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Proposed Revisions to 310 CMR 19.000 Regulations – Response to Comments Document

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This document summarizes and responds to comments that MassDEP received on proposed revisions to 310 CMR 19.000. MassDEP has also summarized and responded to comments received on supporting guidance.

MassDEP held four public hearings on the proposed amendments and accepted comments during a public comment period from July 9, 2013 to August 23, 2013. Overall 12 people provided verbal testimony and 12 people provided written testimony. (Four people provided both oral and written testimony.) In sum, MassDEP received comments from 20 different individuals representing 16 different organizations.

General Comments

Comments: Most commenters expressed general support for the Massachusetts Department of Environmental Protection's work to reduce food waste disposal and to drive food materials to higher value uses that will produce both environmental and economic benefits. Commenters also expressed support and appreciation for MassDEP's process of working with a wide range of stakeholders in developing the proposed regulations and supporting guidance. The result of that careful process is a workable rule that balances the state's environmental policy goals with the interests and concerns of all the different stakeholders -- waste generators, haulers, the various types of companies that can process organic materials, and the public. These commenters expressed strong support for the proposed ban and for proceeding with finalizing the regulations as proposed. Specific related points of comment include:

- Given the State's projected decline in landfill capacity over the next few years, we support the proposed disposal ban on select commercial organics, as well the Department's efforts to develop a regulatory framework that encourages the development of sensible organic waste management options.

- The proposed amendments to 310 CMR 19.000 will stimulate further individual ingenuity and, more importantly, private sector investment in the next generation of innovation to divert waste from traditional disposal facilities.
- The private sector has the technological means today, through both composting and anaerobic digestion, to transform organic materials into valuable products and energy.
- As has been the case with other types of recycled material, the private sector is willing and able to invest in the infrastructure needed, but only when it is sure that the feedstocks will be available.
- Disposal bans on other forms of recyclables here in Massachusetts have provided that level of assurance, and the investment and infrastructure have followed.
- That model can and will work again with organics.
- The proposed ban will help position Mass as a national leader in solid waste management as it already is in renewable energy and energy efficiency.

Response: MassDEP agrees with these comments.

Comment: Several commenters, particularly from the perspective of the solid waste industry, expressed support with the goal of diverting food waste from disposal, but generally disagree with the use of waste bans as a policy tool. These concerns particularly relate to the role and responsibilities of solid waste facilities and waste haulers relative to waste bans. However, these comments also acknowledged that waste bans are an established component of Massachusetts solid waste policy and regulation, and expressed willingness to work with MassDEP to implement the proposed ban, as well as existing waste bans. A commenter cautioned that the proposed ban will result in a significant shift in how the waste disposal and recovery system is managed today and needs to be thoughtfully implemented and enforced to encourage the highest and best use of this valuable material.

Response: MassDEP believes that waste bans, when properly developed and implemented in concert with market development initiatives and assistance to waste generators are an effective tool in driving new markets for diverting materials from disposal and ensuring sufficient feedstocks to support these new markets. MassDEP agrees that the implementation of the ban will result in very significant changes in how food materials are managed and ultimately result in a substantial reduction of food waste disposal. MassDEP acknowledges that there are a number of changes that need to take place to ensure successful implementation of the ban. That is why MassDEP has established a comprehensive Organics Action Plan to support this work while engaging stakeholders extensively in developing the proposed ban.

Comment: One commenter strongly disagreed with the proposed ban stating that it is impractical, unsustainable, and unenforceable – another effort by MassDEP, similar to other bans implemented recently for construction and demolition materials, to manage a waste without an honest assessment of the environmental and economic realities of the ban.

Response: MassDEP disagrees with this comment. The commercial organics ban has been carefully framed so that it can be implemented cost-effectively for waste generators and drive feedstocks to new facilities that are under development. In addition, this ban is supported by important complementary programs, including the RecyclingWorks in Massachusetts program,

the Recycling Loan Fund, MassDEP's Sustainable Materials Recovery Program, and the Massachusetts Clean Energy Center's Organics to Energy program. MassDEP believes that the implementation of the ban and supporting strategies will result in important economic and environmental benefits to the Commonwealth.

