

**MARYLAND DEPARTMENT OF THE ENVIRONMENT
LAND AND MATERIALS ADMINISTRATION**

Response to Comments

on the Proposed Action to Adopt New Regulations .01—.05
under COMAR 26.04.13 Food Residuals—Organics Recycling and Waste Diversion

Introduction: On September 23, 2022, the Maryland Department of the Environment (“MDE” or “the Department”) proposed to adopt new regulations in order to implement Chapters 439 and 440 of 2021, entitled *Organics Recycling and Waste Division — Food Residuals*.¹ This law requires certain persons who generate, beginning January 1, 2023, certain quantities of food residuals to separate their food residuals from other solid waste, and divert those food residuals from final disposal in a refuse disposal. The public comment period on the proposed action ended on October 24, 2022. Responses to written comments received are provided in this document. On December 06, 2022, after reviewing the public comments, the Secretary of the Environment adopted the regulations as proposed with nonsubstantive changes. The Notice of Final Action was published in the December 16, 2022 issue of the *Maryland Register* and the regulations become effective on December 26, 2022.

Comments: MDE received written comments on the proposed action from a total of 15 entities and individuals. The topics of the comments received and the name and affiliation of the commenter, as well as MDE’s responses, are given below, with comments regarding related topics addressed with a single response. The whole text of each comment is included in Appendix A of this document. A copy of the published Notice of Proposed Action is included in Appendix B and an accompanying compliance guide for the proposed regulations is included in Appendix C.²

1. Comment Topic: Definitions - “Anaerobic Digestion”

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County Department of Environmental Protection (DEP)

MDE Response: Montgomery County DEP commented “[the] term ‘anaerobic’ should be further defined, rather than simply stating the word ‘anaerobic’ again within the definition of ‘anaerobic digestion’” and that “[the] term ‘anaerobic’ should be defined/explained in guidance, outreach and education provided by MDE”.³ The proposed definition of “anaerobic digestion” found in COMAR 26.04.13.02B(1) is established in statute under §9-1701(b) of the Environment Article.⁴ This section of the Maryland law defines terms that are applicable to the food residuals diversion requirements in §9-1724.1 of the Environment Article. Because the definition of anaerobic digestion in the proposed regulations is consistent with the statute, the definition was adopted as proposed. To provide clarity regarding the term, MDE has revised its compliance guide explain the term using the U.S. Environmental Protection Agency’s (EPA) explanation that anaerobic digestion is “a process through which bacteria break down organic matter - such as animal manure, wastewater biosolids, and food wastes - in the absence of oxygen”.⁵

¹ 49:20 Md. R. 923-927 (September 23, 2022).

² A copy of the Notice of Proposed Action published in the Maryland Register is available in Appendix B of this document. A copy of the compliance guide for the proposed regulations is available in Appendix C of this document.

³ See full text of the comment on page 1 of Appendix A.

⁴ Section 9-1701(b) of the Environment Article states defines “anaerobic digestion” as “the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate”.

⁵ Learn more on U.S. EPA’s “How Does Anaerobic Digestion Work?” webpage at <https://www.epa.gov/agstar/how-does-anaerobic-digestion-work#:~:text=Anaerobic%20digestion%20is%20a%20process,in%20the%20absence%20of%20oxygen>.

2. **Comment Topic:** Definitions - “Food Residuals”

Commenter(s) Name and Affiliation: Jeffrey Neal, Loop Closing

MDE Response: Loop Closing submitted several suggestions regarding the proposed definition of “food residuals”. As explained below, upon consideration of these suggestions, MDE decided to adopt the following definition of “food residuals” as proposed. The definition of “food residuals” proposed under COMAR 26.04.13.02B reads as follows:

(6) Food Residuals.

(a) “Food residuals” means material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats.

(b) “Food residuals” does not include:

(i) Animal mortalities;

(ii) Compostable products; or

(iii) Wastewater that contains material derived from the processing or discarding of food.

