



Maryland
Department of
the Environment

ORGANICS RECYCLING AND WASTE DIVERSION: FOOD RESIDUALS IMPLEMENTATION PLAN

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House Environment and Transportation Committee

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Introduction

During the 2021 legislative session, the Maryland General Assembly passed House Bill 264 or the Solid Waste Management – Organics Recycling and Waste Division – Food Residuals, Chapter 439 (law).

The law requires certain persons that generate food residuals to separate said residuals and divert them from refuse disposal systems. Beginning January 1, 2023, the law applies to a person that generates at least two tons of food residuals each week and beginning January 1, 2024, it applies to a person that generates at least one ton of food residuals each week. A person is only subject to the requirement to separate and divert food residuals if the residuals are generated within 30 miles of an organics recycling facility with capacity and willingness to enter into a contract to accept all of the person’s food residuals. Diversion may be accomplished by any combination of the following: reducing residuals generated, donating servable food, managing residuals in an organics recycling system on-site, providing collection and transportation for agricultural use, and/or providing collection and transportation for processing in an organics recycling facility.

The Maryland Department of the Environment (MDE) is required to report on or before July 1, 2022 to the General Assembly on the plan for implementing the law. This report lays out the implementation plan.

Implementation Plan

Regulations and Waiver Procedures

The law applies to a “person” as defined in §§ 1-101 and 9-1724.1 of the Environment Article, Annotated Code of Maryland. The definition provides some examples of entities that are included (e.g., supermarkets), as well as some exclusions (e.g., restaurants). MDE will adopt regulations to clarify the application of the law to some common large food residual generators, such as food processors, manufacturers and distributors. The regulations will also address some questions that MDE has received about how to interpret the law, such as how to regard food residuals generated at multiple buildings on a single campus for the purpose of the threshold quantity of food residuals generation.

The law authorizes MDE to grant a waiver from the requirement to divert food residuals if the person demonstrates undue hardship due to:

- The cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing of the food residuals; or
- Other reasonable circumstances.

MDE is required to establish waiver application procedures. These procedures will be identified in the regulations, including the information to be submitted. Additional support will be provided on MDE’s website with written and visual guidance.

MDE has begun drafting the regulations and anticipates publishing the draft regulations for the initial, informal public review and comment period.

Outreach and Assistance

Outreach to Generators of Food Residuals

MDE has completed preliminary research that indicates there will be ~6,500 facilities that fall under the definition of “person” and generate over one ton of food residuals each week. The estimate of facilities was identified through Maryland’s GIS Data Catalog¹ and Johns Hopkins Center for a Livable Future’s Maryland Food Systems Open Data Portal². The estimate includes persons such as: schools (1,350), supermarket/convenience store/mini-mart/similar establishments (4,600), school/institution/business cafeterias (500), correctional facilities (40) and others (1,000), including food processing facilities. While individual facilities within these categories may not generate more than the threshold quantity of food residuals, the estimate is useful for MDE’s initial outreach purposes. Due to the large number of entities that need to be aware of and potentially comply with the law, MDE will conduct extensive outreach to food residuals generators before and during implementation of the law.

MDE is developing outreach materials aimed at those potentially subject to the requirements of the law. Materials will include tools to determine if an entity is subject to the requirements of the law as well as printable fact sheets, shareable marketing videos, references for businesses and institutions to implement changes to their current systems of managing food residuals, contacts of industries and services relative to reuse, and information about potential funding sources for food residuals diversion programs.

All materials developed will be available on the MDE food residuals diversion webpage, which will provide guidance for methods used to estimate the weight of food residuals generated, based on other commonly available information. Estimations are only to be used when actual weight cannot be ascertained and will include industry specific suggestions.

Guidance will also be provided to support on-site composting or anaerobic digestion, specifically how to execute and maintain and on-site composting of an anaerobic digestion system. MDE is developing detailed guidance on how to submit an application for a waiver. MDE is developing a frequently asked questions document about the applicability of the food residual law, to be used in conjunction with the regulations.

