



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Kathleen A. Theoharides
Secretary

Martin Suuberg
Commissioner

**SUMMARY OF AND RESPONSE TO COMMENTS ON
DRAFT AMENDMENTS TO
310 CMR 19.017 - WASTE BAN REGULATIONS**

October 15, 2021

REGULATORY AUTHORITY:

MGL c. 111, s. 150A

On October 16, 2020, the Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to 310 CMR 19.017 - Waste Ban Regulations, that proposed to add mattresses and textiles as materials banned from disposal, and to lower the threshold of the existing commercial organics material (food materials) waste ban so that it applies to entities that generate one-half (½) ton or more of organic waste for disposal per week (current threshold is 1 ton per week).

MassDEP held two public hearings and solicited comments on the proposed amendments in accordance with Massachusetts General Law Chapter 30A. On October 16, 2020, MassDEP published a notice in the Boston Globe announcing the public hearings and public comment period on the proposed amendments. MassDEP also notified a wide range of stakeholders through MassDEP email distribution lists and additional outreach. Two public hearings were held via Zoom on November 9, 2020 and November 12, 2020. The comment period closed on December 4, 2020.

This document summarizes and responds to comments that were received during the public comment period. Those who provided comments are listed below:

First Name	Last Name	Organization/Notes
Scott	Alfonse	Greater New Bedford Regional Refuse Management District
Jan	Ameen	Executive Director/Franklin County Solid Waste District, Greenfield, MA 01301
John	Andrade	New Bedford resident
Mimi and Salvatore	Balsamo	
Daniel T.	Barrett	Town of Bourne, ISWM Department
Geoffrey	Beckwith	Massachusetts Municipal Association
George E.	Booth	Springs Creative
Steve	Changaris	MA National Waste and Recycling Association (NWRA) Chapter Director
Michelle	Ciccolo	State Representative/15th Middlesex District Lexington & Wards 1&7 in Woburn/Zero Waste Caucus
Herbert A.	Claiborne	Carpenter Co.
Marie	Clarke	VP/International Sleep Products Association

Deane	Coady	Brookline's Solid Waste Committee
Solange	Connolly	Quincy Resident
Mike	Cotter	
Ida	DelVecchio	Quincy Resident
Janet S.	Domenitz	MASSPIRG/MASSPIRG Education Fund
Lori	Earl	Quincy Resident
Frank	Franciosi	US Composting Council
Phil	Goddard	SNE SWANA Chapter
Phil	Goddard	Town of Bourne, ISWM Department
Rob	Gogan	Formerly Harvard University - Comments on SWMP (also mentions disposal bans)
Ashley Higgs	Hammell	Cambridge Resident
John	Hannon	Triad Recycle, NY
Scott	Henderson	Covanta
Robin	Ingenthron	Good Point Recycling
Anneli	Johnson	formerly DOER
P.J.	Kelliher	Barnstable DPW
Timothy B.	Kilhart	Harvard Public Works Department
Jackie	King	Secondary Materials and Recycled Textiles Assoc. (SMART)
Trisha	Kingsbury	
Craig	Kleinman	Purple Innovation, LLC
George	Leahy	ReSource Waste Services
Philip	Leger	Royalston BOH Chair
Lorenzo	Macaluso	Center for EcoTechnology (CET)
Tracy	Markham	Casella Waste Systems, Inc
Maggie	McKee	Quincy Resident
Charlotte	Milan	Arlington Recycling Coordinator
Colin	Miller	
Serena	Monteiro	Cambridge Resident
Jack	Nelson	
Joseph D.	Noblit	Yankee Mattress Factory
Chris	Osgood	City of Boston - Chief of Streets
Lauren	Palumbo	Lovin' Spoonfuls/COO
Kirstie	Pecci	Conservation Law Foundation
Dan	Peters	Covanta SEMASS
Winton	Pitcoff	MA Food System Collaborative
Steven	Poggi	Waste Management of New England & Upstate New York
Joseph	Raposa	Rhode Island Resource Recovery Corporation

