they produce. Some of our clients were influenced by consumer pressure and others moved by regulation.

The main challenges our clients face are generally not within their operations but in navigating the hauling and processing landscape and larger building constraints.

Challenges:

1. The Business Integrity Commission lists 47 approved organics haulers on its website, but there is no information about where these haulers currently tip organic materials. A hauler's processing

partners should be public information and the availability and accuracy of this information should be enforced by the city through regular required reporting.

2. For NYC restaurants, hotels and other food businesses, Saturday is the busiest day. Currently haulers do not collect compost in a separate truck on Saturday night/Sunday morning because there are no open transfer stations to tip organics on Sundays. Considering how busy Saturdays are, we are landfilling and incinerating roughly a fifth of the organics we could be beneficially using today. With the expansion of the ban, we need to solve for Sunday tipping.
3. The way forward for compostable dishware is unclear. The presence of fluorinated chemicals in compostable dishware, a dangerous contaminant in compost, is motivating business to rethink disposables. A solution for sustainable to-go containers that exists today is reusable to-go dishware. Our client, Dig Inn, is piloting a disposable to-go dishware program called Canteen by Dig at their 691 Broadway location in partnership with the Portland company, GoBox. The program allows customers to enroll and sign out a bowl. When they return bowls and sign them back in by scanning a code, the system allows them to check out a new bowl. The long-term goal for Dig is to collaborate with other fast casual and retail food businesses on a city-wide or beyond solution. This is just one example of the type of reusable dishware program the city could encourage through incentives or a willingness to pilot dish drop sites in public spaces.

We want to thank DSNY for expanding regulations to include buildings where food service establishments total eight thousand square feet and where building management arranges private carting. This will solve the challenge of providing compost services to our customers who are in buildings where they don't control the hauling contract, have been first movers and have lacked support from building management.

In closing, we want to thank the Mayor and DSNY for leading here in New York State and nationally on commercial organics. We are excited to work with you to capture that next 100,000 tons.

Thank you for your time today.

Sincerely,

Christina



Christina Grace
CEO



In opposition to expanding commercial organics rules

Good morning. My name is Kathleen Reilly and I am the NYC Government Affairs Coordinator for the New York State Restaurant Association. We are a trade group that represents food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and have advocated on behalf of our members for over 80 years. Our members are one of the largest and most widely impacted constituencies in the City, as nearly every agency regulates some aspect of this industry. To ensure the continued viability of the restaurant industry, New York City must prioritize regulations that enable these hardworking New Yorkers to continue earning their livelihoods.

I am here today to voice the industry's opposition to the proposed expansion of the commercial organic recycling rules under Local Law 146 and to encourage the Department of Sanitation to take additional time to study the economic impact of this proposal, demonstrate availability of commercial waste haulers, and consider providing a tax credit before adopting these drastic measures. Businesses all over the City are struggling with higher rents, increased labor costs, more stringent scheduling rules and all sorts of other regulations that are still being phased in without any concern of how one effects the other. This approach needs to stop if restaurants have any hope of being financially viable within the five boroughs.

Today, we are here to raise a number of concerns over the proposed expansion of the existing organic recycling rules. While as an industry we applaud the intention of these regulations and we feel that being more environmentally friendly is a laudable goal, this expansion goes too far and will significantly hinder a restaurant's ability to succeed, grow and create jobs.

The newest iteration of rules would dramatically expand the scope of restaurants covered by commercial organics mandates. For a lone food service establishment, the threshold is more than cut in half, decreasing from 15 thousand to 7 thousand square feet. Even more troubling, the coverage for a "chain" has plummeted to include restaurants with 2 or more locations and at least 8 thousand square feet total, compared to the previous threshold of 100 locations. Counting restaurant groups with just 2 or more locations as "chains" seems to confuse the meaning of the term, and capture restaurants that are operating more or less like independents do, and certainly seems a far cry from what the average person conceptualizes as a "chain."