Loop Closing’s first suggestion is to change item (b)(iii) of the definition in order “to prevent using equipment to send large amounts of food residuals to the Water Resource Recovery Facilities defeating the purpose of the regulation”, stating “such equipment could include grinders, pulpers, digesters, garbage disposals” and “they do not create an end product of value that can be used, rather a product that needs further processing”.⁶ The intent of the 2021 law establishing the food residuals diversion requirements is “for the purpose of requiring a certain person that generates food residuals to separate the food residuals from other solid waste and ensure that the food residuals are diverted from final disposal in a refuse disposal system in a certain manner under certain circumstances”.⁷ Maryland regulations generally prohibit a refuse disposal system from accepting liquid wastes and wastes containing free liquids for disposal, but allow for the disposal of wastewater through a septic system or treatment works if conducted in accordance with federal, State, and local discharge permitting requirements.⁸ Under these existing State regulatory requirements, wastewater containing material derived from the processing or discarding of food would not be destined for final disposal in a refuse disposal system such as a landfill or incinerator. Additionally, the treatment of wastewater containing food residuals at a sewage treatment plant produces biosolids. Biosolids are a valuable byproduct of the treatment process that, under certain regulatory conditions, can be land applied on agricultural land. For these reasons, MDE does not agree item (b)(iii) as proposed defeats the purpose of the regulations.

The Loop Closing also suggested adding “food packaging” as a material excluded from being defined as food residuals. They commented that food packaging “should not be considered a food residual and needs to be source separated out so that the food residuals can be properly processed to make an end product that will have a market and provide the desired benefits”, adding that “[we] don’t want [to] recreate the market problems that contaminated recycling feedstock created resulting in China to refuse to continue to accept the recyclables and the recycling market collapsing”.⁹ MDE does not believe this added exclusion is necessary. COMAR 26.04.13.03D(1) as proposed already requires that before food residuals are diverted, a person must separate the food residuals from other solid waste and non-compostable materials, which can include non-compostable packaging material. Nothing in the proposed regulations requires an organics recycling facility to accept a load of food residuals that contains packaging material. For organics recycling facilities willing to accept compostable packaging material, the proposed regulations also do not prevent the co-diversion of source separated food residuals and compostable packaging material for organics recycling. Therefore, MDE believes the definition of

⁶ See the full text of the comment on page 19 of Appendix A.

⁷ Chapters 439 and 440 of 2021 (pp. 1).

⁸ COMAR 26.04.07.03B(8) establishes that liquid wastes and wastes containing free liquids may only be disposed of at a solid waste acceptance facility that has been specifically authorized by MDE to handle those wastes. The presence of free liquids shall be determined by application of the free liquid test as specified by U.S. EPA in 47 Federal Register 8311 (1982). COMAR 26.08.04 and .08 establishes the requirements for, among other things, (1) the construction, alteration, or operation of any system for the disposal of wastewater into the waters of the State, and (2) the discharge of industrial waste into publicly owned treatment works.

⁹ See full text of comment on page 20 of Appendix A.

food residuals and the separation requirements of the proposed regulations are protective against the contamination of organics recycling feedstock.

3. Comment Topic: Definitions - “Person”

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP; Jennifer Dallaire, U.S. Department of Veteran Affairs; and Ryan Metz.

MDE Response: MDE received several comments regarding the proposed definition of “person”, defined under COMAR 26.10.04.13.02B as follows:

(10) Person.

(a) “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(b) “Person” includes:

(i) An individual facility owned or operated by a local school system;

(ii) An individual public primary or secondary school;

(iii) An individual nonpublic school;

(iv) A supermarket, convenience store, mini-mart, or similar establishment;

(v) A business cafeteria, school cafeteria, or institutional cafeteria;

(vi) A cafeteria operated by or on behalf of the State or a local government;

(vii) A manufacturer, processor, or similar establishment; and

(viii) Any other entity listed under §B(10)(a) of this regulation that is not excluded under §B(10)(c) of this regulation.

(c) “Person” does not include:

(i) The aggregate of all school buildings and facilities in a local school system; or

(ii) A restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.

