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Department of Environmental Protection

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Massachusetts Department of Environmental Protection's Response to the Dartmouth Select Board's Petition for Rulemaking

I. Introduction

On January 10, 2025, the Dartmouth Select Board (Petitioner) filed with Massachusetts Department of Environmental Protection (MassDEP) a "Petition for Massachusetts Department of Environmental Protection Rulemaking to Revise and Rescind Site Assignment Regulations for Solid Waste Facilities" (Petition).

Pursuant to regulatory requirements for responding to petitions for the adoption of regulations, MassDEP held a public meeting regarding the Petition on March 16, 2026. At the meeting, MassDEP discussed the current regulatory framework for composting, Massachusetts' challenges with solid waste capacity and disposal issues, and how those issues are addressed in the Massachusetts 2030 Solid Waste Master Plan (SWMP) published in October 2021, specifically for composting operations. MassDEP also invited comments from the meeting participants, which are summarized as follows.

- Dartmouth's Town Administrator Cody Haddad stressed that the Town of Dartmouth is not opposed to composting, but that he and others want to make sure it is regulated for the safety of the community. Mr. Haddad stated that many other states have more stringent regulations for composting than Massachusetts and conveyed the Town's concern that they think MassDEP lacks strong regulations in this area.
- The Town of Dartmouth's Public Health Director Christopher Michaud reiterated that the Petition was not for the purpose of banning composting, but for Massachusetts to have parity with other states in its regulation of this area,

- especially with regard to storm water, contact water and leachate. Mr. Michaud also: described odor complaints that have been received in the Town; stated that, unlike MassDEP, the Massachusetts Department of Agricultural Resources (MDAR) is not charged with protecting air and water quality; and described various challenges faced by the Town subsequent to MassDEP's organics waste bans. Mr. Michaud further expressed his hope to have prescriptive regulations in place. Later, Mr. Michaud addressed the meeting again and contemplated that people in the composting industry may object to new regulations under the assumption that it will cost too much money, but Mr. Michaud weighed that against the income he estimates that they take in and compared their ability to absorb those costs against that of the average homeowner, especially those in rural areas.
- Andrea Langhauser introduced herself as an appointed member of the Town of Dartmouth's Waterways Management Commission, and a retired Senior Waterways Planner from MassDEP. Ms. Langhauser detailed various sites, including a landfill and a farm composting operation, with which she was familiar, and characterized them as being well managed, particularly in regard to water quality impacts. She contrasted those with the composting sites Mr. Michaud discussed, which she stated fall outside MassDEP and MDAR oversight. Ms. Langhauser then characterized these facilities as having potentially high nitrogen emanating from them, and requested MassDEP to site these facilities away from wetlands resources, and to require sites to have water quality protections on par with other states.
 - State Representative Christopher Markey addressed the situation regarding nitrogen loading from septic systems in the Town of Dartmouth, and expressed his opinion that a vast volume of the nitrogen actually comes from compost sites. He further expressed a desire to work together with MassDEP to solve the problem to not have it be borne by Dartmouth residents alone. Mr. Markey also stated that perhaps farmers would have to pay more to comply with regulations but that would be a commercial investment.

- Dartmouth Select Board Member David Tatelbaum stated that the Town has been working to clean up its water and expressed a desire to partner with MassDEP to accomplish that.

II. Applicable State Law for Filing and Responding to the Petition

Section 4 of the Massachusetts Administrative Procedure Act, M.G.L. c. 30A, allows “any interested person” to petition an agency to request the “adoption, amendment, or repeal of any regulation.”

MassDEP regulations, at 310 CMR 2.00, govern the process by which an interested person petitions MassDEP and how MassDEP considers and responds to such petitions. Those regulations require MassDEP to “consider the petition ... at a meeting.” 310 CMR 2.03. MassDEP may, but is not required to, take comments from the audience at the meeting. 310 CMR 2.04. Following such meeting, MassDEP is required to determine whether to schedule the petition for further proceedings, and within ten days must notify the petitioner of MassDEP’s action. This letter constitutes notification to the Petitioner of MassDEP’s action on the Petition.

III. Summary of the Petition

The Petition proposes that MassDEP revise and/or rescind certain sections of its regulations at 310 CMR 16.00: Site Assignment Regulations for Solid Waste Facilities. The Petition argues that the regulations concerning compost siting need immediate and substantive changes. The Petition includes descriptions of issues in support of making changes to the regulations, such as nuisance odors and unpermitted discharges of pollutants to ground and surface waters, and proposes edits to certain sections of 310 CMR 16.00.