Furthermore, with space ever more expensive in New York City, restaurants attempt to maximize the efficiency of their operations in spaces they struggle to afford. By expanding the scope of restaurants impacted by commercial organic recycling rules, the Department is asking owners to make impossible choices when it comes to space allocation. This is especially important for restaurants that would newly be covered as part of a chain, because counting cumulative floorspace does not take into consideration the smaller sizes of individual locations. Many small restaurants, including kiosk or walk-up window-style restaurants, could be affected by these rules and they simply do not have the space to keep organic waste on site while waiting for an approved carter to come and pick it up. These approved carters are few and far between and we are unconvinced that there is actually the necessary capacity for the demand that the new rules would create. If this type of waste is forced to remain in smaller locations for an extended period of time, we will see an increase in odor that will be off-putting to customers as well as create additional vermin issues that raise significant health concerns and could lead to further violations. The City is simply not prepared and does not have the needed infrastructure in place to implement this proposed expansion, and we ask that before enactment this issue be addressed.

Beyond the important factor of capacity in general, we'd also like to remind the Department of a groundbreaking industry restructuring for private waste carting that has just been approved by City Council. We know the intention of this new zoned system, amongst other things, is environmental friendliness and expanding the availability of organics hauling. But between now and the time that contracts are actually awarded to serve the zones, it's hard to predict what will go on in the market for private waste hauling and commercial organics. If anything, this is an especially uncertain time in the marketplace, and a difficult time to demand a number of new restaurants acquire a somewhat-niche service.

Another consideration is the central role that landlords often play in negotiating contracts for waste hauling. The City should simply not hold those restaurants who aren't in control of waste management, and are trying to do the right thing, liable for fees, fines, and infractions. Those fees should be passed on to those who are actually in control of the process. This is a fairness issue that should be addressed before these final rules are adopted.

The restaurant industry in particular is concerned with the cost ramifications of this rules expansion. The restaurant industry is uniquely saddled with extremely low margins and extremely burdensome regulation, and the majority of restaurants nationally are small businesses and single-unit operators. This rules expansion is poised to raise costs for these precarious businesses by requiring them to seek an additional hauling service, and to consistently educate their staff and customers on how to correctly sort and dispose of the organic waste. We remain unconvinced that a full economic impact on restaurants has been considered, and we request that such a study be done and made available before expanding the coverage of this organics mandate.

As a partial solution to the issue of newly imposed costs, we suggest that a tax credit be created to help ease the financial burden of the rules expansion. As was mentioned above, restaurants across the City have an inordinate amount of trouble making ends meet. The City has kind words for local business, but the recent litany of regulations tells a different story. If the Department of Sanitation and the Mayor's office truly want to help businesses, a tax credit in this situation would go a long way in advancing a vision of a healthy, environmentally conscious restaurant industry.

In conclusion, the New York State Restaurant Association opposes the expansion of commercial organics rules for the time being, and urges the Department of Sanitation to take our comments today into account before adopting the expansion. The lack of an adequate processing infrastructure, including composting or anaerobic digestion facilities in close proximity, availability of haulers, building management constraints, and variable hauling costs make these regulations difficult to implement and manage. We urge the Department to look for other ways to help reach their goals and we look forward to working with them to further this pursuit.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

315 W 36th St., 7th Floor

New York, New York 10018

November 20, 2019

Meredith Danberg Ficarelli
Director, Common Ground Compost
meredith@commongroundcompost.com

NYC Department of Sanitation | Local Law 146

**Public Hearing and Opportunity to Comment on Proposed Rules:
Commercial Organic Waste Separation Requirements**

My name is Meredith Danberg-Ficarelli. I am the Director of Common Ground Compost LLC, a consulting operation that helps businesses in NYC develop and launch composting and recycling programs. We also run a bicycle-powered micro hauling program called Reclaimed Organics that picks up food scraps from businesses in Manhattan. We support the expansion of commercial organics rules to include more businesses in NYC.

At the risk of sounding like a broken record: climate change is real. The norm is for the onus to be on the consumer to make decisions that reduce their individual impact on the environment, but social pressure for a small portion of the population to “do the right thing” is not nearly enough. We must take drastic and immediate action across the entire global economy if we are to give future populations a chance of living lives that even closely resemble our own.

When we recognize the challenge we face, separating food scraps for pickup by a separate truck so they can be recycled and reused is just one of thousands of actions that must be taken. It is not an exaggeration to say that we must completely restructure our economy, and studies are finally shedding light on the massive impact that consumption plays in the global carbon footprint of our species.

This not to say that organics separation and environmentally responsible processing is not important: everyone eats. Food is one of the main things we all have in common with each other, and by normalizing the source separation and recycling of organic matter, NYC is weaving environmentally responsible behavioral changes into the fabric of our lives.