Bill	Rennie	Retailers Association of Massachusetts
Twila	Ressler	Savvy Rest, Inc
Kaity	Robbins	Boston University
Kate	Rodriguez	
Keith	Saxon	
Mary Rose	Scozzafava	
Nick	Stefkovich	Republic Services
Valerie	Sweeney	ERC Wiping Products
Laura	Tavares	UTEK/Director of Social Enterprise, Mattress & Woodworking
Waneta	Trabert	Newton Department of Public Works
Ryan	Trainer	International Sleep Products Association
Paige	Wetzel	
Andy	Wise	Textile Waste Supply Co.

1. Comment: Many commenters expressed support for the proposed bans on mattresses and textiles, as well as lowering the threshold for the commercial organics ban from one ton to one-half ton per week. In addition, some commenters recommended banning disposal of food scraps from all businesses and residents by 2025 while some suggested gradually reducing the threshold over time.

Response: MassDEP agrees with the importance of reducing food waste from small businesses and residents. However, diverting food material from disposal from these sources requires a very different infrastructure than for commercial operations, including facilities that can handle a greater degree of contamination from non-food materials, as well as more capacity to manage food material and yard waste together. Collection of food material from many smaller sources is also more expensive than collection of this material from fewer large sources. MassDEP plans to continue to implement other approaches to reduce food waste from smaller sources, including voluntary programs combined with technical assistance, support of backyard composting and municipal collection pilots, and education and guidance to prevent and reduce food waste at the source. By 2025, MassDEP plans to assess progress in this area and determine what additional steps may be needed to further reduce food waste.

2. Comment: Many commenters requested that MassDEP delay the effective date of the proposed bans on all three materials. Concerns included inadequate collection and recycling capacity, a need for more education and stakeholder engagement, and increased business costs, particularly for businesses already struggling due to COVID 19 impacts. This would allow more time for collection and processing infrastructure development, stakeholder engagement, education and assistance, and business recovery from the impacts of COVID 19.

Response: Although MassDEP has done extensive work on these issues to date, MassDEP agrees that extending the effective date of these new bans will allow for further progress on the concerns mentioned. Therefore, MassDEP has moved the effective date for these new bans to November 1, 2022 in the final regulations. This will allow additional time to deliver technical assistance, conduct outreach and education initiatives, and continue to grow markets and infrastructure for these materials.

3. Comment: Several commenters encouraged MassDEP to conduct additional outreach and stakeholder engagement around the proposed amendments, in particular to help inform residents about where they can bring their textiles and what textiles can and cannot be reused or recycled.

Response: MassDEP will continue to work with stakeholders, including municipalities, businesses, and businesses that collect and receive mattresses, textiles, and food scraps to work towards compliance with the new waste bans and to ensure residents are informed.

4. Comment: Some commenters stated that the proposed bans will increase management costs for municipalities that operate curbside or drop-off collection for mattresses and textiles and result in an unfunded mandate for municipalities. This is in addition to the increased costs municipalities are facing for managing other recyclables. Others commented that diverting mattresses and textiles from the solid waste stream will enable municipalities to save money through reduced disposal costs.

Response: MassDEP agrees that there are management costs associated with diverting all of these materials from disposal, including collection and processing costs. In the case of textiles, collecting and sending textiles for recovery can save municipalities money on a net basis due to the value of the collected textiles. In the case of mattresses, the information that MassDEP has obtained shows that the cost of recycling mattresses is similar to the cost for disposal on a per unit basis. Most solid waste facilities charge surcharges for mattresses and box springs and these range from \$20-100 per unit, with most around \$50 per unit. Municipalities are not required to provide solid waste and recycling services to residents, and, therefore, any increase in cost associated with providing such services to its residents would not constitute an unfunded mandate. Should a municipality opt to provide these services they also can recoup expenses for recycling and disposal through a service fee on residents.

