

April 27, 2021

ORRS - Part 350
NYSDEC
Division of Materials Management
625 Broadway
Albany, NY 12233-7253

RE: Comments on Proposed Part 350

To Whom It May Concern:

Thank you for the opportunity to submit written comments on the proposed rules for implementing the requirements outlined in the NYS Food Donation and Food Scraps Recycling law enacted in 2019.

The Institute for Local Self-Reliance (ILSR) is a national nonprofit organization that supports environmentally sound and equitable community development. For more than four decades we have advanced waste reduction, reuse, recycling, and composting as means for local economic development and healthy communities. I direct ILSR's Composting for Community Initiative and have 35 years experience promoting non-burn solutions to trash problems. My work includes researching and writing multiple guides and reports on the best recycling and composting programs in the country, and facilitating a national Community Composter Coalition, which has members in 34 states, including many in New York. Indeed, New York is home to many groundbreaking community composting operations, which have been an inspiration for numerous initiatives and programs across the United States.

Composting can be small scale and large scale and everything in between but too often home composting, onsite composting, community scale composting, on-farm composting, and medium-scaled sites are overlooked. Anaerobic digestion systems come in different sizes as well. One of the biggest obstacles to having a healthy and distributed organic materials recycling infrastructure is rules and policies that privilege large-scale industrial sites. SIZE MATTERS. The draft rules as written will lead to mixed waste processors, contaminated compost, and large-scale industrial sites at the expense of better operated smaller-scale and medium-scale sites (and a diverse healthy infrastructure). The yellow highlights below indicate problematic language in the draft rules.

Section 350-2.4 Separation of food scraps for recycling

(a) Except as provided in subdivision (c) of this section, on or after January 1, 2022, any designated food scraps generator that is within 25 miles (measured in a straight line) of an organics recycler(s) or an intermediary used prior to recycling such as a regional depackaging facility or a transfer facility, to the extent that the facility has capacity to accept all of the generator's food scraps based on the department's yearly estimate of an organics recycler's capacity in accordance with this part, must do the following:

(1) Separate its food scraps from other solid waste. The materials separated will depend on the capabilities of the organics recycler used by the generator. For example, post-consumer food scraps do not have to be collected by the generator unless the organics recycling facility is capable of

removing contaminants (plastics, etc.) that are likely to be present with the food scraps. The generator may determine the most efficient and appropriate separation methods for their operation.

(c) Separation of food scraps by the generator is not required for a designated food scraps generator that sends all of its food scraps to be processed in a solid waste composting facility, solid waste anaerobic digestion facility, or other organics recycler capable of managing the waste without source separation.

I urge the agency to develop rules to encourage well-operated sites that handle clean material streams. If implemented as currently written, the rules will directly encourage mixed waste composting and mixed waste anaerobic digestion facilities, and thus, the lowest common denominator for organics recycling facilities rather than the highest and best use. They would undoubtedly lead to commingling of clean organics with non-compostable items that will in turn be sent to depackagers and large-scale sites that claim they can handle contaminated loads. There is a role for depackaging systems. That role should not be in processing all of a supermarket's material nor in encouraging the commingling of clean streams with packaged streams.

I further urge the agency to disallow depackagers and mixed waste transfer stations from counting as capacity within the 25 mile radius. The New England laws on which New York State's law is based – Vermont's, Rhode Island's, and Connecticut's – included a mile radius threshold as a strategy to encourage close-in capacity and infrastructure. A depackager is not an organics recycling facility. A transfer station is not an organics recycling facility. As pointed out above, composting and anaerobic facilities come in all sizes. Rules could and should be developed to encourage locally based facilities and close-in infrastructure, not infrastructure encouraging commingling of clean materials with contaminated materials and designed to feed mixed solid waste (aka dirty) large-scale far-away facilities.

If you don't think this can happen in New York, think again. It is already happening in Vermont and Massachusetts, states with perhaps better legislative language requiring source separation. In Vermont, the state agency has been supporting and investing in "depackaging" by issuing grants and permitting. I know of at least two on-farm composters in Vermont (and there are more) who have lost market share to depackagers and large-scale industrial facilities that take contaminated organics. These farmers have been accepting clean streams from these supermarkets for years. Sites that are producing high-quality compost are literally seeing large-scale industrial sites syphoning the flow of materials away from their operations. In Massachusetts, one member of our Community Composter Coalition, the worker-owned CERO (which has for years been delivering food scraps generated from commercial clients in the Boston metro area to a network of farmers for composting or anaerobic digestion) is now losing clients. Their most significant competition is from waste industry companies that have leveraged access to large capital assets and state grants to build huge depackaging facilities. According to CERO, "They tell our customers that they no longer have to worry about separating organics. They can put everything, including plastic wrap, styrofoam and metals all into a dumpster and claim adherence with the organics waste ban."

The [story and fate of the The Wilmington Organics Recycling Center in Delaware](#), may serve as another warning sign. The site, designed to receive a whopping 600 tons per day, was at the center of expanded food waste collections in the Mid-Atlantic region, and took materials from New York as well. It accepted organic materials from government institutions, grocery chains, schools, food processors, sports venues, restaurants, and other large food waste generators. The large waste hauler, WMI, became the majority owner, and proceeded to run the facility into the ground by accepting

contaminated material. Between mid 2012 and its closure in fall 2014, the facility received hundreds of odor complaints, Notices of Violation from the State of Delaware, and complaints about plastic and glass contamination in the compost. The State shut down the facility in December 2014, causing disruption in dozens of food scrap recycling programs.

What can you do to avoid such fates in New York? To prevent the waste hauling industry from giving compost a bad name? To encourage less contamination, not more? If implemented, a distributed infrastructure approach would create jobs, reduce private and public sector costs for managing waste, and better tie compost to healthy soils and local food production, thereby reinforcing a community culture of sustainability and engaged environmental stewardship. (See ILSR's Hierarchy to Reduce Food Waste & Grow Community, attached.) Moreover, with a diverse infrastructure, problems at one site will not disrupt the whole system as was the case in Wilmington.

New York State has a huge opportunity to implement rules that do not privilege sites that want contaminated loads, but that rather support a distributed and locally based infrastructure that wants clean materials for high-quality soil amendments.

Thank you for your time in reading and addressing these comments.

Sincerely,



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Hierarchy to Reduce Food Waste and Grow Community