Comment: Several commenters stated that the proposed ban will result in significant environmental and economic benefits for Massachusetts. Massachusetts will benefit from the new regulation by managing its resources within the state. Food processors, institutions and other large-scale generators of organic resources already are well-versed with the development of options rather than landfilling, have figured out the in-house logistics of managing wastes differently, and are benefitting from cost-competitive systems. Unlike the broader recycling sector that is global, or sending cash with our trash to landfills in other states, we can keep organic resources and the jobs managing them here in Massachusetts, replenishing both our soils and economy.

Benefits resulting from the ban and resulting infrastructure will include:

Producing renewable energy

- AD systems provide Class I renewable portfolio standard (RPS), base load capacity able to produce power at all times and can offset peak demand.

Reducing greenhouse gases

- Carbon negative – AD systems destroy greenhouse gases, even with gas collection systems, decomposition of food waste in landfills is a significant source of methane.

Capturing nutrients in organic wastes

- Produces nutrient-rich organic fertilizer, enhances soil vitality, provides needed plant nutrients, while reducing use of chemical fertilizers.
- These nutrients are lost when organic materials are disposed.

Local economic benefits

- \$10-20 million in capital construction – dozens of jobs created during construction.
- Dozens more jobs created once facility begins operation, including collection, processing and transport of materials.
- Also cost savings for commercial food waste generators that divert food waste from disposal to AD facilities.

Response: MassDEP agrees that the ban and complementary initiatives will result in important economic and environmental benefits to the Commonwealth.

Comment: Commenter is concerned that there will not be a way to track the environmental or economic efficacy of this new disposal ban regulation since it will be implemented without being

benchmarked or modeled against the performance of the current system – on either an environmental or economic analytic basis. NSWMA and others have done research that shows that greater environmental benefits, at less cost, are likely achieved by improving the recovery and recycling rates of currently managed materials than by creating new expensive organic materials diversion programs. Further, since the department has provided for so many organics materials management options – we count five – (farm or facility based composting; food waste single sourced anaerobic digesters; aerated static pile facilities; combined sewage and food waste anaerobic digesters; and dewatering and/or pulping waste water disposal options) we cannot see any such benchmarking or meaningful environmental reviews or information ever being produced in the future.

Response: MassDEP will be able to draw on several metrics and sources of information to assist with evaluating the success of the waste ban. These include:

- Annual reports from facilities with general permits or composting or conversion permits reporting amounts of food waste received;
- Results from RecyclingWorks technical assistance and anecdotal information about diversion through other methods which are not required to submit reports (e.g., pig farms, onsite systems);
- Assessment of failed load rates observed during waste ban inspections, third party inspections, and facility monitoring and how these change over time;
- Updated waste characterization data – updated every three years; and
- Updating economic impacts of recycling in Massachusetts including the organics management industry.

Proposed One Ton/Week Threshold

Comment: Many commenters stated they believe the proposed one ton a week threshold should be a starting point for the regulation with progressively lower limits over time. Commenters believe that lower limits will allow for larger and more consistent sources for feedstock. One commenter voiced that the ban as currently purposed with the one ton a week threshold is appropriate.

Response: MassDEP believes that it is premature at this point to specify a date for establishing a waste disposal ban on smaller sources of food waste. MassDEP plans to focus attention on increasing diversion of food waste from smaller sources after the infrastructure to support food waste diversion from larger sources has been successfully established. However this material is typically different both quantitatively and qualitatively from food waste from larger sources and MassDEP may consider a different approach and mix of strategies to support this increased diversion.

Comment: One commenter felt there needs to be a relief valve under waste bans when recycling markets are not there.

Response: As stated above, MassDEP believes that there will be sufficient infrastructure to support the implementation of this ban as proposed. Generally speaking, once an infrastructure is established recycling (or composting/anaerobic digestion) markets typically continue to function, though materials will fluctuate with economic conditions. Because waste bans are intended to ensure an ongoing reliable supply of materials for recycling (or composting and anaerobic digestion) markets, MassDEP generally does not waive waste ban requirements due to market fluctuations.