5. Comment: Some commenters expressed concerns that the proposed reduced threshold for the commercial organics ban will increase management costs for businesses, particularly smaller restaurants that would be subject to the reduced threshold.

Response: While the tip fee to deliver food waste for composting, anaerobic digestion or animal feed is generally significantly lower than solid waste disposal tip fees, food waste collection may increase costs for some businesses that generate smaller amounts of food waste, as they may not generate enough reduced disposal costs to offset the added collection cost. For many businesses that are close to the ½ ton per week threshold, they may be able to comply cost-effectively by

taking steps to prevent and reduce food waste in their operations and by donating surplus food that has been properly packaged and stored to food rescue and food bank organizations. MassDEP will deliver assistance to businesses through the RecyclingWorks in Massachusetts program to help businesses implement the most cost-effective compliance approach.

6. Comment: MassDEP cannot adequately oversee and control companies that collect these banned materials for recycling, composting, reuse or other purposes. Municipalities and businesses may choose the cheapest service provider, which may result in poor management and greater environmental impacts. MassDEP should look to source reliable companies to assist in compliance with these bans, perhaps through state contract or some other means. Waste bans may lead to products being exported as waste to other states or countries where the environmental impacts of managing these materials may be greater.

Response: For recycling, composting, and anaerobic digestion facilities located in Massachusetts, MassDEP oversees those facilities, typically through either a General Permit or a Recycling, Composting and Conversion (RCC) facility permit. MassDEP cannot directly oversee facilities in other states or countries, but that is the case for increased recycling with or without waste bans. However, MassDEP has supported market development initiatives that have helped to foster a growing in-state mattress recycling infrastructure, as well as the most extensive capacity for managing food scraps in the Eastern United States. Much of this infrastructure was developed in response to the commercial organics waste ban implemented in 2014. There is currently extensive textiles recovery infrastructure in Massachusetts, but MassDEP will continue to work with stakeholders to further develop in-state reuse and recovery opportunities for textiles, in addition to export markets. Where it is helpful, MassDEP does work with the state's purchasing agency, the Operational Services Division, to provide state contracts for recycling services for both municipalities and state agencies.

7. Comment: MassDEP should not allow food scraps to go to wastewater treatment facilities as they are contaminated by chemicals in sewage sludge. MassDEP should continue to promote backyard composting and food rescue, and support development of anaerobic digestion. Local reuse/recycling of organic materials is best.

Response: MassDEP has and will continue to promote multiple options for managing surplus food, including up front prevention and reduction strategies, food donation and rescue, on-site composting, off-site composting, de-packaging operations and a variety of anaerobic digestion operations, including operations based at dairy farms, stand-alone operations, and AD operations based at existing wastewater treatment plants. MassDEP believes that all of these operations offer different benefits.

8. Comment: MassDEP needs an exemption for moldy, wet, or other non-recyclable mattresses to allow them to be sent for disposal. They should not be considered a "zero tolerance item" under the waste bans. Having to apply for waivers will be time consuming for the facility and for MassDEP. Also, some textiles are not suitable for recycling. MassDEP should add language

exempting used industrial wiping cloths and low value or contaminated residuals from textile reuse and recycling operations that do not have recycling outlets from the waste bans.

Response: MassDEP will revise the definitions in the regulations to clarify that the waste bans do not apply to mattresses and textiles that are contaminated with mold, bodily fluids, insects, oil, or hazardous substances.

These materials that are not considered recyclable because they are wet, moldy, or otherwise contaminated (e.g., bed bugs) when they are received (by the municipal collection site and/or the vendor) and will be allowed to be sent for disposal. However, entities that are collecting and managing mattresses and textiles must ensure that materials that are clean and dry when accepted are stored and handled in such a way that they do not become contaminated and non-recyclable. In the case of used wiping cloths, these would not be considered clean textiles and would not be subject to the waste disposal ban.

