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BACKGROUND DOCUMENT ON PROPOSED AMENDMENTS TO

310 CMR 19.000

Waste Ban Regulations

REGULATORY AUTHORITY:

M.G.L. c. 111, § 150A

September 30, 2020

**This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
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I. SUMMARY

MassDEP is proposing to amend the waste ban regulations at 310 CMR 19.017 to add mattresses and textiles as materials banned from disposal, and to lower the threshold of the existing commercial organics waste ban so that it applies to entities that generate one-half ($\frac{1}{2}$) ton or more of commercial organic material per week (current threshold is one ton per week).

MassDEP is also proposing changes to its Waste Ban Guidance Document for solid waste facilities, which will be made publicly available for comment along with the proposed regulation changes.

II. BACKGROUND

MassDEP's Draft 2030 Solid Waste Master Plan proposes a 30% statewide waste reduction goal, to reduce disposal by 1.7 million tons annually, from a 2018 baseline of 5.7 million tons to 4.0 million tons by 2030. This goal would place the Commonwealth on track to achieve a 90% reduction goal by 2050, of reducing disposal by about 5.1 million tons, from a 2018 baseline of 5.7 million tons to 570,000 tons by 2050.

The Draft 2030 Solid Waste Master Plan proposes the adoption of several strategies for increasing residential, commercial, and institutional recycling over the next ten years and beyond. A major priority is to significantly increase the diversion of organic material from the solid waste stream by an additional 500,000 tons annually by 2030, from the 2018 baseline of 280,000 tons of food waste reduction. Food materials represent more than 25% of municipal solid waste disposed in Massachusetts – approximately 1.3 million tons – annually.

MassDEP plans to work with stakeholders to develop and implement an updated Organics Action Plan targeting different sectors, including large commercial and institutional generators, medium business and institutional generators, and small businesses and residents. The plan includes the following strategies:

For large generators:

- Drive increased food waste reduction through continued waste ban inspections and enforcement, sending formal information requests to businesses that generate food scraps, technical assistance through MassDEP's RecyclingWorks program, and education and outreach.
- Develop initiative/systems to track and reduce food waste generation at the source.

For medium generators:

- Develop a comprehensive strategy to support reducing the threshold for the commercial organics waste disposal ban to one half (½) ton per week by 2021.
- Implement grant and loan programs to foster increased investments in collection systems, local and regional composting capacity, and intermediate processing facilities.
- Provide expanded business assistance through RecyclingWorks.

For small businesses and residents:

- Develop a multi-pronged approach to reduce food waste from small sources by raising awareness about how to reduce food waste and supporting increased adoption of on-site/home composting.
- Foster further development of community and drop-off composting programs
- Develop efficient models for curbside food waste collection.

MassDEP is also proposing to add textiles as a waste ban material. Based on waste characterization data, about 250,000 tons of textiles are disposed of in the trash on an annual basis. However, a robust and extensive reuse and recycling infrastructure is in place to handle these materials. There are more than 25 textile reuse and recycling operations in Massachusetts, and more than one half of municipalities collect textiles for reuse and/or recycling.

Massachusetts also has an extensive network of textile collection and drop-off programs run by both non-profit and for-profit entities. Textiles that cannot be reused, for example clothing with stains or tears, can be reused for other purposes such as industrial wiping cloths, insulation, carpet padding, and sound proofing. Due to these reuse and recycling options, textiles typically have value when collected and diverting these materials from the trash lowers trash disposal costs. MassDEP's goal is to cut textile disposal in half by 2030, an annual reduction of 125,000 tons.

MassDEP is also proposing to add mattresses as a waste ban material. MassDEP estimates that approximately 600,000 mattresses are generated on an annual basis, with approximately one third of these coming from residents. This only represents about 16,500 tons per year of waste, though this tonnage has a disproportionate impact, as mattresses are bulky, difficult to handle, and take up a lot of volume at solid waste facilities. There is currently a significant capacity and a growing infrastructure to handle mattress recycling. MassDEP has established a state contract for mattress recycling, with four vendors on state contract, and has established a mattress recycling grant program for cities and towns. Through this contract, more than 50,000 mattresses are recycled annually. The actual annual total of recycled mattresses is larger than this, as this figure does not include mattresses from businesses and institutions. In fact, the private mattress recycling companies that do business in Massachusetts currently have the capacity to handle 300,000 mattresses per year. In addition, MassDEP has awarded mattress

recycling grants to these companies which should enable this capacity to continue to grow. In addition, many mattresses are collected by retailers when consumers buy a new mattress.

Some mattresses may not be able to be recycled if they are dirty and wet, and MassDEP proposes to allow for the disposal of those mattresses when necessary.