Comment: A commenter strongly recommended including the terms “uncontaminated” and “source separated” in the definition of the Commercial Organic Material because it is an extremely important distinction for implementation and enforcement of the ban.

Response: The terms “uncontaminated” and “source separated” are unnecessary for purposes of this definition. Any commercial organic material disposed in a mixed load of trash will be “contaminated” and no longer “source separated” at the point of disposal, but this material would be subject to the waste bans. The waste ban requires that this material, as well as other banned materials, be managed in a way that the material is separated from trash at the source and not sent for disposal.

Comment: The definition of commercial organic material needs to clarify the intent of “one ton per week”. Is this term based on an annualized average or a maximum/minimum generation? Furthermore, could you please clarify what constitutes generator compliance under this definition, given the following two scenarios:

- Generator A currently disposes 53 tpy of food/organic material; next July they start diverting 2 tpy of food/organic material. They are still disposing the remaining 51 tpy. Is Generator A compliant?
- Generator B currently disposes 500 tpy of food/organic material; next July they start diverting 400 tpy of that material. That’s a very big composting effort. But, since they’re such a big generator, they’re disposing over 52 tpy. Is Generator B compliant?

Response: Whether or not a business or institution is subject to the ban would depend on how much commercial organic material they dispose of on a weekly basis. Any business or institution that disposes of more than one ton of commercial organic material per week at any time would be subject to the waste ban.

Comment: Question 6 on DEP’s draft guidance for generators responds to a question about a business that generates more than 1 ton per week but only seasonally. The answer is that the waste ban applies for every week that greater than 1 ton is generated. This seems completely impractical. How does the owner train employees? Sometimes the food waste can go in the trash and sometimes it can’t? Does DEP anticipate that the owner will just continue separating organics when not technically required – and pay for the dumpster/carts when it can possibly

save that expense? How will the hauler and disposal facility know if that generator is violating the waste ban if nobody knows when they hit the separation requirement and when they do not? It seems more practical for the basis of the regulations to be on a tons per year basis.

Response: Expressing the threshold in tons per year really would not change this situation. Some businesses and institutions may be subject under such a yearly threshold even when they are disposing of a minimal amount of food waste in any given week. MassDEP believes that a week-based threshold will be easier to implement and monitor from a compliance standpoint. How such a generator approaches compliance may be somewhat location specific. In most cases, it will likely be easier and more cost-effective for these businesses to maintain food waste separation practices year-round. It is also important to remember that there are a wide range of options for how businesses and institutions that dispose of one ton or more of food waste can comply with the ban and that these businesses should consider which of these options will work best for them.

Generator Outreach and Education

Comment: Commenters support an outreach effort that focuses on educating generators. It is believed that the purposed guidance to generators, along with support from community coalitions, is crucial to the success of food waste diversion program.

Response: MassDEP agrees that outreach and education to businesses and institutions potentially subject to the ban is very important. This has been a point of emphasis during the development of the proposed regulations and MassDEP will place increased emphasis on generator outreach and education as the effective date of the ban nears, as well as after the effective date of the ban. MassDEP's RecyclingWorks in Massachusetts program will play a key role in supporting this effort. In addition, waste haulers, property managers, food service managers, business associations, and others will have an important role to play in reaching out to their customers.

Generator Enforcement

Comment: Comments support focusing on generators, first with aggressive outreach and then followed by enforcement actions to those generators not in compliance with the ban. Some believe that this can be implemented by:

- Increasing the compliance and enforcement staff at MassDEP; and
- Creating certification programs similar to the supermarket program that will help identify generators who are not in compliance with the ban.

Response: Initial implementation of the commercial organics ban will emphasize outreach, communication, and assistance to generators to help them comply with the ban. MassDEP has established a comprehensive strategy to improve compliance with existing waste bans based on a

combination of third party monitoring data, increased MassDEP inspections, and referring generators to the RecyclingWorks in Massachusetts program for assistance. MassDEP expects to take a similar approach to implementing the new commercial organics ban. MassDEP has considered expanding the supermarket certification program to other business sectors, but has decided not to implement that program at this time.