U.S. Department of Veteran Affairs asked the following questions:

I was reviewing the proposed “Food Residuals Diversions Regulations” definition of a “person” and noticed State and Local government is considered in this definition but not Federal government. Will federal government be exempt? If they are (or even if they are not) would you please clarify that in the final rule?¹⁰

The federal government is considered a person and federally owned properties are subject to the food residuals diversion requirements of the adopted regulations. Item (a) of the definition provides a broad description of the types of individuals, facilities, and institutions considered to be a person, a description established in statute under §1-101 of the Environment Article. This section of the Environment Article defines terms for the entirety of the article, including the food residuals diversion requirements in §9-1724.1 of the Environment Article.¹¹ Item (b) of the regulatory definition lists examples of facilities and institutions considered to be persons and subject to the food residuals diversion requirements and expands on the list provided in §9-1724.1(a)(1) of the Environment Article; however, this list is not exhaustive and the absence of a facility or institution on this list does not exclude it from being considered a person.¹² Item (c) of the regulatory definition, as well as §9-1724.1(a)(2) of the Environment Article, explicitly excludes certain facilities and institutions from being

¹⁰ See full text of comments on page 21 of Appendix A.

¹¹ Section 1-101(a) and (h) of the Environment Article states “[in] this article the following words have the meanings indicated...”Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity”.

¹² Section 9-1724.1(a)(1) of the Environment Article states for that section of law, which establishes the food residuals diversion requirements, person includes (i) an individual facility owned or operated by a local school system; (ii) an individual public primary or secondary school; (iii) An individual nonpublic school; (iv) A supermarket, convenience store, mini-mart, or similar establishment; (v) A business, school, or institutional cafeteria; and (vi) A cafeteria operated by or on behalf of the State or a local government.

considered a person, and the federal government is not listed in this exclusion.¹³ Therefore, the federal government is considered a person under the regulatory definition and is not exempt from the food residuals diversion requirements of the regulations.

Ryan Metz, a climate resilience and sustainability professional, provided the following comments:

- 1) *.02 B (10) Person: The term person should be revised to entity. Person is confusing and implies a singular individual human rather than facility, business cafeteria, etc.*
- 2) *.02 B (10): The overall definition of "Person" should be expanded to specifically include all institutions of higher education and all institutions with meal service offered to institutionalized individuals. As it is written right now, colleges and universities do not need to provide the on-campus residents with accessible composting options. Subjecting the aggregate of all campuses to this legislation is an opportunity to enhance the enacted Climate Solutions Now Act by requiring these facilities to dispose of organic waste in such a manner as to reduce their emissions.*
- 3) *Exempting entities from this legislation creates a de facto condition of pollution since all other "Refuse disposal systems" generate emissions; including but not limited to: methane, carbon dioxide, sulfur oxides, nitrogen oxides, etc. Additionally, many refuse disposal systems are located in areas within close proximity to vulnerable and sensitive populations. It is unjust and inequitable to continue to harm these communities when alternative solutions exist.*

In summary, the legislation is missing several opportunities to significantly improve Maryland's Environment by reducing emissions from traditional refuse disposal systems. The legislation does not require state institutions as a whole, specifically the University System of Maryland [(USM)] and Department of Corrections [(DOC)], to be required to divert organic waste. Additionally, any organic waste not sent to a composting facility creates a condition of pollution that harms some of the state's most vulnerable residents. I'd urge the [Department of the Environment] to revise the definitions, include USM and DOC, and think about vulnerable communities.¹⁴

As stated in response to the U.S. Department of Veteran Affairs' comment, the regulations' definition of "person" is consistent with the statutory definition of "person" in §1-101 of the Environment Article, and the list of entities included and excluded from being considered as a person for the purposes of complying with the food residuals statutory requirements provided in §9-1724.1(a) of the Environment Article. Both the regulatory and statutory definitions state that "person" means, among other things "any partnership, firm, association, corporation, or other entity", implying that a person can be something other than an individual human.¹⁵ Also, the current definition of person (within the law) already includes any institutions of higher education and other institutions with meal service offered to institutionalized individuals (e.g., medical or correctional facilities). Also as previously explained, the list of entities included in the definition of "person" is not exhaustive, and a specific type of institution being absent from the list does not mean that institution is not considered a person or is exempt from the regulations' food residuals diversion requirements. For these reasons, MDE has adopted the definition of "person" as proposed.