MDE began outreach to schools by attending the Maryland Association for Environmental and Outdoor Education (MAEOE) Youth Summit in May. MDE will continue to work with MAEOE to support primary and secondary schools with their food diversion efforts. MDE plans to develop tool kits for the schools, create and instruct professional development of educators, and visit schools to educate students on waste-free days. Massachusetts³ and New York⁴

¹ Maryland’s GIS Data Catalog data.imap.maryland.gov/

² Johns Hopkins Center for a Livable Future Maryland Food Systems Open Data Portal data-clf.hub.arcgis.com/

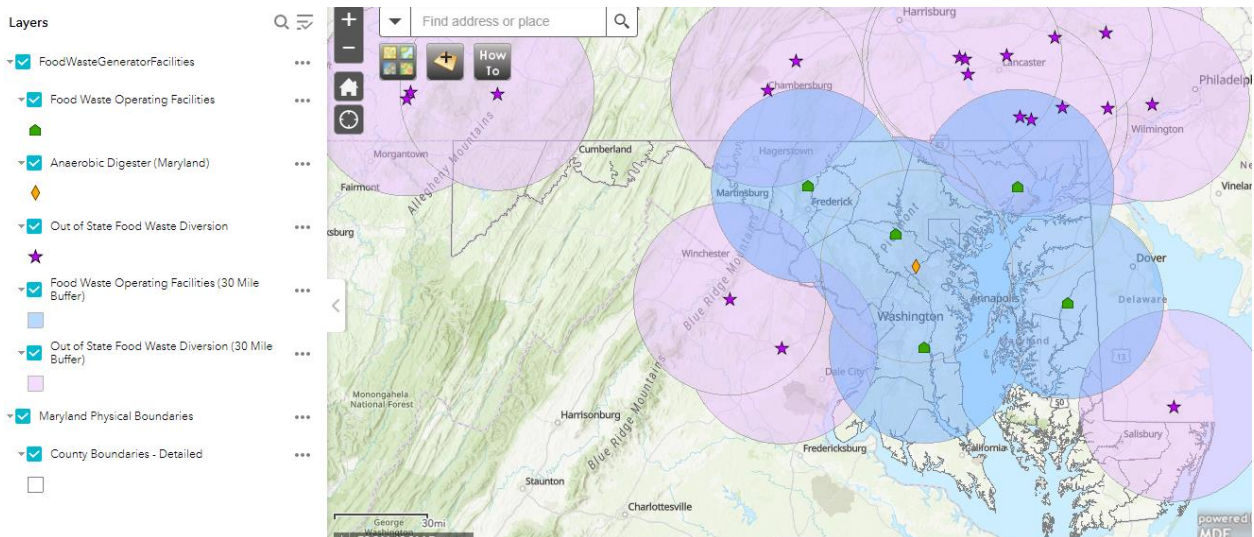
³ Massachusetts RecyclingWorks: Commercial Food Waste Disposal Ban threshold estimation guide for elementary and secondary schools recyclingworksma.com/wp-content/uploads/2020/06/2020-Elementary-and-Secondary-Schools.pdf

⁴ New York State Pollution Prevention Institute Food Waste Estimator rit.edu/affiliate/nysp2i/food-waste-estimator and New York State Department of Environmental Conservation Division of Materials Management *Methodology Used to Determine Designated Food Strap Generators Updated 06/01/2021* dec.ny.gov/docs/materials_minerals_pdf/dfsgmethodology.pdf

methodologies estimated that few, if any, primary or secondary schools will meet the food residuals diversion threshold requirement of two tons of food residuals. MDE recognizes the one ton of food residuals threshold will more likely impact schools on January 1, 2024, offering time for schools to develop plans, assign roles and duties, determine funding, and work on solutions. MDE is in the process of updating its existing Food Waste Minimization and Related Activities tool kit for schools to reflect any feedback and guidance from outreach. MDE anticipates that some higher education facilities may meet the two tons per week threshold beginning January 2023. MDE is working to support existing infrastructure and education and to provide information on potential innovative solutions and funding sources for students/capstone projects to increase recycling ventures and/or marketing.

MDE is also developing an online mapping tool indicating where Maryland based organics recycling facilities exist as well as those adjacent to the state (see Figure I). The map will assist a person potentially subject to the law in determining whether there are organics recycling facilities located within 30 miles. The map is anticipated to be completed and available to the general public online in summer 2022. As organic recycling facilities request addition to the map or when new organics recycling facilities are established, the map will be updated.

Figure I – Organics Recycling Facilities



Outreach to Other Entities

On February 1, 2022, MDE held a meeting with county recycling coordinators on the law and MDE’s plans for implementation, including a timeline. The state law may not be construed to preempt or prevail over any local ordinance, resolution, law, or rule more stringent than the law.