Comment: Many from the waste management industry voiced concern over feasibility of determining noncompliance with regard to one ton per week threshold at the point of disposal. The waste industry also believes that, historically, MassDEP put the burden of enforcing bans on the haulers and waste disposal facilities and they are concerned that if this proposed ban is adopted, once again they will be responsible for implementation.

Response: Solid waste facilities, waste haulers, and waste generators each have certain compliance responsibilities under the existing waste ban regulations. That shared responsibility will continue under the proposed commercial organics ban. For solid waste facilities, they will remain in compliance as long as they comply with their waste ban plan approved by MassDEP. Such plans may allow them to receive and accept certain banned materials for disposal when contaminated, but require that they record this failed load information and communicate this to the hauler delivering the banned material. The hauler in turn should communicate this information back to their customers. Haulers and solid waste facilities are not responsible for enforcing the ban against waste generators, nor have they ever had this responsibility in the past. MassDEP has committed increased staff resources focused specifically on increasing waste ban compliance by waste generators, which will help ensure that solid waste facilities and haulers are operating on a more level playing field. Implementation of the commercial organics ban will work similarly, though an increased emphasis will be placed initially on communication with waste generators and haulers.

Comment: One commenter believes that training waste ban spotters to identify this new waste ban category will be extremely difficult at solid waste facilities, for the following reasons:

- Organic material tends to mix in with waste, more so than the current waste ban materials, rendering it difficult to identify;
- Spotters will need to assess whether it is “commercial” material, a task that will be particularly difficult with transfer loads arriving at disposal sites;
- Spotters will have no way to know whether the material in fact comes from a commercial organic generator of over 52 tons per year; and
- MassDEP needs to provide training and clarify expectations for waste ban spotters at transfer and disposal facilities.

Response: MassDEP will develop training for MassDEP staff, as well as third party inspectors and solid waste facility staff on how to identify loads with a high percentage of food waste. When loads with greater than 10 percent food waste are identified, the solid waste facility will

not need to determine the source of the load. Instead, the facility will record the load as having more than 10 percent of food waste and communicate that information to the hauler, who will be able to identify the source(s) of the load and determine whether any generators may potentially be subject to the ban.

Comment: One commenter suggests developing a timeline for implementation of the ban, a phased in enforcement period, that will allow generators sufficient time to work through the details of the options available for implementation.

Response: Initial implementation of the commercial organics ban will emphasize outreach, communication, and assistance to generators to help them comply with the ban. MassDEP also will work with generators and haulers to confirm what entities are potentially subject to the ban and, where necessary, refer them to the RecyclingWorks program for assistance in determining the most cost-effective compliance options available to them. Given the timing of promulgating the final regulations, MassDEP has changed the effective date of the ban to September 1, 2014. This should provide sufficient time for applicable generators to establish the necessary management systems to ensure compliance with the ban.

Hauler Roles and Responsibilities

Comment: Haulers do not want to be set up to fail and are concerned that compliance with the waste ban will be their responsibility. Commenters explained that haulers and disposal facilities are willing to inspect, notify, educate, and offer services that facilitate compliance with the waste bans; but ultimately only the generator can source separate, and other parties should not be held responsible if they don't comply. If a hauler acts too aggressively, a waste generator will look to another provider for services and possibly take their business to an out of state hauler.

Response: MassDEP agrees that waste generators are central to complying with the waste bans and that haulers or solid waste facilities are generally not in a position to be able to separate banned materials for their customers. However, as this comment points out, waste haulers and solid waste facilities also have an important role to play and have specific compliance obligations under the waste ban regulations, including inspecting loads, documenting failed loads, providing recycling services, communicating this information to their customers to address non-compliance and refraining from contracting for the disposal of banned materials. In some cases, MassDEP has heard reports that waste haulers do not take these steps, encourage their customers not to comply with waste bans, or even mix separated recyclables with trash to send for disposal. MassDEP will enforce waste bans to ensure that both waste generators and haulers operate on a fair, level playing field so that haulers that do take steps to comply do not lose customers to haulers seeking not to comply with the waste bans.