Montgomery County DEP expressed a concern that the exclusion of the aggregate of all school buildings and facilities in a local school system from the definition of "person" may preclude a local school system from implementing a food residuals diversion program that covers multiple or all school buildings and facilities in the local school system.¹⁶ The exclusion established in §9-1724.1(a)(2) of the Environment Article simply means that the aggregate of all school buildings in a school system is not considered a single person for the purpose of determining whether the food residuals diversion requirement applies. Instead, each school building or facility

¹³ Section 9-1724.1(a)(2) of the Environment Article states "[in] this article the following words have the meanings indicated..." "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity".

¹⁴ See full text of comment on page 26 of Appendix A.

¹⁵ Environment, §§9-101 and 9-1724.1(a)(2), Annotated Code of Maryland and COMAR 26.04.13.02B(10).

¹⁶ See the full text of the comment on page 3 of Appendix A.

within a school system is considered a separate person and, therefore, each school building or facility should assess separately whether it meets the location and quantity criteria for being subject to the food residuals diversion requirements. If a school system chooses, it is free to implement a food residuals diversion program that covers multiple school buildings or facilities.

4. Comment Topic: Definitions - “Refuse Disposal System”

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP

MDE Response: Item (f) of the “refuse disposal system” definition under COMAR 26.04.13.02B(13) states that the term includes, among other things, “other solid waste acceptance facilities”. Montgomery County DEP inquired “[what] type of facilities will MDE allow under this definition” and suggested that the Department “provide a clear definition in materials, outreach and education provided by MDE”.¹⁷ According to existing State regulations, a “solid waste acceptance facility” is defined as any landfill, incinerator, transfer station, or processing facility whose primary purpose is to dispose of, treat, or process solid waste.¹⁸ To provide further clarity, MDE will add to the compliance guide for the adopted regulations the types of facilities that are considered a solid waste acceptance facility.

5. Comment Topic: Cafeterias

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP; and Melvin Thompson, Restaurant Association of Maryland

COMAR Citation(s): COMAR 26.04.13.02B(10)(b)

MDE Response: The proposed definition of “person” includes a business cafeteria, school cafeteria, or institutional cafeteria and a cafeteria operated by or on behalf of the State or a local government. Montgomery County DEP and the Restaurant Association of Maryland provided the following comments in regard to the term cafeteria not being defined, and what type of food service operation is considered to be a cafeteria.

The term “cafeteria” should be clearly defined in guidance, outreach and education provided by MDE to affected businesses to address comments that Montgomery County DEP has received that are attempting to downplay their cafeterias and that they generate food residuals only in “kitchens” which is not defined in the proposed regulations. (Alan Pultyniewicz, Montgomery County DEP).¹⁹

The Compliance Guide for Proposed Regulations seems to broadly interpret “cafeteria” to include food establishments in locations with common dining tables/seating areas that operate within properties such as malls/shopping centers, rest stops, airports/transportation hubs, food halls, etc. “Cafeteria” is not defined in the proposed regulations nor in the law. A business cafeteria, school cafeteria or institutional cafeteria is typically operated by a single food service entity. Merriam-Webster defines cafeteria as “a restaurant in which the customers serve themselves or are served at a counter and take the food to tables to eat.” The Compliance Guide (pages 12-13, Q&A #14-#15 and Table 1) implies that food establishments operating in such locations could be considered to be part of cafeterias subject to the diversion mandate if the dining tables/seating areas are controlled by the property owner/operator (who may be separate from the food establishment); and regardless of whether the food establishments are independently owned/operated.

Do such restaurants/food establishments utilizing common dining tables/seating areas qualify for the restaurant exemption? And regarding Q&A #14, what factors would the Department use in its “discretion to reevaluate an entity’s determination?” (Melvin Thompson, Restaurant Association of Maryland).²⁰

¹⁷ See full text of comment on page 2 of Appendix A.

¹⁸ COMAR 26.04.07.02B(29).

¹⁹ See full text of comment on page 1 of Appendix A.

²⁰ See full text of comment on pages 22 and 23 of Appendix A.

Upon consideration of the above comments and the types of entities identified by the Legislature as a “person” under Chapters 439 and 440 of 2021, MDE has determined it will consider:

- A place equipped with a dining room where people sit and eat meals that are prepared and served on the premises to be a restaurant establishment excluded from being subject to the food residuals diversion requirements; and
- A food service business, restaurant, or dining room located within a government facility, school, or a business in which customers serve themselves or are served from a counter before eating to be a cafeteria.

