



January 10, 2025

Commissioner Bonnie Heiple  
Massachusetts Department of Environmental Protection  
100 Cambridge Street, STE 900  
Boston, MA 02114

Re: Petition for Massachusetts Department of Environmental Protection Rulemaking to Revise and Rescind Site Assignment Regulations for Solid Waste Facilities

Dear Commissioner, Heiple:

In accordance with the provisions of 310 CMR 2.02, the Town of Dartmouth hereby petitions the Massachusetts Department of Environmental Protection (hereinafter referenced as MassDEP or the Department) to amend and revise certain sections of 310 CMR 16.00: Site Assignment Regulations for Solid Waste Facilities. The facts presented below will demonstrate the insufficiency of the aforementioned regulations and the dire need for immediate and substantive changes if MassDEP is to protect the Commonwealth's interests intended within the aforementioned regulations.

This petition results after numerous years of investigations, research and experiences by staff of the Town of Dartmouth into the unintended consequences resulting from composting since the initial waste ban for generators of more than one ton of food waste per week beginning in 2014.<sup>1</sup> Since the enactment of the first food waste ban, MassDEP has furthered the diversion of food wastes from landfills by amending the aforementioned regulations and in November 2022, to lower the generator limit of food waste diverted from one ton to one half ton per week.<sup>2</sup> The Department's revisions to 310 CMR 16.00 in 2022, to further food waste diversion came while MassDEP was well aware of ongoing harm to: the waters of the Commonwealth;<sup>3</sup> the air;<sup>4</sup> and the interference with the enjoyment of residential properties.<sup>5</sup>

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<sup>1</sup> "New Research Highlights Massachusetts as National Leader in Food Waste Reduction." Mass.gov, September 12, 2024. <https://www.mass.gov/news/new-research-highlights-massachusetts-as-national-leader-in-food-waste-reduction>.

<sup>2</sup> "MassDEP Waste Disposal Bans." Mass.gov. Accessed November 13, 2024. <https://www.mass.gov/guides/massdep-waste-disposal-bans>.

<sup>3</sup> "Total Maximum Daily Loads by Watershed." Mass.gov. Accessed November 13, 2024. Pages 70 -73 and 104 -121. <https://www.mass.gov/lists/total-maximum-daily-loads-by-watershed>.

<sup>4</sup> "Dartmouth Man Says He's Not to Blame for Fisher Road Odor Problems." New Bedford Standard-Times, May 13, 2015. <https://www.southcoasttoday.com/story/news/local/chronicle/2015/05/13/dartmouth-man-says-he-s/34561779007/>.

<sup>5</sup> Hilsman, Angie. "Composting Site Contributes to Nitrogen Pollution, Neighbor Complaints." Dartmouth, November 1, 2016. <https://dartmouth.theweektoday.com/node/25375>.

Furthermore, harm is not restricted to waters and the air, but also public health and public safety with fires that have endangered neighborhoods and poor air quality.<sup>6</sup>

The factual issues surrounding composting that have led to this petition are segregated below. Supporting information to amend and revise 310 CMR 16.00, will not be limited to the Town of Dartmouth but will also reference matters elsewhere in the Commonwealth or information from peer environmental protection agencies.

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**I. Nuisance Odors:**

Nuisance odors from composting was the initial scratching of the surface of the ill-made revisions to 310 CMR 16.00 that went into effect in 2014 and began the widescale diversion of food waste to waste handling facilities under new exemptions in sections 16.03 (2)(c)1.- 2., 16.04 and 16.05. Nowhere in these sections are there setbacks to sensitive receptors, such as but not limited to residential neighborhoods. The regulations shift from a rigorous public process of site assignment to a mere notification by the operator to the local board of health and self-certification form. The regulations also ignore longstanding controls to protect the environment and public health that are known as setback standards that are found in state and local regulations including but not limited to: by-laws such as zoning provisions; 310 CMR 10.00: Wetlands Protection Act Regulations; 310 CMR 15.000: Title 5; and 310 CMR 22.00: The Massachusetts Drinking Water Regulations.

Shortly after the 2014 food waste ban, Dartmouth had eight composting operations. Some were agricultural operations that were stabilizing manure with offsite bulking materials; however, others were merely using the lower threshold of permitting and lack of oversight as a business opportunity with limited investment. Of the eight operations, half were handling food waste and were the source of nuisance odors in residential areas. We know this is not unique here in Dartmouth, but also includes at a minimum the following municipalities:<sup>7</sup>

- Middleborough<sup>8</sup>

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<sup>6</sup>Standard-Times, Curt Brown The. "Dartmouth Firefighters Continue Fight against Stubborn Underground Blaze at Stump Dump." Wicked Local, July 15, 2015. <https://www.wickedlocal.com/story/archive/2015/07/15/dartmouth-firefighters-continue-fight-against/33868927007/>.; "A-plus Waste & Recycling in Middleborough Penalized \$9,360 for Failure to Properly Manage Compost Operations." New Bedford Standard-Times, September 2, 2016. <https://www.southcoasttoday.com/story/news/local/the-gazette/2016/09/02/a-plus-waste-amp-recycling/25528337007/>.; DeAngelis, Gino. "Fire Departments Extinguish Mulch Fire in Middleborough." ABC6, September 1, 2024. <https://www.abc6.com/fire-departments-extinguish-mulch-fire-in-middleborough/>.

<sup>7</sup> Guha, Auditi. "Neighbors Complain of Nasty Odors." New Bedford Standard-Times, October 7, 2015. <https://www.southcoasttoday.com/story/lifestyle/health-fitness/2015/10/06/neighbors-complain-nasty-odors/33324259007/>.

<sup>8</sup> "Massachusetts Residents Sick over Recycling Center Odor." Waste 360, November 9, 2023. <https://www.waste360.com/residential-waste/massachusetts-residents-sick-over-recycling-center-odor>.

- Northborough<sup>9</sup>
- Haverhill<sup>10</sup>
- Acushnet<sup>11</sup>

While many of the above noted situations are many years ago, this does not diminish the carelessness of the regulatory exemption within 310 CMR 16.03 – 16.05 that allows for composting operations to site wherever, and to harm residential property owners. In some of the aforementioned matters MassDEP has pointed to the Massachusetts Department of Agricultural Resources (MDAR) as being the overseeing agency for enforcement due to a site being “registered” with MDAR through the 330 CMR 25.00: Agricultural Composting Program. However, MDAR is not directed by statute as is MassDEP to protect the air, land and waters of the Commonwealth. This regulatory finger pointing is frustrating to the public and will be discussed further in this document.

Aside from odors interfering with the enjoyment of residential property, some information does suggest that exposure to fugitive emissions from composting may have health impacts such as irritant symptoms.<sup>12</sup> Inhalation of air pollution is a widely accepted risk exposure and equity to protection of public health must be just with all forms of air pollution. Until such a time that conclusive studies eliminate risk on human health from odors sourcing from composting sites, caution is imperative and must be made with setback standards embedded in regulations.

In closing nuisance odors are largely avoidable when compost operations are properly sited away from residential areas and when operators are properly trained in the handling of organic wastes. A good example of improper mixing and the need for operator training being the cause of chronic nuisance odors occurred in 2017 and 2018 when the Dartmouth Board of Health investigated nuisance odors over a widespread area of Town.<sup>13</sup>

## **II. Unpermitted Discharges of Pollutants to the Groundwater and Surface Waters:**

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<sup>9</sup> “Northborough Man Fights State Order Over Composting Odor.” Boston.com, November 5, 2018. <https://www.boston.com/real-estate/real-estate-news/2018/11/05/northborough-man-fights-state-order-over-composting-odor/>.

<sup>10</sup> Wiley, Desiree. “It’s Overpowering and Disgusting’: Neighbors Complain of Stinky Farm.” NBC Boston, December 16, 2016. <https://www.nbcboston.com/news/local/its-overpowering-and-disgusting-neighbors-complain-of-smell-kimball-farm-haverhill-massachusetts/1923990/>.

<sup>11</sup> Barnes, Jennette. “Stink, Stank, Stunk! Acushnet Odor Explained.” New Bedford Standard-Times, January 10, 2020. <https://www.southcoasttoday.com/story/news/2020/01/09/stink-stank-stunk-acushnet-odor/1922123007/>.

<sup>12</sup> “Odour from a Compost Facility.” National Collaborating Centre for environmental Health, January 2018. [https://ncceh.ca/sites/default/files/Odour\\_from\\_compost\\_facility-Feb\\_2018.pdf](https://ncceh.ca/sites/default/files/Odour_from_compost_facility-Feb_2018.pdf).

<sup>13</sup> Dartmouth Board of Health ordered an operator in March of 2018 to cease composting operations that utilized sugar dried cranberries. Since the termination of this this pre-consumer food waste nuisance odors have ceased. The investigation leading to the enforcement action caused the Town significant resources in the investigation that commenced seven months prior. This is an unnecessary burden placed on towns by MassDEP.

Before diving into the biggest concern that will be demonstrated further on, we wish to provide some background that will reveal how the assessment by the Town's Health Department staff quickly shifted to include a new concern not expressed by residents who were reporting obnoxious odors.

Here in the Town of Dartmouth in the 1990s, Dartmouth was besieged with the stockpiling of clam shells from processing in the City of New Bedford. The shells were laden with remnants of shellfish tissue. Consequently, odors persisted along with vectors. The stockpiling was enabled by the "clean shells and bones" exemption in 310 CMR 16.00 at the time. Wendy Henderson, prior Director of Public Health for the Town of Dartmouth, and Lee Tripp from the Massachusetts Department of Environmental Protection conducted a site inspection on December 3, 1997. From the inspection they were able to arrive at some field estimates to assess the impacts of the shell pile and ultimately decide if the shells were "clean". First, they determined the amount of shellfish tissue per cubic yard, so an estimate could be established on the incoming loads. Additionally, a sample of the runoff from the stockpile was taken with alarming results for sodium, nitrate, sulfate, ammonia and chloride.

Between the volume of meat in each overall load, and the deleterious constituents associated with the runoff, an enforcement order was issued to cease and desist stockpiling clam shells in the Town of Dartmouth. Following that action, one hauler attempted to propose a handling facility in Dartmouth but the costs to assure the leachate and odors would be managed stopped the proposal. Following that, the shell stockpiling moved clandestinely through the Southcoast and discovered by odor complaints. Eventually, state action ensued with corrective action to ensure shells were clean. Despite the enforcement action to guarantee clean shells, the harm to wetlands in the Mattapoisett River watershed still remains after twenty years due to the die back of the red maple swamp that received runoff. Today a monoculture of phragmites is what remains and not the diverse system of trees, shrubs, annual plants and associated fauna in the wetland.