Comment: One commenter has found that with organics collection, organics collection containers are periodically found to contain plastic bags and other contaminants rendering the material unfit for composting. Commenter is concerned that if these materials are found, 310

CMR 19.017(5) requires “prior notification and approval of the Department.” Obtaining MassDEP approval prior to arranging disposal seems unrealistic, given that this will likely be a frequent occurrence. Waiting for approval would cause delays and could prevent the timely removal of highly putrescible material from public areas.

Response: MassDEP agrees that holding such materials in order to request a waste ban waiver prior to disposal will generally not be feasible. However, assuming that the generator disposed of more than one ton of commercial organic material per week, disposing of this material would still be a waste ban violation. This would essentially be the same result as if the generator disposed of the organic material in the trash. In such cases, the priority should be prompt communication and feedback to the generator to prevent these occurrences in the future and ensure that the generator returns to compliance as soon as possible.

Addressing Odor and Nuisance Concerns

Comment: One commenter stated the draft regulations package does not address the fact that organics diversion will exacerbate vector and odor issues where the waste is stored, which may be at the generator’s location. Onsite treatment systems will be necessary to control such problems. It is believed that incorporating in situ methods to reduce, reuse or recycle will be a prerequisite for this initiative to be successful and input from the Commonwealth’s Health Department or that agency with jurisdiction over such matters should be sought and integrated into the implementation of this Rule. Attention needs to be paid to the specific set of issue unique to permitting organic processors (i.e. increased need for collection, dust, odors, neighborhood feedback).

Response: The RecyclingWorks in Massachusetts program has released recommended best management practices for food waste management and collection at businesses and institutions to minimize nuisance, odor, and vector concerns. In fact, a well run program to collect food waste separately from trash may result in reduced nuisance issues compared with disposing of that same material in trash containers. This guidance was developed working with local health officials and the Massachusetts Department of Public Health, and is intended for use by those local health officials, businesses, and institutions, and their service providers. In addition, the RecyclingWorks program has developed a web guidance page on options to comply with the commercial organics ban. This guidance recognizes that on-site systems are one way for businesses and institutions to comply with the ban and may be the best solution in some cases.

Compliance Options and Facilities for Managing Food Waste

Comments: Several comments support the commercial organics ban. Commenters stated that food waste diversion is already being done by many businesses and there is sufficient infrastructure in place to support an increase in the amount of organics being diverted and ensure the capability for industry compliance.

Response: MassDEP agrees with this comment.

Comments: Some commenters had concern that infrastructure to haul and process organic material is not yet well enough established and that there are not any food waste processors in the Worcester/Boston Metro Area. With so few processors it could lead to artificially high costs where collection and hauling costs will exceed trash disposal costs in some areas. One commenter points out that subsidies and incentives should be instated to support facilities in urban and suburban areas where the waste is been generated. This would prevent extensive shipping cost that could lead to the loss of environmental benefit. One commenter points out that Vermont's recent food waste disposal ban is only activated when the generator is located within 20 miles of a certified organics management facility that has available capacity and believes that similar language in the Massachusetts ban would prevent unreasonable hauling costs. Commenter believes it is critical that local communities establish solid waste policies to drive sustainable food waste collection programs.

Response: Massachusetts has implemented a number of changes to foster the development and siting of new composting and anaerobic digestion capacity, including regulation changes, several loan and grant programs, and changes to the Renewable Portfolio Standard to improve the ability of anaerobic digestion facilities to earn high value renewable energy credits. Further initiatives in this area are described in MassDEP's Organics Action Plan. There are a number of compost sites that will take food waste now, and a growing number of haulers that offer food waste collection services. In addition, it is important to recognize that many of the businesses and institutions potentially subject to the ban have already taken steps to reduce food waste disposal to some degree. Many businesses and institutions subject to the ban now are saving money by diverting food waste from disposal. It is also important to recognize that there is a wide range of options for businesses and institutions to comply with the ban and do so in a cost effective way, including reducing food waste in the first place, donating servable food, employing on site systems, and sending to a variety of offsite facilities, including anaerobic digestion facilities, compost facilities, and animal feed operations. The continued implementation of the ban will drive development of additional capacity, which will further reduce hauling costs and make these programs even more cost-effective.