The compliance guide for the adopted regulations has been updated to include these descriptions. Additionally, in response to Montgomery County DEP’s comment, food residuals generated in any food establishment include discarded pre-consumer food generated in a kitchen (e.g., spoiled or expired food, peels and trimmings from produce, meat scraps, etc.) and post-consumer food discarded onsite by the public.

6. Comment Topic: Location and Processing Capability of Organics Recycling Facilities - Applicability Criteria
Commenter(s) Name and Affiliation: Sydney Daigle, Prince George's County Food Equity Council (FEC)

MDE Response: Under the 2021 law establishing the food residuals diversion requirements, a person is only required to divert food residuals from disposal if the person meets or exceeds the weekly food residuals tonnage thresholds and “generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that: (i) has the capacity to accept and process all of the person’s food residuals; (ii) is willing to accept all of the person’s food residuals for recycling; and (iii) is willing to enter into a contract to accept and process the person’s food residuals”.²¹ The organics recycling facility criteria are mirrored in the proposed regulations. Prince George’s County FEC commented that language establishing these criteria “should specify organic recycling facilities that can accept *all or some* of the person’s food residuals...[the] language reads that if an organics recycling facility is unable or unwilling to accept all food residuals, diversion is not required” (*emphasis added*).²² Because the 2021 law requires, for the sake of determining if a person is required to comply with the food residuals diversion requirement, that the organics recycling facility must be willing to accept *all* of the person’s food residuals for recycling, MDE cannot propose regulations creating a conflicting requirement. Therefore, the regulatory language was adopted as proposed.

Additionally, Prince George’s County FEC commented that “[if] possible, persons under the law should be able to divert a portion of their food residuals to facilities that cannot accept the full amount”.²³ Even if a person is located within 30 miles of an organic recycling facility having the capacity and willingness to accept *all* of its food residuals for recycling, making the person subject to the food residuals diversion requirements, the person is not obligated to send all of its food residuals to that specific organics recycling facility. The person may send all or a portion of its food residuals to any off-site organics recycling facility and remain in compliance with the food residuals diversion requirements. Also, the person may divert all or a portion of its food residuals through source reduction activities, food donation, agricultural uses such as animal feeding or land application, or organics recycling onsite (i.e., at the site of generation).

7. Comment Topic: Burden of Determining and Documenting if a Person is Required to Divert Food Residuals
Commenter(s) Name and Affiliation: Carol Adaire Jones and Linda Breggin, Environmental Law Institute; and Melvin Thompson, Restaurant Association of Maryland

MDE Response: MDE received several comments regarding a person’s responsibility to determine if they are subject to the food residuals diversion requirements and the burden of making, and maintaining documentation of, this determination. The Restaurant Association of Maryland submitted the following comment:

According to the proposed regulations, the Department may request documentation of the actual or estimated weight of food residuals generated each week by a person subject to the food residuals

²¹ Chapters 439 and 440 of 2021 (pp. 4).

²² See full text of comment on page 30 of Appendix A.

²³ See full text of comment on page 30 of Appendix A.

diversion mandate and located within a 30-mile radius of an organics recycling facility that has the capacity (and is willing) to accept the material.

We are concerned that weighing and maintaining documentation of food residuals generated each week would be unreasonable and overly burdensome on those who generate significantly less than the established thresholds. Instead, the regulations and related guidance should allow for an alternative annual baseline measurement period of 30 days (and during the operating season for seasonal businesses) to determine the weekly average weight of food residuals generated over this period. If the average weekly weight over this period is 1 ton or less in 2023 and ½ ton or less in 2024 and subsequent years, such entities should not be required to maintain documentation for weekly weighing of food residuals during that year.²⁴

The proposed regulations allow MDE to request from a person subject to the food residuals diversion requirements certain documentation that demonstrates the person's compliance with the diversion requirements. If a person's average weekly food residuals generation falls below the 2 tons, beginning 2023, or 1 ton, beginning 2024, thresholds, the person does not have to comply with these documentation requirements because they are not subject to the food residuals diversion requirements.

The Environmental Law Institute submitted the following comment (this is an excerpt of the entire comment, which recommends in detail how MDE could assist in identifying covered food residuals generators):

We recommend that the Maryland Department of Environment (MDE) take a more active role in the process of determining which generators are covered, in order to support generators and expedite the process...