The Market alone has not succeeded in creating demand for organics recycling services at the scale necessary to transform the operations of all businesses in the City, so regulation is essential to move the needle. We must recognize, however, that source separation is only one step on the road to nutrient recovery, and today, the NYC region is drastically lacking in sites to process organic material.

Expanded regulations will encourage growth in the industry, but we believe the City should do more, including offering vacant City land for small- and medium-sized operators to build organics recycling infrastructure. The more New Yorkers can see well-functioning organics recycling infrastructure, and ideally have access to employment opportunities within this niche, the faster we can normalize the idea that our “waste” has value.

We would also ask that the City support projects and solutions that lead to a reduction in the use of single-use products in the food industry in New York City. This includes supporting the legislation introduced by Council Member Van Bramer that would flip the convenience-at-all-costs relationship we have with single-use utensils. Beyond that, we must reconsider disposable culture altogether, accepting reusable alternatives and systems that can integrate reusable materials into our existing systems, replacing disposables.

Disposable compostable serviceware is a huge problem right now: many businesses are purchasing compostable serviceware with the misguided understanding that they “break down” in landfills, and are therefore a silver-bullet solution to eco-conscious operations. Businesses that have compost pickup services should be able to rest assured that their compostable serviceware is making its way through the nutrient cycle, but very few businesses are informed to the reality: compost sites do not want this material as it is contaminated with environmentally persistent chemicals including PFAS, a lack of labeling standards makes it hard to differentiate compostable from non-compostable products, and mechanical decontamination processes are removing a majority of it before it even leaves the five boroughs.



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**Testimony of Melissa Iachan at
New York City Department of Sanitation Public Hearing on Proposed Rule
Expanding Commercial Organic Waste Requirements
Dated November 20, 2019**

Good morning, my name is Melissa Iachan, and I am a Senior Staff Attorney in the Environmental Justice Program at New York Lawyers for the Public Interest (NYLPI). I am here representing NYLPI to comment on the proposed rule expanding commercial organic waste requirements. NYLPI's environmental justice program has focused on trying to bring equity into our city's waste systems for more than two decades, and I have worked in the area of waste regulation for more than five years. We are grateful for our continued partnership with DSNY in working towards establishing a much more sustainable, efficient and equitable commercial waste system in the City, and appreciate the ability to speak on the proposed rule at issue at today's hearing.

We strongly support the goals of the proposed rule, which would increase diversion of food waste from landfills—which also means decreased greenhouse gas emissions and less waste going to the many land-based transfer stations clustered in overburdened communities of color in North Brooklyn, the South Bronx, and SE Queens. Food waste and other organic waste make up more than a third of the commercial waste in the City—which itself is a much larger portion of the waste stream than residential waste. We are encouraged and supportive of the proposed rule to expand the commercial establishments who are required to separate organic waste for recycling or composting under the law.

We strongly support mandating more businesses—particularly food service establishments as well as food retail establishments—to source separate their organic waste for beneficial use. We want to take this opportunity to stress the need for organics diversion to be affordable for businesses, and ideally priced lower than collection of landfill-bound garbage. The current system allows waste haulers to disincentivize organics diversion by charging much more than normal

waste hauling services, and recent testimony by the industry has indicated that, without regulatory involvement, members of the private sanitation industry have no plans to invest in expansion of organics collection in order to make the service affordable for customers. This, however, is changing, as Commercial Waste Zones will hopefully be fully implemented in the next two to three years. We urge the City to utilize the opportunities the zoned collection system will provide to require the industry to incentivize commercial organics diversion by providing expanded affordable services.

Finally, we want to commend the attention to detail that DSNY has given to this rule expansion, ensuring that a potential loophole that would prove problematic under the new commercial waste zone system has been removed from the language of the Rules of the City of New York, by striking the clause in §1-11(a)(2)(iii). Generally speaking, this expansion as a whole has been done thoughtfully, balancing the need to continue to divert waste from landfill due to our climate emergency with an effort to gradually change the behaviors and habits of our food production and service industry in the City. We are happy to submit our comments today as entirely supportive and look forward to continuing our partnership with DSNY and the administration as a whole to explore more innovative ways to decrease the amount of waste we send to landfill.

Thank you.