Comment: Commenter is concerned that the media has reported that this regulation will channel all food waste into energy producing facilities and the media does not mention other compliance alternatives available.

Response: This information is not accurate. As mentioned above, there is a wide range of options available to businesses and institutions for how they can comply with the ban.

Comments: Commenters stated that source separated organic materials need to be free of contamination in order to be converted into soil and clean energy. There is a concern that an AD facility could also get permitted to process biosolids with food waste with a byproduct that is

contaminated due to pharmaceuticals, heavy metals, chemicals from biosolids and not be usable for soils. There is a need for MassDEP to develop or reference a stronger standard for compost products to ensure:

- Marketed products from composting or anaerobic digestion are not toxic;
- Contaminated products are not destined to be burned in an incinerator or used as landfill daily cover; and
- Contaminated products are suitable for a specified restrict use or deposited in a monofill or other form of safe storage.

Response: Anaerobic digestion and composting of bio-solids is already in place at a number of waste water treatment facilities and can have important environmental and economic benefits compared with other wastewater treatment residuals management options. Use of products from such activities are regulated under 310 CMR 32.000. In addition, it is important to note that co-digesting food waste and wastewater sludge can have important benefits including stabilizing the digestion process (compared to food waste alone) and increasing gas and energy generation (compared to wastewater residuals alone).

Comments: Commenters stated that 248 CMR 10.00 Uniform State Plumbing Code, E - Food waste Grinder Units (8c): Commercial Food-waste Grinders Required. All establishments summarized in 248 CMR 10.00(2) (a), (restaurants, cafeterias, hotels...) that are served by a municipal sanitary sewer and can seat 20 patrons or more shall incorporate food waste grinders. And as such, any food service establishment subject to the regulations can meet its obligation through use of a food waste disposer connected to the municipal sewer system. MassDEP should support efforts to enforce this requirement since it has a shared goal with the commercial organics waste ban.

Response: MassDEP agrees that in some cases food waste grinders may be an effective way for businesses and institutions to manage some portion of their food waste. Any business or institution interested in this approach should consult with their local health department or sewer department to obtain any necessary approvals.

Comment: In 310 CMR 16.02, “conversion” includes enzymatic, thermal or chemical degradation of organic materials. How would this be interpreted by MassDEP, given that the waste ban would not allow commercial organic material to be disposed of in a municipal waste combustor?

Response: Conversion of source separated organics at a facility permitted under 310 CMR 16.04 and 16.05 would not be considered disposal. Therefore sending separated commercial organic material to such a facility would be in compliance with the ban.

Comment: One commenter states organics processing facilities, whether aerobic or anaerobic, require a lot of investment funds and a lot of labor to produce a quality product. These costs must be accurately quantified to justify the waste ban and must include all inputs.

Response: These capital, operating, and maintenance costs are all considered and taken into account by developers of anaerobic digestion facilities and their investors in determining whether to proceed with a project. This is a private business decision. MassDEP believes that, from a broader standpoint, such facilities will be able to operate as a cost-effective materials management alternative in Massachusetts and provide economic development and job benefits.

Comment: One commenter asks if MassDEP assumes that 350,000 tons/year of organic waste will be diverted and a high percentage of that will be composted, where is the equal amount of carbon material coming from to support these systems? Assuming that at some point, carbon material will need to be purchased by composting operators, there needs to be an adequate supply that is reasonably priced.

Response: Note that the goal of increasing organics diversion by 350,000 tons annually is a 2020 goal, and MassDEP does not expect to reach this goal in 2014 from the implementation of the waste ban. Carbon materials to compost with food waste are available from a variety of renewable sources, including existing leave and yard waste compost sites and agricultural compost sites. In addition, adding materials such as waxed cardboard or compostable paper in some programs may also provide a carbon source.

Need for Strong End Markets

Comments: Commenters stated that in order for the Commercial Organics Waste Ban to be effective, there needs to be assurance that end products are clean, useable and that markets exist. One concern is that the liquid residual from anaerobic systems does not yet have a market. It is essential to have stable end markets if large capital investments are going to be justified.