Fortunately, the foresight of Ms. Henderson and Ms. Tripp, a joint collaborative effort of state and local government nearly three decades ago spared Dartmouth from the harm of the lax handling of a seafood waste product. However, the last ten years of MassDEP's campaign to aggressively promote composting with regulatory adaptation and grants based solely on increasing diversion of food waste has been anything but a joint venture for the environmental and public interests of Dartmouth.<sup>14</sup> This time, leachate and the deleterious constituents only seem to be a concern of the Town of Dartmouth.

As noted in the introduction, nuisance odors were invading residential properties from compost sites from the onset of the 2014 food waste ban. One site, 564 Fisher Road in Dartmouth was granted a General Permit by MassDEP in 2015 and was located such that runoff from the compost piles flowed into a pond and then into a bordering vegetated wetland. During a site inspection in 2016, staff from the Board of Health observed dead vegetation where runoff flowed or collected. Subsequent inspections by town staff determined similar environmental impacts at other locations in Dartmouth.<sup>15</sup>

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<sup>14</sup> "New Research Highlights Massachusetts as National Leader in Food Waste Reduction." Mass.gov, September 12, 2024. <https://www.mass.gov/news/new-research-highlights-massachusetts-as-national-leader-in-food-waste-reduction>.

"Solid Waste Advisory Committee Meeting Summary." Mass.gov, October 26, 2023. <https://www.mass.gov/doc/10262023-meeting-summary/download>

<sup>15</sup> "Total Maximum Daily Loads by Watershed." Mass.gov. Accessed November 13, 2024. (CN315.1), pages 105 – 122. <https://www.mass.gov/lists/total-maximum-daily-loads-by-watershed>

In November of 2017, the Board of Health sent access notices for testing to compost operations in town that were known to be receiving large volumes of food waste. Of the three access notices sent, one granted access for sampling. On December 7, 2017, samples were collected at the General Permit site located at 564 Fisher Road in the Town of Dartmouth. Samples were gathered by a highly qualified third-party consultant of the town and analysis was performed by a MassDEP certified laboratory.

Sample results revealed excessive Total Nitrogen concentrations downgradient of the compost piles in low lying areas where stormwater collected and in a pond that had an outlet into a bordering vegetated wetland. A cross-gradient pond was also sampled for background concentrations and revealed substantially lower concentrations.<sup>16</sup>

The Town then undertook coordinated enforcement action against the conditions and certain activities at 564 Fisher Road. Ultimately, the Town succeeded with the enforcement action to protect the public interests established within our zoning by-laws, local and state wetland requirements and local public health regulations when the operator surrendered his General Permit as provided in a civil action Agreement for Judgement.<sup>17</sup> Please note one aspect of the coordinated enforcement included the Conservation Commission citing a violation due to a substantial tree kill in the down gradient wetland that resulted from the discharge from the compost operation.

Coincidentally, in the same year as the commencement of local enforcement noted above, MassDEP held a hearing on September 30, 2018, for the DRAFT Slocums and Little Rivers Embayment System Total Maximum Daily Loads for Total Nitrogen (CN 315.0). At that hearing, public comments were made by staff from the Town of Dartmouth and subsequently written comments and pictures were provided to demonstrate points by Town officials. Oral and written comments were extensive, but one topic was repeated: the negative impacts of composting to the contributing watershed of the embayment system.

While much can be discussed about the MassDEP response to the comments as an acknowledgement of severe pollution to a watershed that the Department was saying needed protection, we will select a few points to emphasize compost pollution and need for this petition. Nonetheless, we have added highlights to these MassDEP statements that after six years demonstrate many of the points in this petition were clearly expressed by the Department six years ago.

MassDEP responses to comments as follows:

- *“MassDEP acknowledges the increase in the number of composting in the town and the increase in the volume of waste disposed of at these facilities since the regulatory changes in 2013. MassDEP is committed to working with our sister agency MassDAR to properly oversee and regulate these facilities. If composting facilities are violating a MassDAR registration and*

<sup>16</sup> <sup>16</sup> “Total Maximum Daily Loads by Watershed.” Mass.gov. Accessed November 13, 2024. (CN315.1), page 122. <https://www.mass.gov/lists/total-maximum-daily-loads-by-watershed>

<sup>17</sup> Bristol, SS. Superior Court Civil Action No. 1873CV01103, Paul Murphy, as the Director of Inspectional Services of the Town of Dartmouth, Plaintiff, v. Wilfred N. Francis, Jr. Defendant. [https://www.masscourts.org/eservices/searchresults.page?x=G1\\*cLUaZcD\\*u7UWgQliJ5z4vkOoiOMZDpDaO3dJDEps6-8lFFfYkr6UjLxdXUTEvast8OL7b1SShFQq10VCKv0LLs-pz\\*gJQGDYF9UqXYwDZ38uHm9vO01o9RQgof0BvV7lCmoUY0amJrPmjwyZlSkXYAdArSIAD\\*248sn7wstZ1YcL1tTjRgAE1wUY0EX7vDabM59Wv2PnmXJQfWLD80A&antiCache=1730291995583](https://www.masscourts.org/eservices/searchresults.page?x=G1*cLUaZcD*u7UWgQliJ5z4vkOoiOMZDpDaO3dJDEps6-8lFFfYkr6UjLxdXUTEvast8OL7b1SShFQq10VCKv0LLs-pz*gJQGDYF9UqXYwDZ38uHm9vO01o9RQgof0BvV7lCmoUY0amJrPmjwyZlSkXYAdArSIAD*248sn7wstZ1YcL1tTjRgAE1wUY0EX7vDabM59Wv2PnmXJQfWLD80A&antiCache=1730291995583)

*violating 310 CMR 16.04(1), than MassDAR has the authority to revoke the registration and thereafter MassDEP will take appropriate actions, including but not limited to enforcement actions, to bring the site into compliance to protect public health, safety, or the environment. Apparent violations at composting facilities regulated by MassDEP should be reported to the MassDEP regional office.*

*The additional nutrient loads attributable to the composting facilities was not included in the development of the TMDL since the data collection period for the TMDL (200-06) was prior to the changes in the solid waste regulations. The TN load allocations estimated in the Technical Report did not include the additional load from the composting facilities. Additional load due to the organic composting should be managed separately from the TMDL because it was not included in the original data collection. It is clear that proper oversight and management of commercial composting facilities is need in order to reduce the burden of nitrogen reduction by the town.”*

- *“The photos and supporting attachments to this letter (pg 104-121) appear to indicate that the composting facility is not operating in compliance with MassDEP or MassDAR regulations. MassDEP has and will continue to enforce the solid waste regulations and take appropriate actions, including enforcement, against compost facilities that do not comply with solid waste regulations. Please note that the possession of a solid waste general permit for a composting facility does not relieve the compost facilities owner(s)/operator(s) from complying with other federal, state and local regulations. Refer to MassDEP Response to Question 10 during public meeting.”*
- *“An additional nitrogen load, specifically due to composting activities, was not directly included in the TMDL. Some composting is considered part of normal agricultural land use and was therefore included intrinsically. Massachusetts food waste ban (on establishments creating more than one ton of food waste per week) began in October 2014. The data collection period used in the development of the Slocums and Little Rivers TMDL was 2000 to 2006. These composting facilities represent new nitrogen loads that did not exist during the initial study period, therefore the town still has to address the impacts from the baseline conditions outlined in the original MEP report.*

*Massachusetts Department of Agricultural Resources (MassDAR) regulates agricultural operations with composting under 330 CMR 25.00. Those wishing to compost on-farm need only submit a registration application and comply with the policies outlined in the Guidelines for Agricultural Composting, <https://www.mass.gov/files/documents/2016/08/tz/guidetoagcomposting2011.pdf>. These Guidelines have been developed for farmers engaged in agricultural composting, for waste generated by their own, as well as taking in waste from other farming operations. Composting sites are to be located at such a distance to prevent erosion, siltation, and stormwater runoff to adjacent water bodies and wetlands. Compost operators are subject to annual self-certification that includes verification of the types and quantities of material accepted at the composting facility and that Best Management Practices are being followed. Composting requires managed*

*decomposition to avoid unwanted results which can lead to complaints by neighbors and local officials.*

*If the site is not regulated by MassDAR then the site may be regulated by MassDEP under the solid waste regulations 310 CMR 16.00 as a general permit or a Recycling, Composting or Conversion (RCC) permit. The facility would require a solid waste site assignment by MassDEP if it was not eligible for a general or RCC permit (composting facility applicability, volume limitations and permit requirements) or did not comply with 16.04 or 16.05.*

*Composting is an environmentally beneficial activity, but it is crucial that the compost facilities employ best management practices (i.e. proper carbon to nitrogen ratio, water content, etc.) to mitigate adverse impacts. MassDEP is committed to helping the towns address nitrogen impacts from compost facilities. Compost facilities that do not comply with the solid waste regulations have the potential to cause nitrogen impacts and MassDEP has and will continue to inspect compost facilities to determine if the facilities are in compliance with the regulations. Whenever, the MassDEP has cause to believe that non-compliance has occurred it will take appropriate action(s), including but not limited to enforcement actions, to bring the site into compliance to protect public health, safety, or the environment.*

*Complaints of sediment laden or discolored runoff, odor or other nuisance should be reported to MassDEP or MassDAR and appropriate actions will be taken.*<sup>18</sup>

MassDEP in the first comment asserts that proper oversight and management of commercial composting facilities is needed in order to reduce the burden of nitrogen reduction by the town. However, the staff from MassDEP who wrote these comments are presumably from the Bureau of Water Resources, which raises a question as to why existing regulations of MassDEP were not referenced as a solution to the discharge. The regulations that should have been referenced are 314 CMR 3.00 and 314 CMR 5.00 and as you are aware pertain to the point and non-point source discharge of pollutants to the groundwater or surface waters.

Within 314 CMR 3.02 and 314 CMR 5.02 are definitions of relevance to the proper oversight and management of commercial and agricultural composting. They are: *pollutant as any element of agricultural or industrial waste, runoff, leachate or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into waters of the Commonwealth; and pollution is the presence in the environment of pollutants in quantities or characteristics which are or may be injurious to human, plant or animal life.* MassDEP, being the proponent of the DRAFT Slocums and Little Rivers Embayment System Total Maximum Daily Loads for Total Nitrogen (CN 315.0) and numerous other TMDL reports for Total Nitrogen clearly demonstrates the Department's acknowledgement that Total Nitrogen is a pollutant. Furthermore, the acceptance of Total Nitrogen as a constituent of compost leachate and the need to manage such to prevent pollution has been scientifically studied and published.<sup>19</sup>

<sup>18</sup> Several emails to MassDEP administration by a Town of Dartmouth official did not generate a response for appropriate actions to be taken.

<sup>19</sup> Dany, Roy et al. "Composting Leachate: Characterization, Treatment, and Future ..." Rev Environ Sci Biotechnol, February 14, 2018. <https://espace.inrs.ca/id/eprint/6885/1/P3294.pdf>.