**STATEMENT OF THE NATURAL RESOURCES DEFENSE COUNCIL
BEFORE THE NEW YORK CITY DEPARTMENT OF SANITATION
REGARDING PROPOSED RULES
TO EXPAND ORGANIC WASTE SOURCE-SEPARATION REQUIREMENTS FOR
LARGE COMMERCIAL FOOD RETAILERS & FOOD SERVICE ESTABLISHMENTS
November 20, 2019**

My name is Eric A. Goldstein and I am the New York City Environment Director at the Natural Resources Defense Council ("NRDC"). NRDC is an international, not-for-profit legal and scientific organization, active on a wide range of environmental, public health and quality of life issues across the globe, around the nation and right here in New York City, where we were founded in 1970. NRDC has worked for decades on solid waste issues in the New York region and has advocated for a transformation from primary reliance on landfilling and incineration to making recycling, composting, waste prevention and equity the cornerstones of city waste policy in the 21st century.

We appreciate this opportunity to submit comments on the New York City Department of Sanitation's proposed rule that would expand organic waste source-separation requirements for large commercial food retailers and food service establishments.

In brief, NRDC supports the Department's proposed rulemaking and believes that it is required by Local Law 146 of 2013, consistent with the Commissioner's capacity determination under the statute and necessary for the City to achieve its ambitious Zero Waste and 80 by 50 global warming emissions reduction goals.

Food scraps and yard waste constitute the single largest category of the waste New Yorkers dispose of. According to the Department's 2017 waste characterization study, more than one-third of the city's residential waste stream consists of organics – food scraps, food-soiled paper and yard waste. The amount of such organics, all of which are suitable for composting, has increased over the past 15 years – from 28 per cent in 2005 to more than 34 per cent in 2017. The amount of food scraps and other organic waste generated by New York City businesses is similarly large. As the Department stated in its rulemaking proposal, such organics make up "more than one-third of all commercial waste in New York City."

Unfortunately, the overwhelming amount of commercial organic waste generated today (as well as most of the city's residential organics) is sent to landfills or incinerators. This practice unnecessarily contributes to the #1 environmental problem facing the city and the planet

NATURAL RESOURCES DEFENSE COUNCIL

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today – climate change. When buried in landfills, organics break down and release methane. Methane is the second most potent global warming gas, trapping up to 87 times more heat on the planet than carbon dioxide over twenty years. And landfills are the third largest source of methane emissions in the United States, according to the U.S. Environmental Protection Agency. Simply put, New York City will never, ever achieve its 80 percent by 2050 GHG reduction goal (or its Zero Waste to landfills by 2030 goal) unless it makes a rapid and successful transition to sending the organics we generate to composting operations or anaerobic digesters that capture methane before this heat-trapping gas escapes into our atmosphere.

The City Council recognized the importance of this goal when, in 2013, the Council enacted legislation designed to jump-start the composting of both residential and commercial organics in the nation's largest city. At issue in today's rule-making is Local Law 146 of 2013. It requires the Sanitation Commissioner to evaluate the capacity of all facilities within a 100-mile radius of New York City that can process organic waste by composting, anaerobic digestion or similar sustainable method and in cost-competitive fashion with landfilling or incineration. Then, once the capacity to sustainably dispose of organics is demonstrated, the Commissioner is directed to designate, by rule, those organics-generating establishments that must ensure -- one way or another -- that their food waste and related organics are disposed of in such composting or digesting facilities. NYC Administrative Code, Section 16-306.

Today's rulemaking is the third such designation made by the Commissioner, consistent with this statute. In the first designation, in 2015, about 275 of the largest food waste generators – stadiums, arenas, hotels, etc. – were directed to arrange for their organics to be sent to facilities or treated on site in a sustainable, non-methane generating fashion. In the second round of such actions, in 2017, an additional 1,800 large food waste generators were added to the program. And now, as capacity throughout the region has increased, an additional 8,500 additional businesses will be covered.

As the proposed rule makes clear – the large food waste generators covered by this new directive will have a choice as to how to dispose of their organic waste – they can donate food that would otherwise be thrown away to a charitable organization or other willing recipient, engage private carters to take the waste to an approved facility, transport the waste to such a facility themselves, or manage the waste on-site using in-vessel composting or aerobic or anaerobic digestion systems that are consistent with city sewage discharge rules.