The Petition provides a number of proposals to amend the regulations. In general terms, these proposals include:

- Integration of the Bureau of Water Resources (BWR) regulatory requirements into certain sections of the solid waste regulations at 310 CMR 16.00;
- Clarification that it is MassDEP's responsibility to enforce its composting regulations, and not that of the Massachusetts Department of Agricultural Resources (MDAR); and
- Substantially revising MassDEP's regulations concerning composting operations to address nuisance conditions, including, but not limited to, greater setbacks and moving away from self-certification.

IV. MassDEP's Action on the Petition

MassDEP, including staff from its Bureau of Air and Waste and Office of General Counsel, carefully reviewed the proposals and supporting information in the Petition. Below is MassDEP's response to each of the Petition's proposals.

A. Agricultural Units' Exemption from Site Assignment [310 CMR 16.03]

The Petition advocates adding several conditions to an "agricultural unit's" ability to be exempt from site assignment under 310 CMR 16.03(2)(c)1., and, at 310 CMR 16.03(2)(c)2., proposes to remove "Small Composting Operations Not a Residence" from the ability to be exempt from site assignment altogether. Further, the Petition proposes to list those aspects of environmental protection that have not been statutorily assigned to MDAR at 310 CMR 16.03(2)(c), require composting operators to be properly trained, and invest in specialized staff to have a similar inspectional and oversight program to MDAR to address burdens placed on municipal officials as such officials are not granted access to composting operations in 310 CMR 16.00.

MassDEP's Response:

M.G.L. c. 21H, § 7(b) states, “The department of food and agriculture shall establish an agricultural composting program. Said department of food and agriculture is hereby authorized to establish state and local composting projects, to establish a demonstration agricultural composting program, and to accept applications for grants from municipalities for the purposes of creating agricultural composting projects. Said department of food and agriculture shall promulgate rules and regulations for the operation of state, local, and demonstration agricultural composting programs.” Pursuant to this authority, **MDAR has a comprehensive registration process for agricultural composting operations, set out in its regulations at 330 CMR 25.03.¹ The MDAR regulations require that agricultural composting operations do not result in unpermitted discharges to the environment and are not located in excessively drained soils or highly impermeable soils. The regulations also require that the applicant agree to provide MDAR with access to the property, complete a training program approved by MDAR and that the applicant not have a history of non-compliance with environmental laws and regulations.² If an applicant does not comply with these requirements, MDAR can deny or revoke their registration, as provided in 330 CMR 25.05.**

MDAR also has comprehensive oversight of registered composting operations at 330 CMR 25.04. These provisions include that the composting operation be secure from illegal dumping; minimize and address odors, noise, drift of materials, vectors, and risk to humans and the environment; maintain records; be at least 250 feet from a private well, 300 feet from a private residence and 100 feet from a property line; and ensure the operation does not result in unpermitted discharges to the environment.

Regarding site assignment, MassDEP’s regulations state, at 310 CMR 16.03:

(2) The activities listed in this subsection at 310 CMR 16.03(2)(a) through (c) do not require a site assignment, a facility permit pursuant to 310 CMR 19.000: *Solid Waste Management*, a general permit pursuant to 310 CMR 16.04, or a recycling,

¹ 330 CMR 25.03(4) and (6).

² 330 CMR 25.03(10), (11) and (13).

composting or conversion permit pursuant to 310 CMR 16.05, provided that the owner and operator incorporates best management practices 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. ... (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.

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. ...

5. Residential Composting. At a residence, composting of organic materials generated at the residence.

6. Residential Disposal of Stumps, Trees and Brush. Disposal of stumps, trees and brush at a single-family home or farm where the stumps, trees and brush are generated and disposed within the boundaries of such home or farm by the occupant or resident of that home or farm.

Therefore, the exemption is conditioned upon an owner/operator incorporating “best management practices 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.” As also stated in the regulation, MassDEP exempts composting operations from obtaining a General Permit or Recycling, Composting & Conversion Permit (RCC). However, MassDEP does not relinquish its enforcement authority over registered composting operations under 330 CMR 25.00. Rather, 330 CMR 25.01 and 310 CMR 16.03(2) each include language that farms are exempt as long as “the owner and operator incorporate best management practices 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, does not present a threat to public health, safety or the environment, and otherwise satisfies all requirements of 330 CMR 25.00.” If a composting operation does not abide by these requirements, MassDEP can take enforcement.

It would be unnecessarily duplicative if MassDEP added similar requirements to its regulations. However, MassDEP retains its authority, and has regularly exercised such authority, to respond to public health, safety and environmental impacts at composting sites including those registered under the MDAR agricultural composting program. MassDEP carefully logs and responds to received complaints, returns calls when appropriate, conducts odor inspections, discusses odor mitigation controls with the owners/operators, and when appropriate, forwards complaints for farming facilities that are exempt from solid waste regulations to MDAR for follow-up. The above-described measures and proportionate response by MassDEP is provided for all complaints at the time they are received, regardless of whether or not they stem from a permitted composting operation.