That said, 310 CMR 16.00 needs to be revised to assure integration of the Department's Bureau of Water Resources into the permitting process of the Bureau of Air and Waste. The permitting sections, 16.03 – 16.05 must be revised to require in all circumstances, except residential composting as described in 16.03(2)(c)5., compliance with the discharge requirements within the 314 CMR 3.00 or 5.00 regulations. Dovetailing of the permitting regimes is a practice in another state and will be discussed later in this document.

In the third comment by MassDEP an all-to-familiar situation is revealed: MassDEP wanting MDAR to be solely responsible for oversight of the composting operation if registered in accordance with 310 CMR 16.03(2)(c)1. In demonstration of the dysfunctionality of enforcement response we will point to the first comment above, whereas, MassDEP expresses the belief that MDAR becomes an environmental protection division of the Commonwealth or the issuance of an MDAR registration is some sort of exemption from 310 CMR 7.00, 314 CMR 3.00, and 314 CMR 5.00 and is clearly stated when the Department wrote: *“than MassDAR has the authority to revoke the registration and thereafter MassDEP will take appropriate actions, including but not limited to enforcement actions, to bring the site into compliance to protect public health, safety, or the environment.”* We have conducted an exhaustive search and found no language that provides such broad exemption to the regulations of MassDEP. As we see it, the MDAR registration is a separate permitting track for agricultural operations only.

Nowhere within 310 CMR 16.00 does MassDEP assign authority to MDAR to protect the public health, safety or the environment. Moreover, Massachusetts General Laws, Chapter 21H, Section 7 only provides for a program to compost organic matter and for MDAR to promulgate regulations for agricultural composting programs, however, we question any belief that MDAR's regulations should be so written as to become a symmetrical agency of environmental protection. Therefore, 310 CMR 16.03(2)(c)1 must be revised to list those aspects of protection that have not been statutorily assigned to MDAR. This will stop the sibling like finger pointing by MassDEP to MDAR to undertake enforcement for matters including but not limited to:<sup>20</sup> solid waste regulations when plastic infused screening is disposed of onsite, when stumps are piled for decomposition without processing; air quality regulations for obnoxious or nuisance odors; and water quality regulations to assure discharges are permitted and meeting standards of the applicable regulations. Only clear language that expressly applies compliance with 310 CMR 7.09, 310 CMR 16.03(2)(c)5 to strictly organics processing in accordance with the MDAR guide to composting (all other activities strictly regulated by 310 CMR 16.00), 314 CMR 3.00 and 314 CMR 5.00, will be protective of the Commonwealth's residents and environment.

Finally, staff at the Town's Health Department have undertaken a review of records from other states. Findings include that public health and environmental divisions of Alabama, Maryland and New York recognize the harm from mismanaged composting to drinking water, groundwater and surface water. Summary findings include:

- Composting leachate from vegetative organics has other constituents of concern to groundwater and surface water quality<sup>21</sup>

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<sup>20</sup> Barboza, Robert. “Health Board Is Powerless on Fisher Road Odor Complaints.” New Bedford Standard-Times, September 23, 2014.  
<https://www.southcoasttoday.com/story/news/local/chronicle/2014/09/24/health-board-is-powerless-on/36216542007/>.

<sup>21</sup> Investigation of the Impacts to Groundwater Quality from Compost/Vegetative Organic Waste Management Facilities in Suffolk County, Suffolk County Department of Health Services: Steve Bellon, James L. Tomarken, Walter Dawydiak and Andrew Repiejko: January 22, 2016

- Reduce run-off and infiltration to groundwater with design controls and monitoring of groundwater and surface water ponding<sup>22</sup>
- Additional studies or monitoring is needed to increase offsets to potable wells from current setbacks and monitor surface and groundwater at exempt facilities (same study as footnote 19)
- Permitting requires engineering plans and specifications<sup>23</sup>
- Prescriptive environmental setbacks<sup>24</sup>
- Compost facilities are required to submit for approval an operations plan to include response to include but not limited to methods to control contact waters, waste management, management of vectors, and response actions for nuisance odors<sup>25</sup>
- Siting of compost facilities requirements including but not limited to consideration with environmentally sensitive areas (Chesapeake Bay or locally adopted critical area plan)<sup>26</sup>
- Design requirements for management of stormwater and contact water including onsite treatment or offsite disposal. See footnote 24 for section of the Maryland regulations

Clearly, other states have taken a different approach than MassDEP with their all-encompassing regulations management of compost sites and with such specificity that leads us to conclude that the intent is to promote the diversion in a responsible manner that does not result in unforeseen or overlooked consequences. Therefore, we are submitting changes to 310 CMR 16.00 in the addendum to this document which is taken from a review of requirements of other states including Maryland and New York and implement the safeguards to protect public health and the environment.

Lastly, we wish to call out a situation to MassDEP to emphasize our point on the need for a holistic approach to composting regulations in the Commonwealth.

Perhaps the exceedingly unfortunate issue that is being investigated by MassDEP and licensed site professionals in Westminster with forever compounds in drinking water wells would have been avoided had the extensive regulations we are petitioning for and exist elsewhere, been adopted by MassDEP when diversion of organic wastes from landfills commenced.<sup>27</sup>

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<sup>22</sup> Vegetative Organic Waste Management Facility Research Nassau and Suffolk Counties, New York: New York Department of Environmental Conservation: Prepared by Parsons, 200 Cottontail Lane, Somerset, New Jersey 08873; and OBG, 333 West Washington Street, Syracuse, New York 13221-4873

<sup>23</sup> "Permitting Guidance for Maryland Composting Facilities." maryland.gov, September 2022. <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Documents/Composting%20Facility%20Permitting%20Guidance.pdf>.

<sup>24</sup> Davis, Phillip D, and S Scott Story. "Rule 335-13-14-.05 Design Criteria." Alabama administrative code. Accessed November 13, 2024. <https://admincode.legislature.state.al.us/administrative-code/335-13-14-.05>.

<sup>25</sup> "Sec. 26.04.11.09. Composting Facility Operating Requirements, Chapter 26.04.11. Composting Facilities, Subtitle 04. Regulation of Water Supply, Sewage Disposal, and Solid Waste, Part 1., Title 26. Department of Environment, Code of Maryland Regulations." Code of Maryland Regulations. Accessed November 13, 2024. <http://mdrules.elaws.us/comar/26.04.11.09>.

<sup>26</sup> "Sec. 26.04.11.08. Composting Facility Siting and Design Requirements, Chapter 26.04.11. Composting Facilities, Subtitle 04. Regulation of Water Supply, Sewage Disposal, and Solid Waste, Part 1., Title 26. Department of Environment, Code of Maryland Regulations." Code of Maryland Regulations. Accessed November 13, 2024. <http://mdrules.elaws.us/comar/26.04.11.08>.: The entirety of the siting requirements were not listed above, however, the content in this section of the Maryland regulations is important and must be considered.

<sup>27</sup> Immediate Response Action Status Report #10 and Plan Modification, MassDEP Release Tracking Number: 2-21866. Prepared by Lessard Environmental, Inc. and dated October 2024. "A Notice of Responsibility for

### III. Fires endangering public safety and emission of air pollution and greenhouse gases:

Spontaneous combustion from mismanagement of diverted waste ban organics has become all too common in Massachusetts since 2014. Earlier in this document a fire was mentioned in Middleborough a few months ago, however, we are aware of another fire in 2022.<sup>28</sup> Fires have also been reported in media outlets in Agawam on October 20, 2020 and Falmouth on August 20, 2022. When spontaneous combustion is the results within a compost pile or wind row, the reason is a lack of operator knowledge and or mismanagement. That said, consuming first responder resources to extinguish fires is clearly a public safety concern that we can all agree needs to cease. Properly managed compost facilities require mixing feedstocks based on carbon, nitrogen and water content, shaping the pile for aerobic conditions and then managing the environment by frequently monitoring temperature to determine turning frequency. Failure in any of these steps is often the cause of spontaneous combustion. The effective temperature for composting and spontaneous combustion are far apart and demonstrates how the situation is avoidable.

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Now that we have concluded our reporting of the consequences from the fundamental problems in 310 CMR 16.00 and the inability of MassDEP's bureaus to coordinate the applicable regulations for protection of public health, the environment and safety, we must call attention to some general points.

Municipal officials and staff are looked upon by the public as being the solution to residents' concerns, however, local efforts have been stymied from being able to fully address the problem. Nowhere in any of the regulations are municipal officials granted access to a site conducting waste handling for composting. Therefore, investigations can be a fool's errand as follows: odor investigations without site access can be futile without proper site access; dumping ground complaints can be pointless if we lack administrative access; and water quality concerns are pointless without proper monitoring and reporting. If MassDEP is going to continue to promote composting as an alternative to permanent disposal, then the Department should invest in specialized staff to address the burdens that have been placed on municipal officials that cannot address the matter as effectively.

An example of specialized staff and response is best demonstrated by the efforts of MDAR and their reoccurring presence at sites that maintain registrations in accordance with 330 CMR 25.00. Additionally, we appreciate MDAR's responsiveness to send staff into the field when complaints or concerns occur but once again only MassDEP has authority on the environmental issues that we have discussed here so having a similar inspectional and oversight program to MDAR is vital. We are unaware of such oversight by MassDEP, and we know that unlike landfills, we do not have prescribed third party monitoring. Therefore, MassDEP has entrusted the protection of the Commonwealth's air, land and water to the for-profit operators. With the fires and pollution that we have reported herein it is all too

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*the release was issued by MassDEP to MNF on March 31, 2022. The basis for the NOR was that MNF received biosolids and short paper fiber for compost, which the MassDEP identified as being suspected of containing PFAS. Subsequent analysis of soil and stockpiled materials on-site has confirmed the presence of PFAS in both SSO and finished compost."*

<sup>28</sup> Weisberg, Tim. "Middleboro Firefighters Battle Large Fire at Landscaping Yard." 1420 WBSM, July 2, 2022. <https://wbsm.com/middleboro-fire-ryco-landscaping-compost/>.

reminiscent of the waste handling practices leading up to the solid and hazardous waste laws and regulations that began in the early 1970s.

Therefore, MassDEP must move away from the self-certification and best practices model so that the Commonwealth's interests in protecting our air, land and waters is held to the highest standards. Thorough protection of the environment, public health and public safety must always be entrusted to public agencies and not those who profit.

While much progress has been made in the Town of Dartmouth to reduce the unintended consequences, the fundamental problem remains with inadequate state regulations that we have demonstrated herein by a summary of facts, encounters, data and studies. That being said, this document shall serve as a summary in support of proposed changes in the attachment to this petition. For the best interests of the Commonwealth, we believe MassDEP will provide municipal officials and others with the opportunity to participate in the procedural preliminary meeting to discuss our draft regulations that will advance 310 CMR 16.00 from lagging behind to parity with other states like Alabama, Maryland and New York. We look forward to a response.

