

October 30, 2017

*Food Industry Alliance of New York State
New York State Restaurant Association
New York Hospitality Alliance
National Supermarket Association
New Yorkers for Responsible Waste Management
National Waste & Recycling Association/NYC Chapter*

The Honorable Kathryn Garcia
Commissioner, Department of Sanitation
125 Worth Street – 7th floor
New York, NY 10013

By email only – and to nycrules@dny.nyc.gov

Commissioner Garcia:

This letter is submitted on behalf of several New York City-focused business associations involved with food-related businesses and waste management services. Together, we respectfully request that the proposed **Amendment of Organic Waste Source Separation Rules, Reference Number 2017 RG 082**, be withdrawn by the department. Such withdrawal will remove the prohibition on consultations between the department and private stakeholders while the CAPA process is underway. We believe that such discussions are necessary to fully understand what the Department is proposing, increase the likelihood of its success, and avoid increases in the cost of removing, collecting, disposing or recycling organic waste.

Upon completion of such consultations, the department can then propose a revised rule reflecting a consensus with stakeholders about how best to advance this system.

To be clear, our associations support the city's commitment to the diversion of organic waste from disposal and incineration to beneficial use.

Notwithstanding that general support, our urgent request is based on nine (9) considerations:

First, DSNY has not provided – on a timely basis – the information and analysis on which it has based its proposed policy. The requirement under law – to conduct an annual assessment of organics processing capacity within a 100-mile region from the city – was requested by several organizations in late July/early August following the initial public announcement, including FOIL requests. However, it was not received until late Thursday, October 26 – less than three business days before the scheduled hearing and comment deadline.

Only an annotated table was provided, which will require a reasonable amount of time to review and assess, based on other sources of information. On its face, it appears to include inaccurate information, as well as missing critical information that will require additional time to assemble and consider.

In addition, decision-support documents – also requested – have not yet been provided; those would provide the rationale for the proposed expansion, identify how many food-related establishments would be “covered” by the proposed expansion, and otherwise provide both stakeholders and the general public with a full assessment of the benefits and challenges of the proposed expansion.

Second, DSNY has not conducted a proper consultation with affected stakeholders, including the undersigned associations; such consultation would help us to fully understand the proposal, as well as make it more successful and avoid negative impacts.

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Specifically, the undersigned have the following questions:

- What is the specific basis for your (the commissioner's) determination that there is sufficient capacity so that the quantity of organic waste generated by the newly proposed covered establishments, together with the covered establishments designated under the 2015 rulemaking, will not exceed the evaluated capacity? How was "available" vs. "permitted" capacity determined? How was the generated quantity estimated?
- What is the specific basis for your determination that the cost of processing organic waste consistent with section 16-306.1 of the New York City Administrative Code is "competitive" with the cost of disposing organic waste by landfill or incineration? How do you define "competitive?" Does it mean a decline in the cost of collecting, removing, disposing or recycling organic waste? Does it mean that such cost will be about the same? Or does it mean that costs will increase by up to, say, 10 percent?
- To what extent does your evaluation include the capacity of facilities outside the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste?
- While you as the commissioner "...shall designate by rule all covered establishments or a subset of covered establishments, based on any criteria...that generate a quantity of organic waste that would not exceed the evaluated capacity," there is a duty to be reasonable in establishing the criteria. What criteria were used for this assessment, and on what were they based?

Third, DSNY has not published any assessment of how implementation of the first phase of the commercial organics diversion program has occurred, including an assessment of "lessons learned," revisions to be considered, etc., from the first 285 covered establishments. Among the issues of concern are clarifying responsibility for depackaging; clarifying whether post-consumer organic waste must be source-separated, or only pre-consumer; clarifying whether non-organic (e.g., soiled paper, "compostable" food service ware, etc.) should be included (including whether the designated compost facilities can accept them); and seasonal variations in facility acceptance.

Fourth, DSNY's analysis of regional capacity should include a) an assessment of the status of other commercial organics diversion programs within the prescribed region; and, b) an assessment of costs of the referenced facilities (i.e., tip fees). Most (but not all) are barely within 100 miles of the city, which also means additional transportation costs.

Fifth, DSNY's analysis does not appear to include an assessment of in-city capacity for accepting organics collection vehicles and pre-process materials for transport to the regional facilities noted – critical steps in the process of moving organics from collection to end-use.

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Sixth, DSNY's proposal does not include a clear status assessment of DEP's regulatory role in determining whether and how to permit various types of on-site organics processing systems, thereby allowing confusion in the marketplace. It is not clear how many such systems have been installed (or removed), and whether they have proved effective, or not. The question of back-up plans for such systems, as well as the disposition of their residues, also are not addressed. Signage regarding their existence – e.g., a window decal – also is not addressed.

Seventh, DSNY's proposal does not appear to consider use of the in-city capacity at various community-based composting facilities.

Eighth, DSNY's proposal does not appear to consider integration with other related policies, programs and initiatives, such as whether and how the State might initiate requirements for organics diversion, and how it might interface with the city's requirements. Similarly, the proposal does not discuss how it would address the city's important 80x30 greenhouse gas emission goals, nor other initiatives and goals – including the possible reduction in transfer station capacity in certain industrial areas, and reduction in vehicle miles traveled for collection vehicles.

Finally, as the city's overall commitment to the diversion of organics from disposal to beneficial use grows, the commercial sector is concerned that it is being targeted for mandatory diversion without parallel consideration of mandatory diversion for the residential sector directly managed by DSNY, which continues to be a voluntary program even as it expands throughout the city.

When the city's Mandatory Recycling Law was initially adopted in 1989, the residential sector led with its initial mandate, followed by consideration of how best to initiate effective recycling in the commercial sector (already well established for several materials).

The City's commitment to a parallel structure for conventional recycling – similar rules for both commercial and residential – should be the same standard as organics diversion programs are developed and expanded.

As expressed at the outset, while we are supportive of the city's environmental objectives, we also believe that the most effective system for achieving the city's goals can be best developed via broad and effective consultation with affected stakeholders, working through our respective associations.

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Thank you for your prompt, full and fair consideration of this request. We look forward to hearing from you as soon as possible.

Respectfully submitted,

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New York City Hospitality Alliance

National Supermarket Association

New Yorkers for Responsible Waste Management

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Responses may be directed to:

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C: Public Advocate Leticia James
Commissioner Dan Brownell, Business Integrity Commission
Commissioner Greg Bishop, Department of Small Business Services
Councilmember Antonio Reynoso
Robert Orlin, Deputy Commissioner, DSNY
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Gregory Anderson, Chief of Staff, DSNY
Noah Genel, Deputy Commissioner, BIC