MDE is developing outreach materials, including webpages, bulletins/fliers, and webinars, for county officials describing the implementation of the law. The materials will include the benefits of food diversion to the counties. Some counties operate food residual composting facilities that will be reflected on the organics recycling facilities map. For example, Howard County owns and operates its own organics recycling facility at Alpha Ridge, and Prince George’s County manages its own organics composting facility operated under contract with the Maryland Environmental Service. Counties may include food residuals diversion totals to the county’s

recycling tonnage as reported annually to MDE to meet minimum recycling rates under the Maryland Recycling Act.

According to 2020 figures, approximately 167,228 tons of food scraps were recycled out of 941,666 tons of food generated in Maryland, with the remainder sent to the landfills and incinerators. According to the Maryland Governor's Office for Children, more than 45% of the public school⁵ population is below the income threshold necessary to receive a free or reduced-price meal at school. The Maryland Food Bank identifies one in three Marylanders potentially are food insecure⁶.

In May 2022, MDE contacted organics recycling facilities in the state informing them of the law and to prepare them for inquiries of large generators. The law identifies that one option of food diversion is to send food residuals to an organics recycling facility. It does not require an organics recycling facility to contract with a person subject to the law, so organics recycling facilities will continue to have discretion about the materials they choose to accept. However, in order to assist generators of food residuals in determining whether they are subject to the diversion requirement, organics recycling facilities will need to respond to inquiries from generators located within a 30-mile radius. During MDE's recent outreach to the existing organics recycling facilities, only one stated that, as of the time of the publishing of this plan, it did not have the capacity for increased organics diversion. The map in Figure I identifies facilities in Maryland that are registered as a Tier II facility under the General Composting Facility Permit with food scraps as an acceptable feedstock and the one known commercial anaerobic digester. If a facility is operating in Maryland and would like to be added to the map, MDE will update the map accordingly.

Enforcement and Compliance

As this is a new requirement that potentially applies to thousands of entities that may not currently be familiar with food residuals diversion, MDE will focus efforts in the initial year primarily on education assistance, specifically how to meet and comply with the law. MDE is responsible for enforcement and compliance of the law and will develop a form that can be used by county health inspectors to notify MDE if they believe a facility may not be in compliance with the law. Additionally, MDE will respond to any complaints derived from any public inquiry. If a person has not heeded any warnings provided, MDE is authorized, but not mandated, to collect a civil penalty for violations of the law. Penalties collected shall be distributed to a special fund to be used only to finance incentives encouraging food waste reduction and composting in the state.

⁵ Childhood Hunger statistics in Maryland gov.maryland.gov/childhood-hunger/

⁶ mdfoodbank.org/hunger-in-maryland/

Table I – Implementation Timeline

Expected Completion Date	Summary of Task
Summer 2022	Develop and publish a map to identify existing organics recycling facilities and the geographic areas within the 30-mile radius of those facilities [see Figure 1].
Summer 2022	Identify Large Food Scraps Generators (LFSGs) that are potentially in the regulated community under the definition of a person. Begin outreach to LFSGs and counties to notify affected parties of the law and the dates upon which certain parties must begin diverting food residuals.
Summer 2022	Publish draft regulations for informal public review and comments. Review and consider comments received and, if necessary, revise draft regulations based upon comments.
Summer 2022	Develop outreach materials for LFSGs that may be subject to the law. Develop tools for businesses to utilize to determine if they are subject to the law.
Fall 2022	Formally propose regulations and begin a 30-day public comment period.
Fall 2022	Begin online campaign for outreach and education in support of waiver applications, business development and guidance on diversion methods.
Fall 2022	Develop enforcement and compliance standard operating procedures for inspections and other compliance activities.
Winter 2022	Adopt a regulatory proposal.
Winter 2022	Publish guidance documentation and other supporting documents outlining how LFSGs can determine if they are subject to the law and how to comply with the law and the implementing regulations. Publish outreach materials and supporting documents relative to industry-specific food residuals generation estimates.
Winter 2022	Begin inspections and other compliance activities of LFSGs.
Summer 2023	Establish a program to distribute funds that encourage food waste reduction and composting in Maryland. The date in which funding will be available for distribution is to be decided, based on any penalties collected.
Winter 2023	As a part of the Maryland Solid Waste Management and Diversion Report, include a report on the implementation of law, including the impacts on waste diversion in the state.