While the proposed regulations clearly define the responsibilities of covered generators, they do not clearly specify the timing by which the State will determine which generators are covered. As it currently stands, the full burden of making a determination as to whether they meet the conditions for coverage rests with the generators. They must maintain the records of their determination, and they must provide them within 30 days of a request from MDE.

We believe this process places too much burden on the generator, and is likely to result in a very prolonged period in which covered establishments are identified. Further generators do not have a clear understanding of when MDE may request information from them and may postpone making their determination until that request actually occurs.

The process of identifying covered generators will be greatly expedited if MDE does a preliminary screen of establishments in the State to determine the pool of potentially covered facilities, publishes the list, and independently informs the establishments. These establishments then will be on notice that they have a certain time period to provide their own determination, as set by MDE.²⁵

MDE believes there are existing publicly available resources that a food residuals generator can use to determine if it is required to divert its food residuals from final disposal in a refuse disposal system. The U.S. EPA has developed an online [Excess Food Opportunities Map](#) to support nationwide diversion of excess food from landfills. The map identifies and displays facility-specific information about potential food residuals generators and provides estimates of their food residuals generation.²⁶ According to the map's dataset made available by

²⁴ See full text of comment on page 22 of Appendix A.

²⁵ See full text of comment on pages 9 through 11 of Appendix A.

²⁶ The Excess Food Opportunities Map displays, among other things, the location and tonnage estimates for the following types of food residuals generators: correctional facilities; educational institutions; food banks; healthcare facilities; hospitality industry; food manufacturing and processing facilities; food wholesale and retail; and restaurants and food services. The Excess Food Opportunities Map is available online at <https://geopub.epa.gov/ExcessFoodMap/>.

U.S. EPA, the map identifies approximately 5,535 potential Maryland-based entities that are estimated to generate at least 1 ton per week of food residuals. (Because more than one methodology was used to estimate a facility's food residuals generation, EPA calculated an estimated range for each facility. The 5,535 approximated total represents facilities whose "high" estimate was at least 1 ton per week/52 tons per year).²⁷ Additionally, MDE has developed an online [Organics Recyclers Map](#) that displays the location and contact information for organics recycling facilities known to MDE that are located in Maryland and neighboring states, as well as each facility's 30-mile radius. (Note, does not contain real-time available capacity information for organics recycling facilities and is to be used for informational purposes only.)

If upon inspection of these online resources a person identifies themselves as potentially subject to the food residuals diversion requirements, it is the responsibility of the person to verify this preliminary determination. The person will need to calculate their actual or estimated average tonnage of food residuals generated each week and determine if an organics recycling facility located within 30 miles has the capacity and willingness to accept all of the generator's food residuals for recycling, which may involve obtaining documentation from an organics recycling facility that demonstrates their ability or inability to accept the food residuals. The 2021 law establishes a weekly applicability determination requirement.²⁸ To remain in compliance with the 2021 law and regulations, a person actively generating food residuals should not delay determining if they are required to divert their food residuals until MDE requests documentation demonstrating the person's compliance. MDE will ensure in its outreach activities to promote any publicly available resources, such as the two described above, that can be utilized by a person in determining whether they are subject to the food residuals diversion requirements.

- 8. Comment Topic:** Diversion of Post-Consumer Food Residuals
Commenter(s) Name and Affiliation: Brian Frazee, Maryland Hospital Association

MDE Response: The Maryland Hospital Association submitted the following comments and concerns regarding the diversion of post-consumer food residuals:

*We are also concerned that the requirement to divert post-consumer food residuals may cause contamination and jeopardize implementation. While pre-consumer diversion of food residuals is conducted by trained staff, post-consumer food residual collection—or the collection of food scraps in public spaces by patients and guests—presents unique challenges. Patients and guests, unlike our trained staff, may improperly dispose food residuals despite education materials and bin signage. If patients and visitors deposit improper items into publicly available food residual collection devices, it can result in contamination, which may lead to rejected loads by our organics recycling facility. We encourage the agency to consider delaying or exempting diversion of post-consumer food residuals until there is greater public awareness of the new requirements.*²⁹

The 2021 law, which establishes the food residuals diversion requirements, defines food residuals as "material derived from the processing or discarding of food, including pre- and *post-consumer* vegetables, fruits, grains, dairy products, and meats" (*emphasis added*).³⁰ The 2021 law does not differentiate between types of food residuals that are required to be diverted from final disposal in a refuse disposal system, nor authorizes MDE to delay or exempt the diversion for certain types of food residuals. Therefore, the applicable provisions of the regulations were adopted as proposed.