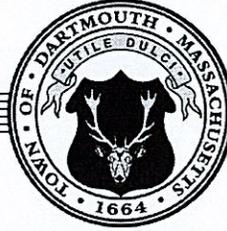
Sincerely,

*See attachments for signatures*

Attachments: Dartmouth Select Board signature page for this petition in accordance with 310 CMR 2.02  
Dartmouth Board of Health signature page for this petition in accordance with 310 CMR 2.02  
Dartmouth Board of Public Works signature page for this petition in accordance with 310 CMR 2.02  
Dartmouth Conservation Commission signature page for this petition in accordance with 310 CMR 2.02  
Dartmouth Planning Board signature page for this petition in accordance with 310 CMR 2.02

Addendum: Proposed changes to 310 CMR 16.00 to accompany this petition in accordance with 310 CMR 2.02

DARTMOUTH



MASSACHUSETTS

Office of the Select Board

*Shawn D. McDonald, Chair*

*Stanley Mickelson, Vice-Chair*

*David Tatelbaum*

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**Town of Dartmouth Select Board signature page for petition to revise 310 CMR 16.00 in accordance with 310 CMR 2.02**

Shawn D. McDonald, Chair

Stanley Mickelson, Vice-Chair

David Tatelbaum

Heidi Silva Brooks

Christopher O'Neil



The Commonwealth of Massachusetts  
MASSACHUSETTS SENATE

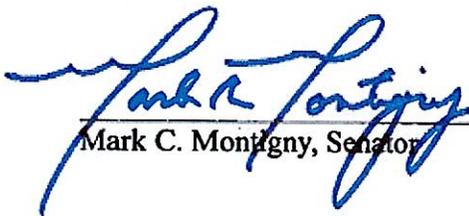
**SENATOR MARK MONTIGNY**  
*Second Bristol and Plymouth District*

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*Chair*  
SENATE COMMITTEE ON  
STEERING AND POLICY  
*Chair*  
SENATE COMMITTEE ON  
INTERGOVERNMENTAL AFFAIRS

**Senator Mark C. Montigny signature page for petition to revise 310 CMR 16.00 in  
accordance with 310 CMR 2.02**

   
\_\_\_\_\_  
Mark C. Montigny, Senator                      Date



*The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

CHRISTOPHER M. MARKEY  
STATE REPRESENTATIVE  
9<sup>TH</sup> BRISTOL DISTRICT

COMMITTEES:  
House Committee on  
Post Audit and Oversight  
Joint Committee on Mental Health,  
Substance Use and Recovery  
Joint Committee on Revenue  
Joint Committee on State Administration  
and Regulatory Oversight

STATE HOUSE, ROOM 276  
TEL. (617) 722-2676

Representative Christopher M. Markey signature page for petition to revise 310 CMR 16.00 in accordance with 310 CMR 2.02

1/10/25

\_\_\_\_\_  
Christopher M. Markey, State Representative

\_\_\_\_\_  
Date



Town of Dartmouth  
Board of Health  
400 Slocum Road  
Dartmouth, MA 02747



**Public Health**  
Prevent. Promote. Protect.  
Michelle Keith, Chair  
Emily Michele Olmsted  
Richard Romero

Christopher Michaud, Director  
Telephone: 508-910-1804  
Fax Telephone: 508-910-1893

**Town of Dartmouth Board of Health signature page for petition to  
revise 310 CMR 16.00 in accordance with 310 CMR 2.02**

Michelle Keith, Chair

Emily Michele Olmsted, Vice-Chair

Richard Romero

DARTMOUTH



MASSACHUSETTS

CONSERVATION COMMISSION

400 Slocum Road • P.O. BOX 79399  
Dartmouth, MA 02747

MICHAEL KEHOE, Chair

<http://www.town.dartmouth.ma.us>



**Town of Dartmouth Conservation Commission signature page for  
petition to revise 310 CMR 16.00 in accordance with 310 CMR 2.02**

12-4-2024

Michael Kehoe, Chair

Date

12-10-2024

Richard Maiken, Member

Date

12/6/21

Nathaniel Watson, Member

Date

12/3/24

Elizabeth DiPaolo, Member

Date

12/2/24

Megan Morrison, Member

Date



Planning Board  
Town of Dartmouth  
400 Slocum Road  
Dartmouth, MA 02747

Town of Dartmouth Planning Board signature page for petition to revise 310 CMR 16.00 in accordance with 310 CMR 2.02

Kevin Melo, Chair

Kevin Estes, Vice Chair

Margaret Sweet, Clerk

Nicholas Psychopaidas

Helio Rosa



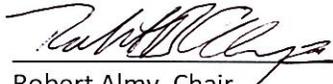
DEPARTMENT OF PUBLIC WORKS

Director  
Timothy J. Barber

BOARD OF PUBLIC WORKS

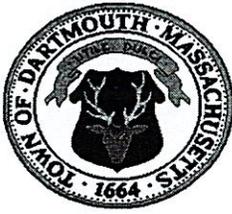
Robert Almy,  
Richard Alves, Jr., P.E.  
Ronald Labelle

**Town of Dartmouth Board of Public Works signature page for petition  
to revise 310 CMR 16.00 in accordance with 310 CMR 2.02**

  
\_\_\_\_\_  
Robert Almy, Chair

\_\_\_\_\_  
Richard Alves, Jr, P.E., Vice Chair

  
\_\_\_\_\_  
Ronald Labelle, Clerk



# *Town of Dartmouth*

WATERWAYS MANAGEMENT COMMISSION  
PO BOX 80218 DARTMOUTH, MA 02748

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ANDY HERLIHY, VICE  
KEVIN MURPHY  
ANTHONY TJ SALVIDIO  
DANA DORNBUSCH  
ANDREA LANGHAUSER  
ELI POWELL

**Town of Dartmouth Waterways Management Commission signature page for petition to revise 310 CMR 16.00 in accordance with 310 CMR 2.02**

**The Waterways Management Commission voted unanimously, at its meeting on December 10, 2024, to support all efforts to revise the solid waste regulations to address potential water quality impacts to the surface waters of the Town of Dartmouth.**

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**Roger Race, Chair ... signed for the rest of the commission December 13, 2024**

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**Andrew Herlihy, Vice Chair**

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**Dana Dornbush, Member**

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**Andrea Langhauser, Member**

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**Kevin Murphy, Member**

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**Eli Powell, Member**

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**Anthony Salvidio, Esq., Member**

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# 310 CMR 2.02 PETITION ADDENDUM: PROPOSED CHANGES TO 310 CMR 16.00

## 16.02: Definitions

Aerobic Digestion means a process of accelerated biodegradation of organic materials using microorganisms under controlled conditions in the presence of oxygen **and within an enclosed environment.**

Contact Water means any water that contacts organic materials at a composting facility at any stage from receiving to mixing to curing piles or windrows. Contact water shall not apply to screened finished composted organic materials.

Lined or flexible Membrane Liner means design specifications in accordance with 310 CMR 19.110(1)-(4).

## 16.03: Exemptions from Site Assignment

### (2)(c) Handling or Disposal of Organic Materials.

1. Activities Located at an Agricultural Unit. Activities located at an agricultural unit as defined in 330 CMR 25.02: Definitions, provided that the owner and operator comply with the regulations and guidelines of the Department of Agricultural Resources. If the Department of Agricultural Resources determines that the activity at a specific agricultural unit is no longer regulated by the Department of Agricultural Resources, then the owner and operator shall be subject to 310 CMR 16.00– **provided that:**

- a. **no more than 5 tons of food materials are imported for use as a bulking agent or feedstock to be mixed with onsite generated agricultural wastes and leachate and contact water is managed through vegetative collection and treatment systems that are located at least 4' above the estimated seasonal high groundwater; or**
- b. **additional density of food waste can be accepted if leachate and contact water is strictly managed with engineering, monitoring, oversight and reporting in accordance with the provisions within 310 CMR 16.05;**
- c. **agricultural composting shall not include stump stockpiling or unprocessed wood waste for long-term biological decomposition;**
- d. **acceptance of an agricultural composting registration shall not preclude the Department from oversight of activities at the agricultural unit as they relate to all of the Department's regulatory roles; and**
- e. **the issuance of the agricultural composting registration is not an exemption of the Department's solid waste regulations.**

2. Small Composting Operations Not at a Residence. ~~Composting (other than at a residence) provided that:~~

- ~~a. less than 20 cubic yards or less than ten tons per week of vegetative materials, food materials or animal manures that are generated on-site and then combined with the addition of bulking materials (from on- or off-site) to achieve effective composting; and~~
- ~~b. at least 30 days prior to commencement of operation, the owner or operator notifies the Department and the board of health in writing using a form provided by the Department.~~

## 310 CMR 2.02 PETITION ADDENDUM: PROPOSED CHANGES TO 310 CMR 16.00

### 16.04: General Permit for Recycling, Composting or Aerobic and Anaerobic Digestion Operations

(1) Applicability. The following operations are eligible for a general permit and do not require a site assignment, a facility permit pursuant to 310 CMR 19.000: Solid Waste Management, or a recycling, composting, or conversion permit pursuant to 310 CMR 16.05, provided the operation meets the requirements of 310 CMR 16.04:

- (a) a recycling operation that receives no more than 250 tons per day of recyclable materials, not including paper;
- (b) a composting operation that:
  - 1. is limited to leaf and yard waste organic materials;
  - ~~1. receives no more than 105 tons per week and no more than 30 tons per day of Group~~
  - ~~2 organic materials, listed at 310 CMR 16.04(3)(b): Table 1. Examples of Organic~~
  - ~~Materials, or other organic materials with a carbon to nitrogen ratio of 30:1 or less;~~
  - 2. contains less than 5,000 cubic yards of organic materials per acre; and
  - 3. has less than ~~50,000~~ 10,000 cubic yards of leaf and yard waste organic materials on site at any one time; or
- (c) an aerobic or anaerobic digestion operation that receives no more than 100 tons per day of organic material from on or off site, based on a 30 day rolling average.

(2) General Permit Requirements for a Recycling Operation. The owner and operator of an operation that handles recyclable materials shall:

- (a) ensure the operation and its products do not result in an unpermitted discharge of pollutants to air, water, land or other natural resources of the Commonwealth, create a public nuisance, or present a significant threat to public health, safety or the environment;
- (b) ensure that the recyclable materials and products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment;
- (c) ensure that the type and quality of recyclable materials is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;
- (d) ensure that the operation handles recyclable materials and residuals only within a handling area, containers or trucks that are sufficiently enclosed and covered to prevent a public nuisance;
- (e) ensure that the amount of residuals generated at a single-stream recycling operation does not average more than 15%, or at any other type of recycling operation 10%, by weight of the materials received during any quarter;
- (f) ensure that the material, in its as-received, in-process or processed condition, shall not exceed the amount of recyclable or organic material that can be received in one year. This time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load;
- (g) ensure that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination;
- (h) maintain accurate records for at least three years to demonstrate compliance with 310 CMR 16.04 and submit a report to the Department annually by February 15 on a form provided by the Department that shall include, but not be limited to, the amounts

## 310 CMR 2.02 PETITION ADDENDUM: PROPOSED CHANGES TO 310 CMR 16.00

and types of recyclable materials received, transferred and recycled and the amount of residuals managed during the previous calendar year; and

(i) submit a compliance certification in accordance with 310 CMR 16.06(1).