In its 2017 Organics Capacity analysis, the Department concluded that the combined available capacity at regional facilities to sustainably handle organics was 130,000 tons per year. That analysis also projected that additional capacity of 36,000 to 140,000 tons per year would be coming on line over the next year. Relying upon the Department's latest Organics Capacity analysis, the Commissioner has satisfied the statutory requirements. The proposed rulemaking is consistent with law, necessary to reduce global warming emissions and in the broad public interest.

Finally, a word to our friends in the commercial waste and food service industries – the need for more sustainable handling of organics is beyond dispute. And with certain important exceptions, the business community has been slow to recognize the need and adapt to the reality of climate change and the contribution that organic waste plays in this problem. But the signals from city and state governments are unambiguous. Composting and anaerobic digestion are quickly becoming the new normal and will very soon become standard operating procedure. And not a moment too soon. Now is the time for our friends in the waste and food service industries to fully embrace this effort and work cooperatively to solve inevitable start-up challenges and to achieve compliance with the law, for the benefit of all New Yorkers.



Comments from the Brooklyn Solid Waste Advisory Board (BkSWAB)

New York City Department of Sanitation

In relation to the proposed commercial organics collection expansion.

November 20, 2019

BkSWAB is a volunteer citizens organization with a mission of helping New York City achieve its zero waste goals. Our members are appointed by the Brooklyn Borough President and tasked with advising the Borough President, City Council Members, City Administration, NY State Legislators, and others on matters related to materials management, and specifically waste prevention, recycling and other beneficial reuse.

The BkSWAB is wholeheartedly supportive of the intent behind the proposed expansion of the collection of commercial organic waste. Organic waste accounts for over a third of NYC's commercial waste – thereby representing around 10% of total waste in the city. Sustainable management of commercial organic waste will therefore play a key role in the City's drive towards zero waste. Moreover, NYC enjoys a reputation as one of the finest cities for food in the world; dealing with the inevitable waste arising from its more than 10,000 restaurants in a responsible manner will only enhance the city's profile.

More broadly, BkSWAB is in favour of the expansion of organics collections across NYC generally, including further expansion of residential collections. The current combination of brown bins for curbside collections, public food scrap drop-off points and community gardens does much to engage enthusiastic residents in the composting of food scraps and yard waste; however, it is clear that the system continues to face challenges of participation and contamination. In addition, as the city moves towards the Zero Waste goals, there is much work to be done to reduce overall quantities of wasted food and redistribute unwanted food. Addressing these issues should also be a key goal for the city moving forward.

It is the view of BkSWAB that the expansion of commercial organics collections should be implemented with caution, following a thorough logistical and economic analysis. Although DSNY has determined that there is sufficient capacity to absorb the projected increase from the amended regulations, it should be noted that there remains room for improvement in participation rates in existing organic waste collections. Any expansion of the scope of organics collections should not preclude this improvement by absorbing remaining capacity for processing. While the addition of further local processing capacity - for example, by upgrading Anaerobic Digestion capacity at water treatment plants - will be a costly and complex process, this should form part of



DSNY's long-term planning, and a preliminary study of options should be undertaken prior to committing to rule changes that will generate significant additional tonnage.

The changes to commercial waste collections in the form of Commercial Waste Zoning (CWZ) will also have an impact on the collection of organic waste from commercial premises. Under the agreed proposals at the time of writing, a maximum of three commercial waste haulers will be available to businesses in a given zone. Haulers bidding for franchises under the new CWZ arrangements may or may not be prepared for an increase in organic waste commensurate with the proposed rule changes. The extra capacity for organics processing identified by DSNY will need to be divided between successful bidders for the CWZ franchises; this process may need to be overseen to keep pricing consistent as far as possible.

The implementation of segregated organic waste within businesses will also inevitably entail a period of transition and costs to the businesses in the form of staff time for training and separation, and physical assets such as internal containers. Policing and enforcement of the new rules will need to be budgeted for and carried out in a suitable manner, to ensure that they are respected. Failure to do this could lead to contamination of the organics stream, impacting haulers and organics processing facilities, and undermining confidence in the system.

It should be emphasized that expansion of organics collections, if implemented correctly, retains the full backing of BkSWAB. However, the experience of the rollout – to date – of residential collections should be used to inform the approach to expansion of commercial collections. Beyond initial teething issues, any problems with implementation of the new rules as a result of poor planning or hasty execution risk leading to a perception of failure on the part of the commercial sector, hindering further expansion of the scheme and undermining overall progress towards the City's Zero Waste objectives.