III. DESCRIPTION OF PROPOSED AMENDMENTS

The proposed amendments would revise the tonnage for commercial organic material from any entity that generates more than one ton of those materials for solid waste disposal per week to more than one-half ton of those materials for solid waste disposal per week. This means that these entities would need to take steps to prevent the disposal of this material from the trash. This waste ban would not apply to organic material from a residence or businesses that generate small amounts of food material for disposal. The amendments will also add mattresses and textiles to the list of materials banned from disposal in 310 CMR 19.017. These changes are proposed to take effect on October 1, 2021.

This regulatory package is accompanied by a proposed revised waste ban guidance document for solid waste facilities that provides guidance on implementation of the proposed amendments. The waste ban guidance document, which will be made available for public comment along with the draft regulations, is intended to assist solid waste facilities in complying with the waste ban regulations. This document guides and informs the development of each facility's waste ban plan, which MassDEP reviews and approves as part of each facility's operating permit.¹ The proposed changes to the waste ban guidance are summarized at the beginning of that document.

IV. IMPACTS OF PROPOSED AMENDMENTS

Commercial Organic Material

Businesses potentially subject to the ban for food material include supermarkets, colleges and universities, large secondary schools, large restaurants and hotels, food manufacturers and processors, and hospitals and nursing homes. The ban is tailored to address concerns from small businesses by exempting entities, such as most restaurants, convenience stores, small markets, and schools that dispose of less than one half ton of organic material per week.

Approximately 2,000 businesses are subject to the current commercial organics waste ban and MassDEP expects approximately 1,900 additional businesses and institutions to be subject to this

¹ Although MassDEP is not required to seek public comment on guidance and the guidance is not part of the proposed amendments to 310 CMR 19.000, MassDEP is making a draft guidance document available for review and comment, along with those proposed amendments, for the information and convenience of the public and regulated entities. The guidance will assist the public and regulated entities in understanding how Mass DEP intends to implement the proposed regulatory amendments. MassDEP will accept informal comments on the draft guidance until December 4, 2020. Comments should be sent to john.fischer@mass.gov.

revised waste ban. These businesses collectively generate about 100,000 tons of food waste per year for disposal. However, MassDEP expects the number of businesses and institutions that will have to make changes in response to these regulations will be lower as some portion of these businesses are already diverting food material from disposal. At the same time, MassDEP believes that this change will increase compliance among businesses that are already subject to the current commercial organics waste ban (those that generate one ton or more of food material per week for disposal.)

MassDEP estimates that the sector that will be most affected by the reduced threshold for food material will be restaurants, with approximately 1,300 restaurants potentially subject to the reduced threshold. MassDEP estimates that full-service restaurants with 18 or more employees and limited service restaurants with 24 or more employees would be subject to the proposed one-half ton per week threshold.

MassDEP will publish guidance to help businesses determine whether they will need to take steps to comply with the ban and is proposing that the regulation become effective one year after final publication to allow lead time for compliance. To comply, businesses that are potentially subject to the ban will need to separate and divert food waste from the trash through any combination of reducing food waste at their business, donating servable food, installing an on-site system, or working with a hauler to send separated food waste to an anaerobic digestion facility or compost site. The waste ban would restrict the disposal, transfer for disposal, or contracting for this material to be disposed of as solid waste, but would not affect management via wastewater systems (i.e., garbage disposals). Businesses would not need to capture 100% of their food waste; but would only need to reduce disposal below the one-half ton per week threshold to comply. For example, if a business disposes of 1,500 pounds of food waste per week and collects 1,000 pounds of this food waste per week for composting, they could dispose of 500 pounds of food waste per week and be compliant with the one-half ton per week threshold.

MassDEP has chosen not to include residential food waste or food waste from small commercial generators in the proposed ban, as insufficient collection and processing systems exist to handle this material cost effectively. In addition, food waste from larger sources will tend to be a higher quality feedstock for anaerobic digestion and composting facilities. MassDEP has also proposed not to include biodegradable paper (e.g., paper towels, plates, biodegradable service ware) as part of the ban, as these materials would not be acceptable at all facilities. As the infrastructure and programs to support this food waste diversion become established, MassDEP intends to increase diversion of food waste from additional sources as appropriate. MassDEP will consider what the best strategies are to drive food waste diversion from these smaller generators, including potentially extending the waste ban to smaller sources.

Textiles

Approximately 250,000 tons of textiles are disposed of in the trash each year in Massachusetts. MassDEP believes that these regulations, along with supporting programs, can divert one half of this material, or 125,000 tons per year to more beneficial uses. Textile reuse and recycling options are widely available to residents and small businesses, as more than 25 businesses and non-profit organizations in Massachusetts run textile reuse or recycling operations. This waste disposal ban would help support the growth of these types of operations. Collection options include drop-off donation bins for charity, curbside collection programs for reuse and/or recycling, and both formal and informal textile resale programs. Textile reuse and recycling options include re-selling or donating for second-hand apparel, manufacturing into new products such as quilts, blankets or bags, converting into industrial wiping cloths, and recycling for uses such as insulation, carpet padding, and sound-proofing materials. Municipalities may choose to establish textile collection programs for their residents – at least one half of municipalities offer programs now and many schools collect textiles for reuse and recycling as a fundraising strategy. Some businesses may generate textiles, including textile or clothing manufacturers and hotels.