### (3) General Permit Requirements for Composting or Aerobically or Anaerobically Digesting Organic Materials.

(a) The owner and operator of an operation that composts **strictly leaf and yard waste** or aerobically or anaerobically digests organic materials shall:

1. ensure the operation and its products do not result in an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, create a public nuisance, or present a significant threat to public health, safety or the environment;
2. ensure that the operation incorporates best management practices, including but not limited to:

- a. producing stabilized organic materials;
- b. maintaining proper thermal regulation and monitoring to prevent spontaneous combustion and destroy pathogens;
- c. managing stormwater and leachate to prevent ponding and water pollution;
- d. maintaining access to an adequate water supply with adequate pressure for fire control;
- e. implementing an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
- f. implementing a vector control plan that is appropriate for the size and type of the operation that will minimize the presence of vectors. The plan shall identify specific actions that will be taken to address complaints if unacceptable vectors occur beyond the property line of the operation;
- g. employing an appropriate number of properly trained personnel for the size and type of the operation;
- h. using equipment that is appropriate for the size and type of the operation; and
- i. developing a contingency plan that describes corrective actions to be taken for management of the organic materials and products in the event of equipment breakdowns, delivery of unacceptable material, spills, fires, extreme weather conditions or other events, including but not limited to the failure of the odor or vector control plan;

3. **ensure demonstrates** that the operation is located at least 250 feet from any existing private water supply and 1000' from any public water supply well in use at the time the operation commences;

4. ensure that the type and quality of organic materials is sufficient for the operation and that the quality of the operation's products is sufficient for the products to be marketable;

5. **ensure demonstrates** that the organic material and products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment, including but not limited to implementing a toxics control plan that:

- a. will minimize entry of toxic materials into the operation;
- b. is appropriate for the organic materials to be managed at the operation; and

## 310 CMR 2.02 PETITION ADDENDUM: PROPOSED CHANGES TO 310 CMR 16.00

c. ensures that the final products resulting from the operation do not pose a significant threat to public health, safety or the environment.

Should toxics be detected in the final products at levels that pose a significant threat to public health, safety or the environment for any likely use of the product, the plan shall also include a contingency plan that identifies steps to be taken to reduce toxics in incoming organic materials, describes corrective actions to be taken for management of the organic materials and products, and identifies how any contaminated products are to be used or disposed;

6. ensure that the amount of residuals generated does not average more than 5% by weight of the materials received during any quarter;

7. ensure that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination, **Surface Water Discharge Permit Program and Ground Water Discharge Permit Program**;

8. not allow materials, in their as-received, in-process or processed condition, to be stored for more than **one-year six months** from the date of their receipt at the operation. This time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load;

9. maintain accurate records for at least three years to demonstrate compliance with 310 CMR 16.04 and submit a report to the Department annually by February 15<sup>th</sup> on a form provided by the Department that shall include, but not be limited to, the amounts and types of organic materials received and composted and the amount of residuals managed during the previous calendar year; ~~and~~

10. submit a compliance certification in accordance with 310 CMR 16.06(1)(a)-(b); **and**  
**11. shall not accept street sweepings or catch basin cleanings for composting.**

(b) Additional Requirements for a Composting Operation. The owner and operator of a composting operation shall comply with 310 CMR 16.04(3)(a) and shall:

1. ensure that no more than 25%, by volume, of the total compost mixture shall be a Group 2 Organic Material listed at 310 CMR 16.04(3)(b): Table 1. Example of Organic Materials or other organic materials with a carbon to nitrogen ratio of 30:1 or less;

2. ensure that adequate and appropriate bulking material (consisting of Group 1 organic materials listed at 310 CMR 16.04(3)(b): Table 1. ~~Example of Organic Materials or other organic materials with a carbon to nitrogen ratio of greater than 30:1) is readily available on-site to mix with incoming Group 2 organic materials or other organic materials with a carbon to nitrogen ratio of 30:1 or less;~~

3. ensure that all Group 2 organic material ~~listed below or other organic materials~~ with a carbon to nitrogen ratio of 30:1 or less is mixed into the compost windrows or piles to such an extent that it is unrecognizable as a separate material as soon as possible but no later than the close of business each day, or transferred off-site by the close of business on the same day that it is received at the operation; and

4. ensure timely and regular aeration of the compost to ensure proper aerobic, temperature, moisture and porosity conditions.

Table 1. Examples of Organic Materials

# 310 CMR 2.02 PETITION ADDENDUM: PROPOSED CHANGES TO 310 CMR 16.00

Table 1  
Examples of Organic Materials

<u>Group 1 Organic Materials</u>	<u>Group 2 Organic Materials</u>
<u>Example Materials C:N ratio</u>	<u>Example Materials C:N ratio</u>
Clean wood 100-1300:1	<del>Vegetables 11-19:1</del>
<del>Cardboard 560:1</del>	<del>Food material 14-16:1</del>
<del>Paper and paper products 125-850:1</del>	Grass clippings 17:1
Leaves 40-80:1	Green plant material 15-19:1
<del>Straw 60-80:1</del>	<del>Fish waste 2-5:1</del>
<del>Corn stalks 60-75:1</del>	<del>Manure 6-14:1</del>
Shrub trimmings 50:1	<del>Solid and liquid digestate from aerobic and anaerobic digestion processes Variable</del>

Source: U.S. Composting Council, Best Management Practices (BMPs) for Incorporating Food Residuals Into Existing Yard Waste Composting Operations, p. 20. found at <http://compostingcouncil.org/admin/wp-content/uploads/2010/09/BMP-for-FW-to-YW.pdf>.

(c) Additional Requirements for an Aerobic or Anaerobic Digestion Operation. The owner and operator of an aerobic or anaerobic digestion operation shall comply with 310 CMR 16.04(3)(a) and shall:

1. ensure that all Group 2 organic material, listed at 310 CMR 16.04(3)(b): Table 1. Example of Organic Materials, or other organic materials with a carbon to nitrogen ratio of less than 30:1 generated off-site is delivered to the operation via sealed tank or vessel and transferred using a direct connection (e.g. hose) technology, however, this requirement does not apply to an operation that accepts less than 15 tons per day of Group 2 organic materials listed at 310 CMR 16.04(3)(b): Table 1. Example of Organic Materials or other organic materials with a carbon to nitrogen ratio of less than 30:1;
2. ensure that all handling occurs in sealed tanks or vessels, with odor controls; and
3. ensure that all organic material is either added to the active digestion system by the close of business on the same day that it is received at the operation or stored in sealed tanks or vessels, with odor controls.

(d) Additional Requirements for Composting or Aerobically or Anaerobically Digesting Organic Materials:

1. inspection by the Department prior to commencing with operation; and
2. inspection by the Department no less than one time per calendar year unless the facility is subject to oversight by a third-party inspector for 310 CMR 19.00 compliance and the inspector provide in their quarterly report a review of the activities covered within 310 CMR 16.04.

## 16.05: Permit for Recycling, Composting and Conversion (RCC) Operations

(1) Applicability. The recycling, composting, conversion or handling of recyclable or organic

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materials that does not qualify for an exemption pursuant to 310 CMR 16.03 or a general permit pursuant to 310 CMR 16.04, shall apply for a recycling, composting or conversion (RCC) permit pursuant to 310 CMR 16.05. A RCC operation that has a RCC permit does not require a site assignment or a solid waste management facility permit pursuant to 310 CMR 19.000: Solid Waste Management provided the owner or operator complies with the permit.

(2) RCC Permit Application. Any applicant applying for a RCC permit pursuant to 310 CMR 16.05 shall submit an application to the Department, using forms and procedures provided by the Department, including without limitation, those specified in 310 CMR 4.00: Timely Action Schedule and Fee Provisions, with a copy to the board of health.

(a) Pre-application Meeting. The applicant shall attend a pre-application meeting with the Department. The applicant shall provide to the Department, at least 14 days prior to the meeting date, sufficient information to describe the general nature and scope of the applicant's proposal including, but not limited to, the following information:

1. the location;
2. a description of the technology, including a process flow chart and the size and type of all equipment used;
3. the type, quantity and quality of all materials received and products or residuals produced; and
4. identification of the potential public nuisances and adverse impacts from the operation and the proposed methods for controlling such public nuisances and impacts.
5. if location is within a watershed with an EPA approved TMDL or Natural Resource Area as defined in 310 CMR 15.214 (1)(b) and the receiving waterbody, waterway or estuary is impaired, identification of the facility's pollutant prevention measures.

(b) General Application Requirements. The applicant shall submit an application that meets the following requirements.

1. The application shall include sufficient information such that the Department can:
  - a. evaluate the feasibility of the proposal to accomplish the intended recycling, composting or conversion activity; and
  - b. evaluate the potential for public nuisances and impacts of the operation on public health, safety and the environment.
  - c. evaluate that the composting operation will not result in any additional pollutant load in a contributing watershed to any waterway, watershed or estuary with an EPA approved TMDL or Natural Resource Area as defined in 310 CMR 15.214 (1)(b).
2. The application shall identify all other local, state or federal permits required.
3. All forms, plans, and other papers pertaining to design and construction of an operation to be permitted pursuant to 310 CMR 16.05, shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable about the proposed technology, design and construction and shall bear the seal, signature and discipline of said engineer. Any other form, plan or paper shall be completed by a competent professional experienced in the appropriate field.
4. All mapping and surveying shall be completed by a **Massachusetts** registered **land** surveyor.
5. The application shall provide an estimate for a financial assurance mechanism, if required by the Department, similar to the types of financial assurance approved in

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310 CMR 19.051: Financial Assurance Requirements.

6. The application shall include documentation that the MEPA process:

- a. does not apply;
- b. applies and the Secretary has determined that an EIR is required; or
- c. has been completed, and the Secretary has issued a certificate or a determination that an EIR is not required.

7. The Department reserves the right to require additional information.

(c) Specific Application Information. The owner or operator shall ensure that the application includes the following information, as may be modified by the pre-application meeting or pursuant to 310 CMR 16.05(2)(b)7.