Further, MassDEP has taken enforcement actions against compost operations across the Commonwealth for violations including, but not limited to: operating as a transfer station without a valid site assignment,³ maintaining a dumping ground,⁴ noncompliance

³ Double S Farms, Dartmouth

⁴ Double S Farms, Dartmouth

with windrow best management practices,⁵ missing annual certifications,⁶ odor complaints,⁷ receipt of unauthorized material,⁸ wetlands damage,⁹ stormwater accumulation/ponding,¹⁰ and other failures to conduct good management of a compost operation. The solid waste program works with other programs (for example, wetlands staff) if a violation impacts those resources.

Given the comprehensive scheme for the regulation of composting operations described above, MassDEP will not amend 310 CMR 16.03 as proposed in the Petition at this time.

B. Limiting Composting, Aerobic Digestion and Anaerobic Digestion to Leaf and Yard Waste [310 CMR 16.04]

The Petition proposes to reduce the types of materials for composting, aerobic digestion and anaerobic digestion. Specifically, the proposal removes several categories from Table 1: Examples of Organic Materials in 310 CMR 16.04, leaving only clean wood, leaves, shrub trimmings, grass clippings and green plant material, and removing, among other categories, food material and cardboard.

MassDEP's Response:

The Petition's proposal is not in line with the SWMP. In the Introduction and Background section, the SWMP states, "Reducing our waste, along with diverting it with recycling, composting, and anaerobic digestion, will achieve important greenhouse gas emissions reductions and result in energy savings and resource conservation impacts from a lifecycle perspective."

⁵ Bridgewater Farm Supply, Bridgewater; Landscape Express (f/k/a Newland Farms), Norton; Fresh Ground (f/k/a Save that Stuff), Brockton

⁶ Bridgewater Farm Supply, Bridgewater

⁷ A Plus Waste & Recycling, Middleborough

⁸ JRM Hauling & Recycling, Beverly

⁹ Weiss Farm, Inc., Stoneham; Apple D'Or Tree, Inc., Southborough

¹⁰ Weiss Farm, Inc., Stoneham

Further, in the section titled “Setting Priorities,” the SWMP states, “In order to reach our waste reduction goals effectively and efficiently, MassDEP has conducted analyses to identify priority materials based on the following criteria: 1. significant additional diversion potential on a tonnage basis, 2. opportunities to reduce waste by phasing out use of single use products and disposable packaging, 3. potential for increased reuse and donation, and 4. existing underutilized capacity, or opportunities for local market development potential.” The SWMP then identifies the categories with “significant potential.” Food material and cardboard are at the top of that list.

The Petition’s proposal would severely undermine the capacity to manage organic materials for productive use and would significantly inhibit the waste reduction goals of the SWMP. This would result in the need for disposal capacity and/or disposal options (e.g., out of state transportation) that risk more significant and more permanent impacts to the environment and public health. Therefore, MassDEP will not pursue the Petition’s proposed amendments to 310 CMR 16.04 at this time.

C. Setbacks from Composting Operations to Other Uses [310 CMR 16.05]

The Petition advocates for setbacks from composting operations to other uses. Specifically, the Petition proposes to amend 310 CMR 16.05(2)(c)3.f. to include setback distances between composting operations and property lines, dwellings, drinking water supplies, wetlands, airports, and stormwater detention ponds.

MassDEP’s Response:

MassDEP agrees that sufficient setbacks are important to ensure composting operations operate safely. 310 CMR 16.04(3)(a)3 requires composting operations to be “located at least 250 feet from any existing water supply well in use at the time the operation commences.” MassDEP is evaluating whether to include additional setbacks, e.g., to drinking water supplies, residences and property lines, in its next regulatory updates to 310 CMR 16.00. Any and all future regulatory revisions will be subject to public notice and comment.

MassDEP notes that the Petition advocates for placing setback requirements in 310 CMR 16.05, which governs RCC permits. When an owner/operator is required to obtain such a permit, setbacks are specified in the permit, along with other technical aspects of the operation, based on the proposed technology and other factors of the specific operation. Therefore, MassDEP does not plan to include general setback requirements in t 310 CMR 16.05 at this time.

D. Integrate BWR, and its Water Pollution Control Regulations at 314 CMR 3.00 and 5.00 for Discharges of Total Nitrogen from Compost Operations into the Solid Waste Permitting Process and Require Composting Operations to get all Required Local, State and Federal Permits [310 CMR 16.05].