Mattresses

MassDEP estimates that approximately 16,000 tons of mattresses are disposed of in the trash each year. Mattresses are a bulky material that takes up a lot of space and is difficult to handle at solid waste facilities. MassDEP believes that at least one third of these mattresses, or more than 5,000 tons per year, can be diverted from disposal to recycling outlets. Some mattresses are generated by large businesses and institutions like hospitals, colleges and universities, and these mattresses can be readily sent to existing mattress recycling operations. In addition, many mattresses are currently collected by retailers when a consumer buys a new mattress. In addition, municipalities may choose to collect mattresses for recycling through either a curbside or drop-off program.

Economic Impacts

Commercial Organic Material

The bans will encourage economic development and job creation via recycling, which generates more jobs than disposal of the materials. Businesses can realize cost savings by diverting materials from disposal. Massachusetts' 2014 food waste disposal ban created an estimated 500 direct jobs and generated an estimated \$174 million in annual economic activity in Massachusetts.

Businesses and institutions currently pay to dispose of these materials and generally stand to realize savings by diverting the material from the waste stream. Some businesses will face added costs for separate food waste collection, though these will be minimized through more efficient collection systems and reduced disposal costs. Businesses can also realize savings by making

food service operations more efficient to reduce waste and by donating food that is still safe to serve to those in need through food banks and food rescue organizations.

Textiles

Diverting textiles from the trash reduces solid waste disposal and collection costs for municipalities, businesses and residents. In addition, textiles have value for both donation and recycling purposes. Diverting these materials from the trash can save money for both businesses and municipalities, while supporting charity donation programs and textile recycling businesses in Massachusetts.

Mattresses

Based on current contracts, mattress recycling costs \$10-\$20 per unit, with additional transportation and handling costs to collect and load mattresses into containers. It is MassDEP's understanding that most disposal facilities charge a surcharge on mattresses sent for disposal, which are typically similar to or even larger than per unit mattress recycling costs, ranging from \$15-\$60 per unit. Therefore, MassDEP believes that any additional costs should be minimal on a net basis, or municipalities, businesses and residents that recycle mattresses may incur lower costs for recycling than for disposal.

Impacts on Massachusetts Municipalities

Pursuant to Executive Order 145, state agencies must assess the fiscal impact of new regulations on the Commonwealth's municipalities. MassDEP notes that food waste, mattress, and textile disposal are not mandated municipal services. Municipalities that voluntarily provide these services may encounter increased costs due to the requirements of the regulation. However, as indicated, recycling and reuse costs may be lower than current disposal costs. Even if costs are increased, municipal waste removal services are not mandated municipal services subject to the restrictions of Proposition 2½, M.G.L. c. 29, § 27 C(a) (which requires the state to reimburse municipalities for costs incurred as a consequence of new state laws and regulations if associated with a mandated municipal service).²

MassDEP estimates that about 30 public schools may be subject to the reduced threshold for the commercial organics waste ban. Some of these schools may already be diverting food materials from the trash. MassDEP proposes to provide equipment grants and technical assistance to these schools to reduce initial implementation costs and to help them to comply cost-effectively. Schools that establish food waste collection programs can reduce their solid waste disposal costs.

Massachusetts Environmental Policy Act (MEPA)

Pursuant to 301 CMR 11.03(12) (Massachusetts Environmental Policy Act Regulations), MassDEP is not required to file an Environmental Notification Form (ENF) regarding the

² See *Town of Norfolk v. Department of Environmental Quality Engineering*, 407 Mass 233 (1990). Note that incidental administrative cost impacts are also not eligible for reimbursement under M.G.L. c. 29, § 27 C(a).

proposed amendments. The proposed amendments do not reduce standards for environmental protection, nor do they reduce opportunities for public participation in review processes or public access to information generated or provided in accordance with the regulations.

V. PUBLIC HEARING AND COMMENT

In addition to this background document, the public hearing package includes the following documents:

- Proposed Regulation Amendments to 310 CMR 19.000
- Draft Revised Waste Ban Guidance Document for Solid Waste Facilities

M.G.L. Chapter 30A requires MassDEP to give public notice and provide an opportunity to review the proposed regulations at least 21 days prior to holding a public hearing. The hearing will be held in accordance with the procedures of M.G.L. Chapter 30A. The public hearing notice, proposed regulations and background document will be available on MassDEP's website at:

www.mass.gov/dep/public/publiche.htm.

Questions about this document and comments may be addressed to John Fischer at 617-292-5632, or john.fischer@mass.gov.