1. Recyclable or Organic Material. The following information shall be provided for each material managed at the operation:

- a. a detailed description of the type, quantity, and sources of all material(s) to be received by the operation;
- b. the physical, biological and chemical specifications governing the quality of material accepted for recycling, composting or conversion;
- c. where known or when requested, a detailed chemical and physical characterization of the material, including contaminants;
- d. the methods and procedures employed to ensure the material specifications are met. This may include, but is not limited to:
  - i. training, signage or other aids for generators of the material; and
  - ii. sampling and testing of materials at the site of generation, when received at the operation or after processing and treatment to ensure the quality of the material, including minimizing toxic substances; and
- e. a toxics control plan that:
  - i. will minimize entry of toxic materials into the operation;
  - j. is appropriate for the organic materials to be managed at the operation; and
  - k. ensures that the final products resulting from the operation do not pose a significant threat to public health, safety or the environment. Should toxics be detected in the final products at levels that pose a significant threat to public health, safety or the environment for any likely use of the product, the plan shall also include a contingency plan that identifies steps to be taken to reduce toxics in incoming organic materials, describes corrective actions to be taken for management of the organic materials and products, and identifies how any contaminated products are to be used or disposed.

2. Site. The following descriptions, plans, or other site information shall be provided:

- a. a general description of the site and the surrounding area;
- b. a map indicating the location of the proposed operation;
- c. a site map indicating:
  - i. the geographical and geological characteristics of the site;
  - ii. the location and distance to manmade structures and features (such as but not limited to, **airports**, parks, conservation areas, buildings, roads and power lines) within ½ mile of the site; **and**
  - iii. the location and distance to environmental receptors, including but not limited to, public and private water supply wells, wetlands, streams, rivers or other water bodies within ½ mile of the site **and if within a**

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watershed designated by an EPA approved TMDL or Natural Resource Area as defined in 310 CMR 15.214 (1)(b); and  
iv. identification if the facility is within 1 mile of an environmental justice area.

3. Design and Operation. The following plans, reports, diagrams, schematics, studies and other information shall be provided:

- a. a description of the technology, including:
  - i. a process flow chart; and
  - ii. the history of the use of the technology, including:
    - (i) number of units operational;
    - (ii) type of materials processed;
    - (iii) products produced and their use;
    - (iv) an evaluation of operational successes and failures; and
    - (v) evaluation of operational issues including preventing public nuisances and adverse impacts to the public health, safety or the environment;
- b. a design plan including:
  - i. a detailed description of the proposed method(s) for recycling, composting, converting or handling the material from initial receipt through final products and residuals;
  - ii. identification of all equipment to be used at the operation;
  - iii. the layout of the operation including all structures, equipment, buildings, roads and other appurtenances;
  - iv. the location, quantity and composition of all emissions or discharges, including but not limited to wastewater discharges and air emissions;
  - v. environmental controls that:
    - (i) prevent public nuisances, including but not limited to, odor, vectors, noise and dust; and
    - (ii) protect public health, safety and the environment, including but not limited to, the proposed method of treatment and management of wastewater discharges, air emissions, stormwater, **contact water** and leachate;
  - vi. the location and size of on-site storage areas for received materials, products and residuals; and
  - vii. the size of the operation in tons per day;
- c. An operations and maintenance plan, including:
  - i. a description of the methods and procedures employed to ensure and verify the quality of materials received and products produced;
  - ii. a description of the proposed material handling methods and techniques;
  - iii. an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;

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- iv. a vector control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds. The plan shall identify specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
  - v. a description of the routine environmental monitoring and sampling protocols;
  - vi. an inspection plan to ensure the operation will be in compliance with the RCC permit and all applicable regulations; and
  - vii. a record keeping system that documents the compliance of the operation with its RCC permit and all applicable regulations;
- d. contingency plans for:
- i. management of incoming recyclable or organic materials should there be an interruption in operation;
  - ii. management of incoming recyclable or organic materials that do not meet specifications and need to be rejected;
  - iii. response to a fire, flood, or other extreme weather conditions or acts of nature;
  - iv. response to a spill or leakage of any material at the site requiring remediation or corrective action; and
  - v. repairing or replacing broken or inoperative equipment.
- e. collection and disposal of leachate and contact water by:
- i. enclosure within a building that has an underlayment liner as described in 310 CMR 19.02 for the following activities organics receiving area, mixing pad and curing piles or windrows with a pitched slab to a collection tank; or
  - ii. durable concrete or hot miix asphalt pad, shall not include recycled aggregate unless used as a subgrade to the poured concrete or hot mix asphalt that is engineered to support the activity and direct contact water and leachate to a collection tank or engineered pond with a flexible membrane liner for the following activities organics receiving area, mixing pad and curing piles or windrows; and
  - iii. all collected contact water and leachate is pumped by a liquid waste hauler and transported to a Wastewater Treatment Facility or Wastewater Treatment Plant as defined in 314 CMR 12.02 for disposal or treated onsite for disposal in accordance with 314 CMR 3.00 or 314 CMR 5.00.
- f. siting setbacks for composting facilities unless a greater setback is required by other state or local requirements:
- i. pad for receiving, storage, mixing or composting to a property line 100' irrespective if enclosed or outside;
  - ii. pad for receiving, storage, mixing or composting to a dwelling 1500' if enclosed or outdoors;
  - iii. pad for receiving, storage, mixing or composting to any private drinking water well 1500' or within 2500' of a public drinking water supply irrespective if enclosed or outside;

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- iii. pad for receiving, storage, mixing or composting to any wetland as defined in the Massachusetts Wetland Protection Act, M.G.L. chapter 121, section 40, 310 CMR 10.00: Wetlands Protection shall be 100' if enclosed or outdoors;
  - iv. composting facility to an airport 2000' if outside;
  - v. composting facility stormwater detention or retention facilities shall not be located within 100' of a drinking water well; and
  - vi. stormwater detention and retention ponds shall have a minimum of two vertical feet above the estimated seasonal high ground water.
- g. other siting requirements for composting facilities:
- i. all receiving, storage, mixing or composting areas shall not be located within a 100-year flood plain or velocity zone;
  - ii. shall not be located in any watershed subject to a Watershed Permit issued in accordance with 314 CMR 21.00 unless such municipality has approved the siting, design and operation by local regulations of the host municipality first and if no such regulations exist, then such approval will reside with the Department;
  - iii. engineered holding ponds for contact water and leachate shall be designed 2' above the estimated seasonal high ground water;
  - iv. shall not be located in any watershed subject to a Watershed Permit issued in accordance with 314 CMR 21.00 by the Department unless such municipality has approved the siting, design and operation by local regulations of the host municipality first and if no such regulations exist, then such approval will reside with the Department;
  - v. outdoor composting shall not be located in a Natural Resource Area when the terms of 310 CMR 15.215 (2)(a) requires the upgrade of existing septic systems to a Best Available Nitrogen Reducing Technology; and
  - vi. groundwater and surface water monitoring systems installed in accordance with 310 CMR 19.118 (1) – (3).

4. Products and Residuals. The owner or operator shall ensure that the application includes the following information:

- a. a description of the type and quantity of products to be produced and how they will be used;
- b. documentation that markets or uses exist for the products to be produced;
- c. a description of how organic materials that are to be land-applied are to be stabilized and how pathogens are to be destroyed; ~~and~~
- d. the quantity and composition of any residuals generated and how and where they will be managed; ~~and~~
- c. compost residuals infused with solid waste shall disposed of when the volume exceeds 20 cubic yards or every six months if the volume is not reached.

(3) Review Criteria. The Department shall issue an RCC permit only if ~~it is persuaded~~ demonstrated that 310 CMR 16.05(3)(a) through (h) are met.

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(a) Recyclable or Organic Materials Only. Incoming materials meet the definition of recyclable or organic materials, and the operation will minimize toxic materials. The Department may take into account the following factors in making its decision:

1. whether the materials have been separated from solid waste to the maximum extent possible and contain the least possible amount of solid waste;
2. the nature of any contaminants and their probable effect on public health, safety and the environment from handling or use of products;
3. whether the materials are or are likely to be contaminated with toxic substances, as determined by the Department; and
4. whether the toxics control plan is sufficient to prevent significant threats to public health, safety or the environment.

(b) Design and Operation is Feasible. The operation will function as it has been proposed and designed in that:

1. the materials can feasibly be and will be recycled, composted or converted under the proposal set forth in the application;
2. the incoming material and product specifications will be met consistently;
3. the products will have markets or a reasonable likelihood of having a market;
4. materials, whether in their as-received, in-process or processed condition, shall not be stored for more than ~~one year~~ **six months** from the date of their receipt at the operation. The time limit may be exceeded in the case of storage of a processed material pending accumulation of one full container load; and
5. the quantity of residuals generated through the processing and treatment of materials will not average more than the following percentages by weight of materials handled during any calendar quarter:
  - a. 5% for organic materials;
  - b. 5% for recycling of construction and demolition waste;
  - c. 10% for recycling of recyclable material except at a single-stream operation;
  - d. 15% for recycling of recyclable material at a single-stream operation; or
  - e. Such other percentage as the Department may establish in order to minimize residual generation. The residual generation criteria established at 310 CMR 16.05(3)(b)5.a. through d. may be modified by the Department under the following circumstances:
    - i. the industry average for processing materials of the same nature utilizing the best available processing equipment is different than the percentages set forth in 310 CMR 16.05(3)(b)5.a. through d; or
    - ii. the scale of the operation is sufficiently small that actual residual generation is minimal.

(c) No Significant Threats or Nuisances. The operation will not present a significant threat to public health, safety or the environment and will not create a public nuisance.

(d) No Added Load to a Natural Resource Area. **The operation will not result in additional pollutant load to a Natural Resource Area as defined in 310 CMR 15.214(1)(b).**

(d) No Unpermitted Discharges. The operation will not result in an unpermitted discharge to air, water, land or other natural resources of the Commonwealth.

(e) Appropriate Siting. The site is appropriate for the particular proposed activity, size, and technology taking into consideration, but not limited to, distances to sensitive human

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and environmental receptors, such as residences, schools, public and private water supply wells, wetlands, streams and rivers.

(f) MEPA Compliance. The owner and operator have demonstrated that either the MEPA process does not apply or the MEPA process has been completed and the Secretary has issued a certificate or a determination that an EIR is not required.

(g) Financial Assurance. The owner or operator has provided a sufficient financial assurance mechanism, similar to the types of financial assurance approved in 310 CMR 19.051: Financial Assurance Requirements, if required by the Department, to pay for the removal and proper management of materials and restoration or remediation of the buildings, equipment or land should the operation be terminated.

(h) No Adverse Impact on Solid Waste Facility. If the operation is located at a solid waste management facility, it will not adversely impact the solid waste management facility and will be operated consistently with the facility's site assignment and solid waste management facility permit.

(4) RCC Permit Conditions. The Department may issue an RCC permit subject to conditions.