The Petition advocates revising 310 CMR 16.00 to integrate BWR regulatory citations regarding compliance with discharge requirements. It also proposes MassDEP add language to 310 CMR 16.00 to remind applicants to obtain all local, state and federal permits.

MassDEP's Response:

MassDEP's BWR's discharge permit program regulations contain exemptions from the permit requirement for the introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands. The surface water exemption is found at 314 CMR 3.05(5) and the ground water exemption is found at 314 CMR 5.05(9). If there were a discharge of pollutants to surface or ground water that did not qualify for these exemptions, MassDEP may initiate an enforcement action under its general enforcement authority in the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. As noted above, the solid waste staff works with personnel from other MassDEP programs as necessary to enforce regulations agencywide. Therefore, MassDEP does not see a need to incorporate the BWR regulatory citations into the solid waste regulations.

Compost operations that do not qualify for an exemption under 310 CMR 16.03 as outlined above must obtain either a General Permit under 310 CMR 16.04, or an RCC Permit under 310 CMR 16.05, both of which state that the owner and operator shall 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 ...” See 310 CMR 16.04(2)(g) for General Permits and 310 CMR 16.05(4)(n) for RCC Permits. Therefore, the Petition’s proposal to include language that reminds applicants to obtain all necessary permits is already incorporated into MassDEP’s permitting process.

Regarding nitrogen discharges, MassDEP appreciates the Town’s previous comments noting that sources of nitrogen in the Buzzards Bay Watershed were not as well defined as in other areas. Data collection is warranted to more specifically evaluate the degree to which Dartmouth composting facilities may contribute to nitrogen loading. ¹¹ MassDEP’s water program has worked with the Nonpoint Source Section Chief in the Watershed Planning Program to encourage the Southeast Regional Planning and Economic Development District (SRPEDD) to apply for a planning grant pursuant to Section 604(b) of the federal Clean Water Act that helps municipalities identify sources of nitrogen and also develops the planning and funding tools needed to tackle the nitrogen issues in Buzzards Bay. SRPEDD was awarded a 604(b) grant in Spring 2025 and MassDEP looks forward to further collaboration on this important issue.

E. Enhanced Public Notification [310 CMR 16.05]

The Petition proposes enhanced public notification for environmental justice (EJ) populations for the siting of an RCC permit.

¹¹ A study cited in the Petition similarly concluded, “To face the growing production of composting leachates and provide an integrated solution for the treatment of this particular wastewater, further researches are required.” See Section 5 - Conclusion: Dany, Roy et al. "Composting Leachate: Characterization, Treatment, and Future Perspectives," Rev Environ Sci Biotechnol, February 14, 2018. <https://espace.inrs.ca/id/eprint/6885/1/P3294.pdf>.

MassDEP's Response:

MassDEP agrees with the importance of sufficient public notification and public involvement opportunities, particularly for EJ populations. MassDEP will consider including additional public-facing requirements, particularly in areas with defined EJ populations, in its next regulatory revision of 310 CMR 16.00. Again, any and all future regulatory revisions will be subject to public notice and comment.

F. MassDEP and Third-party Inspection Requirements in Aerobic and Anaerobic Digestion, General Permits and RCC Permits [310 CMR 16.06]

The Petition advocates requiring third-party inspectors for composting and aerobic and anaerobic digestion operations. It also proposes requiring MassDEP to conduct inspections to determine that a new operation is in compliance.

MassDEP's Response:

Composting operations, aerobic digestors, and anaerobic digestors are critical to waste management in the Commonwealth. MassDEP inspects composting operations when a complaint is received, and inspections are also conducted in conjunction with other solid waste facility inspections when composting is present. While MassDEP will not pursue the Petition's proposed amendments to 310 CMR 16.06 at this time, MassDEP will commit to conducting a site inspection of a composting facility prior to its commencement to ensure orderly operations.

V. Conclusion

MassDEP shares the Petitioner's goals of promoting and requiring safe operation of composting facilities. At the same time, composting is a critical component of waste management in the Commonwealth, and composting must increase if we are to meet Massachusetts' goals for waste reduction. Without composting operations, residents of the Commonwealth could see significant increases in the cost of managing solid waste

(including due to the potential need to export more waste, which also creates transportation-related greenhouse gas emissions and potential equity issues), as well as an increased need to site new solid waste landfills and incinerators.

As detailed above, MassDEP is evaluating potential regulatory amendments, and investing in additional data collection, to ensure the orderly and beneficial operation of composting facilities. Any and all future regulatory revisions will be subject to public notice and comment, and MassDEP looks forward to continuing to work with Petitioner through those and other means to promote our shared goals.

MassDEP does not plan to hold further proceedings on the Petition at this time.