Response: MassDEP believes that markets for anaerobic digester outputs are an important consideration. Jordan Farm, which co-digests food waste with manure, has been successful in using their solid residual as bedding material for cattle and applying the liquid digestate to farm fields as a fertilizer. MassDEP will work with facility developers and others to support the development of uses for AD material outputs.

Comment: One commenter suggest DEP work with other entities like the Division of Capital Asset Management (DCAM) to create end markets and work with the Department of Energy Resources (DOER) and Massachusetts Clean Energy Center (CEC) to further incentivize credits for anaerobic digestion.

Response: This inter-agency coordination is already taking place. In addition to the agencies listed above, MassDEP has also worked with the Department of Transportation and Department of Agricultural Resources, among others.

Comment: In reference to 5 (B) recycling or composting operation the word “Conversion” is missing and as a definition of 310 CMR 16.02 Conversion “means aerobic or anaerobic digestion or enzymatic, thermal or chemical degradation of organic materials” could this be added?

Response: Not applicable – propose to remove from this document.

Existing Waste Ban Enforcement/Implementation *(Note: these comments are not specifically on the draft regulations, though they are related.)*

Comments: Commenters are pleased MassDEP has hired additional personnel to enforce the Waste Bans. Several Commenters believe that historically, the existing Waste Bans have not been enforced consistently or adequately. Commenter requests MassDEP to commit to reduce waste ban violations by 50% by September 1, 2014, and additional 50% by 2015. Some of the problems with the existing Waste Bans enforcement include:

- Not enough focus on the generators and too much liability to haulers and solid waste facilities;
- More than 1 million tons of banned waste is still disposed of annually; and
- Continued disposal of banned materials is contributing to rapid filling of Massachusetts’ remaining landfills.

Response: MassDEP agrees that waste ban compliance levels need to be improved. MassDEP is pursuing an integrated strategy that includes using data from solid waste facilities and third party inspectors to inform inspections and outreach, implementing increased inspections by MassDEP staff, and referring generators to the RecyclingWorks program for assistance. MassDEP’s changes to lower action levels in waste ban guidance are intended to provide more information that MassDEP can use to identify generators that dispose of banned materials and get those generators to return to compliance. MassDEP also will be working to increase awareness and understanding of waste ban requirements. Eventually, MassDEP expects this strategy to result in reduced numbers of failed loads and reduced enforcement. However, in the short term, reduced action levels for some materials likely will result in more failed loads identified at solid waste facilities. And, increased MassDEP inspections will result in increased numbers of waste ban enforcement actions. Given these factors, this requested commitment does not make sense.

Comment: Commenter suggests MassDEP should reallocate grant funding to support local government work with generator responsibility and generator waste ban compliance, both for the existing ban and this proposed new ban.

Response: MassDEP already provides grants for municipal mandatory recycling enforcement and will continue to offer this grant assistance to municipalities.

Implementation at Solid Waste Facilities

Comments: Commenter states MassDEP should hold off on facility permit modifications and changes to facility guidance should be delayed for several years, until generator education and outreach has been done.

Response: MassDEP disagrees with this comment. Implementation of the waste bans at solid waste facilities is directly connected to outreach to waste haulers and generators about the existing bans and the new commercial organics ban. Solid waste facility inspections and monitoring will provide important information to waste haulers, their customers, and MassDEP to support and inform implementation of the ban.

Comment: Commenter states implementation at solid waste facilities will be difficult because the State's proposed food waste ban would apply only to material from commercial generators of a certain size, not just the material itself. There will be no way to determine what generators on any given route are subject to the ban. Removal and separation of organics at the disposal facility is not feasible after it has been comingled with other waste streams and it is simply not reasonable to expect the receiving facilities to monitor individual generator tonnages.

Response: In cases, where commercial organic material exceeds 10 percent of a load by volume, solid waste facilities will not be responsible for identifying whether the organic material comes from a business or institution subject to the ban. They will be required to document these loads and notify haulers and, where known, generators that the load exceeded the action level for commercial organic material. Haulers should then determine what customer(s) were served on that route and whether any are likely to or may exceed the disposal threshold of one ton per week. MassDEP encourages haulers to contact MassDEP for assistance in resolving any questions.