These conditions may include but are not limited to:

- (a) requirements that the owner and operator operate in a manner that prevents an unpermitted discharge of pollutants to air, water, land or other natural resources of the Commonwealth, does not create a public nuisance, and does not present a significant threat to public health, safety or the environment;
- (b) requirements that the owner and operator ensure the quality of the incoming materials, including but not limited to, requirements to ensure that recyclable and organic materials are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment and that the type and quality of incoming materials is sufficient for the operation;
- (c) requirements that the owner and operator ensure the quality of final products, including but not limited to, requirements to ensure that products are not contaminated by toxic substances at levels which may pose a significant threat to public health, safety or the environment and that the quality of the products is sufficient for products to be marketable;
- (d) requirements that the operation handle materials in a manner that prevents public nuisance conditions, including but not limited to, requirements for enclosed, covered or sealed handling areas, containers or trucks, timely incorporation of organic materials, required ratios of organic material types, and maintenance of proper aerobic or anaerobic temperature, moisture and porosity conditions;
- (e) requirements for an odor control plan that is appropriate for the size and type of the operation that will minimize the production and migration of odorous compounds and that identifies specific actions that will be taken to address complaints if unacceptable odors occur beyond the property line of the operation;
- (f) requirements for a vector control plan that is appropriate for the size and type of the operation that will minimize the presence of vectors and that identifies specific actions that will be taken to address complaints if vectors occur beyond the property line of the operation;
- (g) requirements for a contingency plan that describes corrective actions to be taken for management of recyclable or organic materials and products in the event of equipment

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- breakdowns, delivery of unacceptable material, spills, fires, extreme weather events or other events, including but not limited to the failure of the odor or vector control plan;
- (h) requirements for establishing the operation at appropriate distances from sensitive human and environmental receptors, such as residences, schools, public and private water supply wells, wetlands, streams and rivers;
- (i) requirements that the owner and operator minimize generation of residuals, limiting the amount of solid waste or other materials mixed in with incoming recyclable or organic materials;
- (j) requirements to ensure proper disposal of residuals;
- (k) requirements that the length of time that incoming material, products and residuals can be on-site is limited and in no case will create a public nuisance;
- (l) requirements for appropriate number of properly trained personnel for the size and type of operation;
- (m) requirements for equipment that is appropriate for the size and type of the operation;
- (n) requirements that all solid and liquid materials produced as a result of the operation are managed in accordance with all other applicable regulations and approvals, including but not limited to, a beneficial use determination;
- (o) requirements that the owner or operator maintain accurate records for adequate periods of time and report annually;
- (p) a requirement that the owner or operator annually submit a compliance certification in accordance with 310 CMR 16.06(1);
- (q) a requirement that the proposed operation obtain all other appropriate local, state and federal approvals or permits, including but not limited to, permits for air emissions or water discharges;
- (r) a requirement that the owner or operator provide a financial assurance mechanism similar to the types of financial assurance approved in 310 CMR 19.051: Financial Assurance Requirements;
- (s) a requirement that the owner and operator consent to the right of the Department without prior notice to periodically enter upon and inspect the property, the operation and relevant operating records, to determine and compel compliance with applicable regulations and the conditions of the permit;
- (t) an expiration date on which the RCC permit expires, with a date by which the applicant shall timely submit a renewal application for consideration by the Department; and
- (u) requirements that the owner and operator ensure that the operation does not adversely impact the solid waste management facility if the operation is located at a solid waste management facility and that the owner and operator operate consistently with the facility's site assignment and solid waste management facility permit.
- (v) requirements to obtain all other local, state or federal permits required prior to commencing operations governed by the RCC permit.**
  - a. When a composting facility is issued a RCC permit and does not incorporate a contact water and leachate collection tank or flexible membrane lined pond, the permit shall be conditioned on all discharges from the compost pad, organics receiving and storage areas and mixing pad being discharged to a permitted treatment system in accordance with 314 CMR 3.00 or 314 CMR 5.00 unless**

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such area is discharged in a Wastewater Treatment Facility or Wastewater Treatment Plant as defined in 314 CMR 12.02.

(w) requirement to test finished compost for analytes as determined by the Department when accepting street sweepings and catch basin cleanings and to furnish the finished compost to commercial properties for landscaping only. The frequency of testing shall be determined by the Department.

### (5) Public Review of RCC Permit.

(a) Publication of Draft RCC Permit Decision. The Department shall issue a draft RCC permit decision granting or denying the application. A copy of the draft decision shall be provided to the applicant, to the **municipality, through its board of selectmen or mayor as applicable, board of health, to all abutters within 100' of the proposed facility covered by the application** and to any person who asks in writing for a copy of the draft decision and provides the Department with an electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. mail address.

1. Public Notice. Public notice, paid for by the applicant, shall be provided in a daily or weekly newspaper of general circulation in the locality of the operation **and in municipalities with environmental justice populations, at least one additional news organization that primarily serves the environmental justice population(s) within the impacted municipalities by the proposed facility.**

2. Content of Public Notice. The public notice shall contain:

- a. a description of the proposed operation including the type of technology, proposed tonnage, location and hours of operation;
- b. the identity and mailing address of the applicant;
- c. the public location where the application and the draft RCC permit decision can be inspected; and
- d. the time period for written comments on the application and the address to which comments should be mailed.

(b) Public Comment Period. The Department shall accept written comments from any person up to 30 days from the date the public notice is first published in a newspaper **and when notice was provided by news organization(s) serving environmental justice populations** or a later date specified in the public notice. Any person who requests a copy of the RCC permit decision at the time of issuance shall provide the Department with his or her electronic mail address, or if he or she does not have an electronic mail address, then with his or her U.S. mail address. Submitting comments does not automatically make a person a party to the RCC permit proceeding.

(c) Intervention by Group of Ten Persons. A group of ten persons may intervene in an adjudicatory proceeding relating to an RCC permit application by sending a letter to the Department prior to the public comment period deadline that states:

1. its intent to intervene as a group of ten persons;
2. the facts and grounds on why the group believes the RCC permit decision will cause damage to the environment, as defined in M.G.L. c. 214, § 7A; and
3. the relief sought

The letter shall include an affidavit from each person stating his or her intent to be part of the group and to be represented by the group's authorized representative. Any group of

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ten persons filing written comments which meet these requirements shall be considered a party to the proceeding for the purposes of notice and any other procedural rights applicable to such proceedings under M.G.L. c. 30A, including specifically the right to request an adjudicatory hearing on the Department's RCC permit decision in accordance with 310 CMR 16.05(6)(d).

(d) Public Hearing. The Department shall schedule a public hearing on the draft RCC permit decision within the municipality wherein the proposed operation is to be located when:

1. the applicant requests a public hearing by submitting a written request to the Department prior to the close of the public comment period;
2. the municipality, through its board of selectmen **or board of health** or mayor as applicable, wherein the proposed operation is to be located, requests a public hearing by submitting a written request to the Department prior to the close of the public comment period; or
3. the Commissioner or his designee determines that there is sufficient public interest. The content of the public notice, paid for by the applicant, for such hearing shall include the date, time, and place of the public hearing and the nature and purpose of the public hearing. Such notice shall comply with 310 CMR 16.05(5)(a)1. and 2.

(e) The Department shall issue an RCC permit decision following the 30 day comment period or after the public hearing, if one is held. The RCC permit decision is final after the 21 day following the issuance of the RCC permit decision unless, if a person files a request for an adjudicatory hearing in a timely manner, then the Department's RCC permit decision is not final until the Commissioner issues a final decision pursuant to 310 CMR 1.01(14): Decisions. After the RCC permit decision is final, stay of the RCC permit shall be governed by M.G.L. c. 30A, §14.

### (6) Request for Adjudicatory Hearing of the Department's RCC Permit Decision and Process for Intervention.

The definitions of terms set forth at 310 CMR 1.01:

Adjudicatory Proceeding Rules for the Department of Environmental Protection apply to 310 CMR 16.05(6) unless otherwise defined in 310 CMR 16.00. In the event of a conflict between definitions in 310 CMR 1.01: Adjudicatory Proceeding Rules for the Department of Environmental Protection and 310 CMR 16.00, the definitions in 310 CMR 16.00 prevail for purposes of 310 CMR 16.05(6).

(a) The following persons shall have the right to request an adjudicatory hearing of an RCC permit decision (not a draft decision) issued by the Department:

#### 1. The Applicant.

2. An Aggrieved Person. An aggrieved person shall have the burden of proof to establish his or her status as an aggrieved person as defined at 310 CMR 16.02 and must state in the request for an adjudicatory hearing the specific basis of his or her aggrievement.

3. Groups of Ten Persons. A group of ten persons that has submitted written comments in accordance with 310 CMR 16.05(5)(c) has a right to request an adjudicatory hearing with respect to a RCC permit decision. In the case of a group of ten persons requesting an adjudicatory hearing, the issues at the adjudicatory hearing shall be limited to those of damage to the environment and the elimination or reduction thereof, as defined under

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M.G.L. c. 214, § 7A. The request for adjudicatory hearing shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each person shall file an affidavit stating the intent to be a part of the group and to be represented by its authorized representative.

4. The Municipality Wherein the Proposed Operation Is to Be Located. The board of selectmen or the mayor, **or board of health** as applicable, of the municipality wherein the proposed operation is to be located, provided the municipality has submitted written comments accordance with 310 CMR 16.05(5)(b).

(b) Intervention in Adjudicatory Hearings. Nothing in 310 CMR 16.00 shall prevent a person from requesting to intervene in an adjudicatory hearing pursuant to 310 CMR 1.01(7): Intervention and Participation. Any motion to intervene pursuant to 310 CMR 1.01(7): Intervention and Participation shall be filed within 21 days from the date the first request for an adjudicatory hearing is filed with the Department.

(c) Limitation on Matters Raised in Request for Adjudicatory Hearing. The matters that may be raised in a request for an adjudicatory hearing by a person who has the right to request an adjudicatory hearing, or by an intervenor, are limited to the matters raised during the public comment period; provided, however, that a matter may be raised upon a showing that it was not reasonably possible with due diligence to have raised such matter during the public comment process or for good cause shown.

(d) Process for Requesting an Adjudicatory Hearing. A written request for an adjudicatory hearing shall be filed or postmarked within 21 days from the date the Department issues its RCC permit decision. The adjudicatory hearing request shall be in the form of a notice of claim and shall comply with all the requirements of 310 CMR 1.01: Adjudicatory Proceeding Rules for the Department of Environmental Protection. The person requesting the adjudicatory hearing shall send a copy of the request for adjudicatory hearing by first class mail or hand delivery, to the applicant and to any person who has submitted an electronic or mailing address with timely written comments to the Department.

(e) Timeline and Procedures for Adjudicatory Hearing.