9. Comment: Massachusetts should establish an extended producer responsibility (EPR) system for mattresses before promulgating the waste ban regulations. Without an EPR system, the waste ban could result in increased costs to municipalities, increased illegal dumping, and more transport of mattresses to Connecticut or Rhode Island, placing undue costs on those EPR programs. MassDEP should make it abundantly clear that transporting mattresses over state lines for disposal, etc. is prohibited.

Response: MassDEP supports an extended producer responsibility system for mattresses. However, this must be established through legislation. MassDEP believes a mattress waste ban can be implemented effectively without an extended producer responsibility system, given current disposal charges for mattresses and current market development, technical assistance, education, and outreach initiatives. This is the case for all of Massachusetts current waste bans. MassDEP does not have the authority to prohibit transportation of mattresses over state lines and such a prohibition would not be allowable under the interstate commerce clause.

10. Comment: MassDEP should establish diversion/recycling stakeholder groups for mattresses and textiles to develop a list of recommendations for establishing and/or improving recycling infrastructure in the Commonwealth and throughout the region before proceeding with a waste ban.

Response: MassDEP will continue to work with stakeholders to improve the effectiveness and efficiency of the mattress and textile recycling infrastructure in Massachusetts. MassDEP believes that the capacity and infrastructure currently in place for mattresses and textiles is adequate to support implementation of a waste ban and that this infrastructure capacity will grow prior to the effective date of November 1, 2022. Relative to mattresses, MassDEP is aware of current and planned capacity in Massachusetts that will enable the processing and recycling of 470,000 mattresses per year. This does not include commercial and institutional mattresses that are managed through other channels, and MassDEP believes this activity is significant. For

textiles, over the past decade MassDEP has been actively working to promote and develop the textile recovery infrastructure and is confident the infrastructure has the capacity to manage the expected additional diversion of textiles.

11. Comment: MassDEP should create a streamlined permit modification or permit approval process for any facility operator that might want to get into the business of mattress or textile recycling.

Response: These operations may qualify for a general permit, which is a fast and simple process that does not have a permit fee. For operations that do not meet general permit requirements, MassDEP will explore creating an additional RCC permit category that would be simpler and less expensive for small operations.

12. Comment: MassDEP should provide more opportunities for textile recycling so that used textiles that are past their prime can be handled properly. This could include more textile bins in densely populated areas or greater frequency of special collection days for textiles. Textile drop-off bins are notoriously problematic for contamination and require more oversight.

Response: MassDEP will continue to work with the textile recovery sector, municipalities, businesses and other stakeholders to develop best practices for textile collection and management. These issues also will be addressed in MassDEP's Reduce & Reuse Workgroup.

13. Comment: Rather than focusing on solid waste facilities, MassDEP should shift its focus "upstream" to the generators before the banned organics, mattresses and textiles are commingled with wastes bound for disposal.

Response: MassDEP's waste ban compliance and enforcement approach focuses primarily on waste generators and haulers. However, solid waste facilities play an important role by helping to identify cases of significant disposal of waste ban materials, when MassDEP is not present inspecting at solid waste facilities. This information is used to raise awareness of the disposal of waste ban materials by contacting those generators and haulers, who often are not aware of waste ban materials in loads, as well as provide valuable information to MassDEP to inform waste ban outreach and compliance assistance.

14. Comment: Municipalities require support and sharing of best practices and regulatory tools to ensure waste bans are being followed. Municipalities need financial support to divert these materials properly. Faster delivery of RDP funds to communities is important.

Response: MassDEP will continue to work with municipal officials on waste ban compliance for both existing and new waste ban materials. This will include continuing to administer the state contract for mattress recycling services, continuing to provide market development grants to foster improved capacity for managing these materials, and continuing to support these programs through MassDEP's Sustainable Materials Recovery Program and Recycling Dividends Program.