The Brooklyn Solid Waste Advisory Board

Chair: Shari Rueckl; Vice Chair: Celeste McMickle; Secretary: Elizabeth Royzman; Sergeant at Arms: Suzan Frazier; Members: Sarah Bloomquist, Kendall Christiansen, Pablo Garcia, Rhonda Keyser, Rose Lenoff, Dylan Oakley, Vandra Thorburn, Greg Todd, Phil Vos

COMMENTS OF THE REAL ESTATE BOARD OF NEW YORK TO THE NEW YORK CITY DEPARTMENT OF SANITATION CONCERNING THE RULE EXPANDING ORGANIC WASTE SOURCE SEPARATION REQUIREMENTS

November 20, 2019

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to submit comments on the Department of Sanitation's expansion of its organic waste source separation requirements.

Effective waste management is essential to livability in a city of 8.5 million people. Organic materials, including food scraps, food-soiled paper, and yard, are the largest category of discards, accounting for 34% of the Department of Sanitation's (DSNY) waste stream.¹ Though New York has continued to produce less waste annually since 2005, the volume of organic waste has remained constant. Thanks to DSNY's existing efforts in organic waste management, such as curbside collection and neighborhood drop-off, New York has mitigated its contribution to landfill emissions.

Commercial establishments, which account for over 3 million tons of annual waste, have played a key role in helping New York make progress toward realizing its goal of sending zero waste to landfills.² In this rulemaking, DSNY is proposing to expand the organic waste source separation requirements, which stipulate that certain businesses separate their organic waste for collection and handling either by engaging private carters, transporting organic waste themselves, or managing the waste on-site using in-vessel composting or aerobic or anaerobic digestion systems. The changes would broaden the criteria that trigger compliance with the requirements, impacting large food retailers and certain food establishments.

We believe the proposal would be improved by providing additional clarity on exactly the establishments covered by the expanded requirements. Among the affected establishments are any building or premise where food service occupies a combined floor area of 8,000 square feet. Such a standard has the potential to pose challenges including identifying the party responsible for ensuring compliance in the case that there are, for example, two businesses that each occupy 4,500 square feet. Additionally, chain businesses of three or more retail food stores that occupy a combined 10,000 square feet and have common ownership are responsible for compliance under the proposed rule expansion. If the stores share ownership but have different operators or managers, it will be difficult to understand whether the rule applies.

Given the challenges of adjusting to the expanded rule in these types of circumstances, we believe DSNY should seek to proactively identify and inform businesses that are required to comply with these requirements and offer warnings or cure periods for first time violations.

Moreover, as DSNY is aware, the City recently passed legislation to implement Commercial Waste Zones. This rule should be coordinated with such an effort. Specifically, part of the new commercial waste regime includes a free waste audit service provided by carters that could help establishments determine whether they are responsible to comply with the expanded rule. In addition, the legislation includes a requirement that potential carters be evaluated in part based on their ability to meet organic waste source separation requirements. Consequently, implementation of this rule may be easier if the expansion of the organic waste source separation requirements be timed to go into effect at the same time as the new commercial waste zone collection system.

¹ <https://dsny.cityofnewyork.us/wp-content/uploads/2018/04/2017-Waste-Characterization-Study.pdf>

² https://dsny.cityofnewyork.us/wp-content/uploads/2018/11/CWZ_Plan.pdf

Finally, in its oversight of Local Law 77-2013, which created the Curbside Organics Collection Pilot Program, City Council highlighted the limited capacity of regional facilities that process organic waste.³ Before incurring the structural changes and cost necessary to expand the organic waste source separation requirements, we would ask the City confirm it has the ability to successfully process the organic waste it collects, ensuring it does not end up in a landfill.

Thank you for considering our views.

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³ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2545235&GUID=8C3B3FB2-D540-47A2-80E5-8E4DE2F74A7E&Options=&Search=>



New York City Department of Sanitation
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, NY, 10013

Commissioner Kathryn Garcia:

This letter is submitted on behalf of the New York League of Conservation Voters (NYLCV) regarding the proposed rule changes to Section 1-11 of Chapter 1 of Title 16 of the Rules of the City of New York relating to source separation of organic waste generated by certain commercial food retailers and foodservice establishments. NYLCV represents over 31,000 members in New York City and we are committed to advancing a sustainability agenda that will make our people, our neighborhoods, and our economy healthier and more resilient.