### 1. Pre-screening and Motions.

a. Upon receipt of the notice of claim, the presiding officer will schedule a prescreening conference to be conducted pursuant to 310 CMR 1.01(5)(a)15. and will send notice to all parties. Such prescreening conference will presumptively occur not more than 30 days after the notice of claim is filed. As used in 310 CMR 16.05(6)(e)1. through 4., "presumptively" means that the timeline is binding, absent extraordinary circumstances, in which case the presiding officer has authority to extend the timeline.

b. Any person who intervenes after filing of the notice of claim shall promptly receive the notice of the prescreening conference, but any intervention shall not change the schedule of the prescreening conference or the hearing.

c. Any party may file a motion to dismiss or for summary decision prior to the prescreening conference or by a date set by the presiding officer at the prescreening conference. Motions will not change the schedule of the prescreening conference or the hearing.

d. Upon notice to the parties, the presiding officer may provide an opportunity at the prescreening conference for a simplified hearing conducted pursuant to 310 CMR 1.01(8)(a): Simplified Hearing.

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e. If the presiding officer determines an appeal to be major or complex, he or she will adjust the schedule either by extending it up to 30 days or by taking the matter ahead of other cases.

f. Every party must attend and be prepared to discuss settlement and the narrowing of issues at the prescreening conference. At the conclusion of the prescreening conference or shortly thereafter, the presiding officer shall prepare and send to all parties a prescreening conference report for any appeal not resolved in prescreening. The prescreening conference report shall contain a list of issues that are in dispute, are legally relevant and are to be addressed in the parties' direct and rebuttal cases.

g. The presiding officer may rule on the timeliness, standing and compliance with the requirements of 310 CMR 16.05(6)(e), *sua sponte* or in response to a motion, and provide a prompt ruling to the parties.

### 2. Pre-filed Testimony.

a. A petitioner must file its direct case with the Department and serve a copy on every party no later than 45 days after the prescreening conference. In its direct case, the petitioner must establish the legal and factual basis for its position on the issues identified by the presiding officer in the prescreening report. Failure to do so will result in a waiver of petitioner's direct case for that issue. In addition, the direct case at a minimum shall include:

- i. a description of the subject matter of the Department's RCC permit decision; and
- ii. credible evidence from a competent source in support of each claim of factual error, including any relevant expert report(s), plan(s), or photograph(s).

b. A respondent that seeks to support or defend the Department's RCC permit decision shall file and serve on all parties a direct case within 30 days of the filing of the petitioner's direct case. The response shall, at a minimum, include a rebuttal to the petitioner's direct case setting forth the legal and factual basis supporting the Department's RCC permit decision, including relevant statutory and regulatory citations and evidentiary support consisting of credible evidence from a competent source and any affirmative defenses and evidentiary support for them.

c. An intervenor that contests the Department's RCC permit decision shall file a direct case that conforms to 310 CMR 16.05(6)(e)2.a. no later than the due date of the petitioner's direct case. An intervenor that supports the Department's RCC permit decision shall file a direct case that conforms to 310 CMR 16.05(6)(e)2.b. no later than the due date of the respondent's direct case.

d. The petitioner or an intervenor aligned with the petitioner may file rebuttal evidence no later than seven days after the filing of the direct case by the respondent or any intervenor aligned with the respondent. The rebuttal evidence shall be limited to countering evidence submitted in a respondent's or intervenor's direct case and shall be served on all parties.

### 3. Hearing.

a. Upon receipt of the notice of claim, the Department will schedule a hearing

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and will send notice to all parties. A hearing will be held presumptively within 120 days after the notice of claim is filed.

b. The presiding officer shall conduct a hearing. At the hearing, the parties' direct cases shall consist of, and be limited to, the evidence contained in their respective direct cases and rebuttal evidence, subject to evidentiary rulings of the presiding officer. The primary function of the hearing shall be cross-examination of witnesses and, at the presiding officer's discretion, an oral closing argument. The hearing shall be limited to one day, unless the presiding officer finds that there is good cause for a longer hearing.

4. Final Action. The presiding officer shall issue a written recommended final decision, presumptively within 30 days after the close of the hearing that shall include findings on the contested issues. The Commissioner shall issue a final decision consistent with 310 CMR 1.01(14)(b): Final Decisions, presumptively within six months of the filing of the notice of claim, or in the case of an appeal deemed major or complex in which the schedule was extended, in accordance with the extended schedule. Should a party request a tentative decision, the request shall be governed by 310 CMR 1.01(14)(a): Recommended Decisions and Tentative Decisions, and the schedule for completion of proceedings shall be extended to accommodate such request.

(f) Relationship to Other Rules of Adjudicatory Proceedings. To the extent there is conflict between the regulations governing appeals set forth in 310 CMR 16.05(6) and the Rules of Adjudicatory Proceedings set forth in 310 CMR 1.01: Adjudicatory Proceeding Rules for the Department of Environmental Protection the former shall prevail.

### (7) RCC Permit Modifications.

(a) The proponent shall notify the Department and the board of health of proposed changes in design or operations where:

1. the owner or operator intends to recycle, compost or convert material(s) substantially different from those materials for which the RCC permit was granted;
2. the design and/or management of the operation is to be altered;
3. the owner or operator proposes to increase the volume or quantity of materials to be handled by the operation above that volume or quantity established in the RCC permit; or
4. as otherwise specified in the RCC permit.

(b) Where the Department determines that the change in design or operation is significant, the Department may require the submittal of a revised RCC permit application, with a copy submitted to the board of health, for review. Review of such revised RCC permit modification application shall be as if it were an initial RCC permit application.

(c) Where the Department issues a decision on a modification to an existing RCC permit, any person requesting an adjudicatory hearing pursuant to 310 CMR 16.05(6) may raise in such request only those issues relating to the modification of the RCC permit.

(8) Demonstration Project for Recycling, Composting or Converting Recyclable or Organic Material. The Department may approve a project to demonstrate innovative recycling, composting or conversion projects as provided in 310 CMR 16.05(8)(a) through (d).

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- (a) General Conditions. The following conditions shall apply to any demonstration project approved pursuant to 310 CMR 16.05(8):
1. the materials to be processed shall be limited to the recyclable or organic materials permitted to be processed by operations set forth at 310 CMR 16.05; **and**
  2. a project shall be limited to a specified time period not to exceed two years from the date of approval, after which time the project shall terminate unless an extension is granted in writing by the Department or applicable state and local permits are obtained.; **and**
  3. **local permits are obtained.**
- (b) Application. An applicant shall submit an application to conduct a recycling, composting or conversion demonstration project to the Department, with a copy to the board of health. The application shall contain:
1. the information described at 310 CMR 16.05(2) as required by the Department;
  2. the proposed duration of the demonstration project; and
  3. a description and schedule of interim and final reports to be submitted to the Department describing and evaluating the project.
- (c) Review Criteria. The Department shall consider the following criteria when determining whether to allow the demonstration project:
1. the potential for adverse impacts taking into account the type and amount of recyclable and organic materials, the project location, the design and operating controls, the management practices and the owner's and operator's experience;
  2. whether the activity can be carried out in a manner that prevents an unpermitted discharge of pollutants to air, water or other natural resources of the Commonwealth, does not create a public nuisance; and does not present a significant threat to public health, safety or the environment;
  3. the likelihood of obtaining useful, new information in the time frame proposed for the demonstration project; and
  4. the ability of the applicant to appropriately use or dispose of all project materials once the demonstration project has been completed.
  5. **the ability of pollutant prevention measures if location is within a watershed with an EPA approved TMDL or Natural Resource Area as defined in 310 CMR 15.214 (1)(b) and the receiving waterbody, waterway or estuary is impaired.**
- (d) Review Process. The Department shall follow the procedure described at 310 CMR 16.05(5) when issuing its decision on whether to allow the demonstration project.

### 16.06: General Requirements for General Permits and Recycling, Composting and Conversion Permits

#### (1) Compliance Certification **and Third Party Operation and Maintenance** Requirements.

##### (a) Compliance Certification Schedule.

1. New **or Newly Acquired** Operations. The owner or operator of each new recycling, composting or conversion operation that handles recyclable or organic materials, which qualifies for a general permit, pursuant to 310 CMR 16.04, or RCC permit issued by the Department, pursuant to 310 CMR 16.05, shall submit a compliance certification to the Department with a copy to the board of health, in accordance with

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310 CMR 16.06(1)(b) 30 days prior to the commencement of a new operation ~~or the acquisition of such an operation~~, and the following:

- a. Construction certification in accordance with 310 CMR 19.107; and
- b. the Department has conducted an inspection and determined that the facility is in compliance.

2. Existing Operations. The owner or operator of each operation in existence on or before November 23, 2012 shall submit a certification by February 15, 2014, unless the owner or operator has a Determination of Need issued before [the effective date of these regulations], in which case the owner and operator shall comply with the schedules set forth in 310 CMR 16.01(12) for submission of a certification for the operation.

3. Annual Certification Requirement. The owner or operator of an operation for which a certification is required to be submitted by 310 CMR 16.06(1)(a)1. or 2. shall submit a new annual compliance certification to the Department on or before February 15<sup>th</sup> of each calendar year on a form provided by the Department.

(b) Certification Requirements. The owner or operator shall ensure that a responsible official for either the owner or operator of each operation shall submit a certification. Each certification shall be on a form prescribed by the Department and shall address compliance with the performance standards and conditions to which the operation is subject. The certification form may include specialized forms for specific categories of operation, and any owner or operator required to submit a certification pursuant to 310 CMR 16.06(1)(a) shall submit all applicable forms. The certification shall:

1. state whether the operation is in compliance with the applicable requirements as listed on the certification form and contained in 310 CMR 16.00;
2. include a commitment to identify to the Department any violations of 310 CMR 16.00 that occur;
3. if the operation is out of compliance, state what the owner and operator will do to return to compliance and the date by which compliance will be achieved; and
4. include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:
  - a. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
  - b. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
  - c. that systems to maintain compliance are in place at the operation and will be maintained even if processes or operating procedures are changed;
  - d. that I am fully authorized to make this attestation on behalf of this operation; and
  - e. that I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information".

(c) Third-Party Operation and Maintenance Requirements. The owner or operator of a

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composting facility shall retain a third-party inspector of the facility if permitted in accordance with 310 CMR 16.03(2)(c)1.b. or 16.05. The inspector shall be approved by the Department and must have a demonstrated knowledge of 310 CMR 16.00, composting and stormwater management. The inspector shall be responsible for:

- a. Submitting of biannual reports, on a form provided by the Department, to the Department and the local board of health;
- b. Submitting of biannual testing data of the groundwater monitoring system for the following analytes: pH, Alkalinity, Specific Conductance, Nitrate Nitrogen, Total Nitrogen, Phosphorous, Total Dissolved Solids, Chloride, Calcium, Sodium, Iron, Manganese, Sulfate, COD, BOD and Dissolved Oxygen; and
- c. other analytes as determined by the Department if handling organic waste materials that require Department approval for use a feedstock or bulking agent.