15. Comment: MassDEP should review existing waste ban language to ensure contaminated materials are not diverted along with clean materials (i.e., cardboard coated with plastic).

Response: Waxed and coated cardboard is not subject to the waste bans, though this cardboard can sometimes be difficult for businesses to identify and distinguish in practice. When MassDEP conducts waste ban inspections, enforcement, and technical assistance, we work with businesses to identify what materials are and are not recyclable. In addition, MassDEP's RecyclingWorks in Massachusetts program provides technical assistance and other services to assist businesses in establishing effective diversion programs.

16. Comment: MassDEP should add mercury-added products to the list of materials banned from disposal.

Response: Mercury added products are banned from disposal under separate regulations at 310 CMR 76.00. For more information, see <https://www.mass.gov/regulations/310-CMR-7600-mercury-added-product-disposal-ban>.

17. Comment: MassDEP should utilize US Composting Council's Professional Certification program to prepare facilities to handle additional volume.

Response: MassDEP does provide direct assistance to compost facility operators through a Compost Site Technical Assistance Program delivered through MassDEP's RecyclingWorks in Massachusetts (RecyclingWorks) program. Through this program, RecyclingWorks offers training programs that have been attended by 148 people, as well as direct on-site assistance that has been provided to 56 compost operations since 2015. In addition, the Massachusetts Department of Agricultural Resources has a training requirement in its regulations for agricultural compost operations. MassDEP does not recommend or endorse a specific training program for compost facility operators.

18. Comment: MassDEP should use cubic yards in the guidance instead of number of employees, etc. to estimate food waste generation.

Response: MassDEP provides multiple ways for businesses to estimate their food waste generation through our RecyclingWorks program. This guidance is available here: <https://recyclingworksma.com/food-waste-estimation-guide/>.

19. Comment: MassDEP should change terminology for the commercial organics ban from "commercial" to "non-residential" to clarify that institutions such as schools are included.

Response: MassDEP clarifies the scope and applicability of the ban in the regulatory definition, guidance and outreach materials. This ban has been in place since 2014 and MassDEP is not aware of any confusion over the applicability to institutions such as schools.

20. Comment: MassDEP should change the terminology to "mattress and box spring" to eliminate confusion.

Response: There are a number of specific products relative to the category of mattresses that are each identified in the regulatory definition. MassDEP will further clarify that this definition includes box springs in our outreach materials.

21. Comment: Compostable products should be appropriately labeled.

Response: Compostable products are not subject to the waste disposal ban on organics, however MassDEP agrees that they should be clearly labelled.

Comments on Waste Ban Guidance

22. Comment: Adding an additional inspector or staff person on the tipping floor and landfill face is costly and dangerous. MassDEP should eliminate this requirement from the guidance. As an alternative, MassDEP should consider the option of using cameras & enhanced technology to meet the “Waste Ban Spotter” requirement. If MassDEP does keep this requirement, MassDEP should provide funding for additional inspectors. If a “Waste Ban Spotter” is now required, can the requirement to conduct “comprehensive” waste ban inspections be eliminated?

Response: In MassDEP’s waste ban inspections since 2013, MassDEP inspectors have recorded an average failed load rate by year between 16 and 27 percent, that is 16-27 percent of loads contain significant amounts of waste ban materials. In contrast, in both solid waste facility and third-party inspections, the typical recorded failed load rate is currently 1-2 percent, an order of magnitude different than MassDEP’s observations. MassDEP believes that, in most cases, a loader operator has too many other responsibilities to be able to adequately monitor and record waste ban failed loads and that it is important for another person to be able to support this role. This information can be used to raise awareness of the disposal of waste ban materials among generators and haulers, who often are not aware of waste ban materials in loads, as well as provide valuable information to MassDEP to inform waste ban outreach and compliance assistance.