As you know, diverting organic waste from landfills is a critical component of OneNYC's goal to Zero Waste to Landfills by 2030 (0x30), and represents nearly one third of the overall waste stream. It is also critical for the city's emissions reductions goals, as food waste produces a significant amount of methane, a greenhouse gas 30 times more potent than carbon dioxide.

Reaching the City's zero waste goal will require work from all New Yorkers--cooperation of city officials, private industry, and buy-in from the general public. Current diversion rates underscore that more aggressive actions are necessary to put us on track. NYLCV applauds the Department of Sanitation for taking this measured step towards 0x30 by expanding commercial organics separation rules.

In accordance with LL146 of 2013, DSNY is required to evaluate whether sufficient regional processing capacity exists to accommodate the expansion in the proposed rules. And while this rule change is a significant step forward, NYLCV would like to see even stronger rules for organic waste separation on both the commercial and residential side. To that end, we would like to stress the importance of siting more regional processing capacity for organic waste sufficient for handling future increases. It is imperative that the emissions reductions achieved from diverting this waste are not diluted by transporting it long distances, and does not compound poor air quality in environmental justice communities by siting additional capacity that will increase truck traffic in these already overburdened districts.

In order to address this challenge, the City must create a comprehensive approach and begin a conversation with industry, businesses and the public about what it is willing to do to create, incentivize and spur organics processing capacity within or near the city. NYLCV respectfully offers the following recommendations for reaching this goal:



- Maximize the use of anaerobic digestion capacity at NYC DEP's wastewater treatment plants (WWTPs). Organic waste can be co-digested with sewage sludge. In addition to the capacity for organics waste at Newtown Creek WWTP, the City should encourage high-quality organic waste from commercial or institutional sources at other WWTPs that could accommodate such material. DEP should make clear and public what its intentions and plans are for anaerobic digestion capacity at its WWTPs and what quality of materials they will take.
- We respectfully request that DSNY organize and facilitate one or more roundtable events for the purpose of engaging all stakeholders – food waste generators, collectors, processors, regulators, engaged citizens and others – in a comprehensive and structured discussion assessing the successes and challenges to date of the city's commercial organics diversion efforts, and develop a consensus about additional steps that learn from and will improve its overall efficacy including but not limited to how current efforts will be integrated into the commercial waste zones system.

In addition, it is our hope that this rule expansion, combined with the statewide food waste bill adopted during the most recent legislative session in Albany (Article 27, Title 22 of the NYS Environmental Conservation Law: Food Donation and Food Scraps Recycling), can help spur demand and lead to more investments in local processing facilities.

Beyond the ongoing challenge of processing capacity, NYLCV offers the following comments to the proposed rules:

- The expansion to food courts and catering establishments is a welcomed addition, though brings up a few questions we believe should be spelled out more directly in the rules. Specifically:
 - Does (9) under the proposed rules include large office cafeterias where food is not necessarily prepared on premises but served there daily?
 - Does the expansion to catering establishments (10-11) cover only those events that are fully staffed by the catering company or during "drop-off" events as well?
 - DSNY should consider changing the rule to cover catering companies that have the *capacity* to serve 100+ guests, not just the particular events where the anticipated guest count is 100+. That approach needlessly complicates operations for the catering company, where implementing it as standard operating procedure for certain companies, regardless of event size on any given day, would be more streamlined.
- Expansion of the rules are only as effective as the outreach and enforcement done by DSNY. NYLCV hopes that the introduction of commercial waste zones will bring about stronger partnerships between caters and their customers that can help to ensure



compliance with these rules and source separation more generally. However, we still expect DSNY to conduct thorough outreach and enforcement to ensure compliance.

NYLCV is proud to support the commercial organics program, as the regular, measured expansions to the commercial organics rules from 2015 to 2019 together represent tons of organic waste diverted from landfills, and a sizable reduction in associated emissions.

Today's rule change governing commercial food waste is a great step forward. We look forward to working with the City to make sure we have the processing capacity and infrastructure in place that can get us to the zero waste goal by 2030.

Respectfully,

Adriana Espinoza
NYC Program Director
New York League of Conservation Voters

TRENTON BIOGAS