MassDEP appreciates the potential health and safety risks of personnel on solid waste facility tip floors and landfill faces. However, MassDEP believes that these risks can be addressed through implementing best practices on the tip floor. MassDEP is flexible for how facilities implement these improved monitoring and recording practices. In some cases, facilities have used jersey barriers, a shed, or other structures to provide a safe observation area for monitoring and recording failed load data. MassDEP is also open to the use of other technologies such as cameras, as long as that information is monitored, recorded, and provided to hauler customers, as well as to MassDEP inspectors.

23. Comment: MassDEP should continue to work with the local chapter of the National Waste and Recycling Association (NWRA) and facility operators (who are currently doing disposal ban inspections) if any improvement to the inspection process is needed.

Response: MassDEP will continue to work with the solid waste industry to implement this guidance and to review and implement solid waste facility waste ban compliance plans.

24. Comment: Vehicles with C&D materials above thresholds that cannot be observed ahead of time or reloaded (for example, packers or compactor boxes) will be prevented from dumping completely if C&D materials above thresholds are observed by the Waste Ban spotter and/or loader operator. The remaining portion of the un-dumped load would be rejected from disposal. The portion of the load that has dumped, (likely wood) could be transferred for disposal or disposed at an Energy-from-Waste (EfW) facility.

Response: MassDEP is open to individual facility practices that differ from MassDEP's guidance for solid waste facilities as long as they effectively achieve the same goals and are incorporated into the facilities approved waste ban compliance plan. In the case of municipal waste combustors, MassDEP agrees that wood can be accepted and disposed of at these facilities and does not need to be separated.

25. Comment: The regulation will be an enforcement problem for facility operators. "Textiles" is a very broad term that includes many different types of products. As a result, the ability to determine a 10% content on the majority of loads, many of which will be in bags, will not be possible.

Response: This will work in the same way as it does for existing waste ban materials. Materials such as bottles and cans, paper, and commercial organic material are similar in that they may be disposed of in bags and may not be readily observable by facility staff. Facilities are only responsible for documenting and recording loads that they can observe above the action level thresholds. There is no requirement to open bags, although comprehensive inspections should be conducted more thoroughly than ongoing monitoring, by thoroughly spreading the load out and walking around the load as describe in MassDEP guidance.

26. Comment: Some commenters expressed support for the 15% minimum performance standard for C&D facilities. Others requested that MassDEP amend the 15% proposed requirement to offer C&D facility operators flexibility regarding the targeted diversion rate. Markets for material to be diverted may not exist or could be offline. MassDEP should allow for two C&D facilities operated by the same company may exceed the diversion rate combined but not individually.

Response: MassDEP continues to believe that the minimum performance standard is an achievable standard for construction and demolition handling facilities that are making a good faith effort to separate materials to comply with the existing waste ban requirements. MassDEP will continue to work with facility operators on their compliance as this standard is implemented.

27. Comment: MassDEP should update definition of "single polymer plastic" on page 25 of the guidance document to meet the definition on page 8.

Response: MassDEP agrees with this comment and has modified the definition on page 25 of the guidance document to be consistent with the definition on page 8.

28. Comment: The 45-day deadline for failed load letters should be changed to 50 days.

Response: MassDEP will revise this deadline in the guidance to read that, for the failed loads observed in each month, the facility shall send failed load letters no later than the 20th day of the following month.

Other Comments Not Directly Relevant to Proposed Regulations or Guidance

29. MassDEP should be fully funded under the Governor's H2 budget request.

30. The bottle deposit should be expanded to generate revenue, save municipalities money and increase recycling.

31. Producers of hard-to-manage bulk products need to manage the logistics of the recovery, recycling and disposal for their products.

32. MassDEP should support the growth and development of non-profit social enterprises for reuse and recycling activities. This could include creating a new Social Impact Fund to support social enterprises, adding specific language in the waste bans to include a focus on, non-profit employment social enterprises, awarding additional points to applicants for use of social enterprises through the SMRP Recycling Dividends Program, and create a Leading By Example Initiative (LBE) initiative that encourages purchasing through employment social enterprises.