²⁷ The U.S. EPA has made available the methods used to develop the map and to calculate estimates of food residuals generation, as well as a downloadable dataset containing data and plotted on the map. The technical methodology and dataset are available for download on the About Tab of the Excess Food Opportunities Map.

²⁸ Chapters 439 and 440 of 2021, §B (pp. 4).

²⁹ See full text of comment on pages 7 through 8 of Appendix A.

³⁰ Chapters 439 and 440 of 2021 (pp. 2).

9. Comment Topic: Depackaging of Packaged Food Residuals
Commenter(s) Name and Affiliation: Chris Thomas, Divert, Inc.

MDE Response: Divert suggested that MDE “adjust language to ensure that depackaging is not required by persons subject to the food residuals diversion requirements *unless* specified in their individual contract with the organics recycling facility that is accepting the person’s food residuals” (*emphasis added*).³¹ The proposed regulations require that a person separate their food residuals from other solid waste and non-compostable materials, including films and containers, before the material is diverted through reduction, rescue, and recycling activities. This proposed requirement is consistent with the applicable statutory requirement of “a person that generates food residuals shall separate the food residuals from other solid waste”. In order to comply with this separation requirement, any food destined for organics recycling will need to be removed or separated from any *non-compostable* containers, films, or other food packaging materials.³² Therefore, the regulatory provision was adopted as proposed. The person generating food residuals is responsible for arranging for any needed depackaging of packaged food residuals. Depackaging can be performed by the generator onsite or transported to an offsite to a processing or organics recycling facility with depackaging capability.

10. Comment Topic: Compliance Schedule
Commenter(s) Name and Affiliation: Brian Frazee, Maryland Hospital Association

MDE Response: COMAR 26.04.13.03B(2) propose that, beginning January 1, 2023, a person is required to start diverting their food residuals from final disposal in a refuse disposal system not later than 90 days after the person meets the following criteria:

- The person generates at least an average of 2 tons or 1 ton of food residuals each week that they are in operation and generating food residuals, beginning January 1, 2023 or January 1, 2024, respectively; and
- The person generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that: (i) has the capacity to accept and process all of the person’s food residuals; (ii) is willing to accept all of the person’s food residuals for recycling; and (iii) is willing to enter into a contract to accept and process the person’s food residuals.³³

The Maryland Hospital Association suggested an alternate compliance schedule in the following comment:

[Maryland Hospital Association] supports the goal to divert food residuals from landfill or incineration through reduction and recycling activities, but we are concerned the 90-day period for program preparation and adoption underestimates the implementation difficulties hospitals face. We urge the agency to adopt a 180-day compliance period to allow hospitals sufficient time to meet the challenges.

The purpose of the proposed regulations is to implement Chapter 439 and 440, Acts of 2021, entitled Organics Recycling and Waste Division — Food Residuals. The law requires businesses that generate food residuals to separate and divert their food residual from final disposal. Although the statutes were enacted in 2021, the proposed regulations and guidance were only made available in late September, with an expected effective date of Jan. 1, 2023, for larger businesses. Under the circumstances, the proposed 90-day compliance period is insufficient for hospitals to establish contracts with vendors, develop internal procedures and protocols, and procure the necessary collection devices. Food residual

³¹ See full text of comment on page 14 of Appendix A.

³² Maryland law requires a person that distributes or sells a compostable food or beverage product intended for sale or distribution by a retailer in the State to ensure that the compostable food or beverage product is labeled: (1) in a manner that is readily and easily identifiable from other food or beverage products; (2) in a manner that is consistent with the federal Guides for the Use of Environmental Marketing Claims under Title 20, Part 260 of the Code of Federal Regulations; and (3) either as compostable or with a certification logo indicating the compostable food or beverage product meets the American Society for Testing and Materials standard specifications D6400 or D6868 (*see* Environment Article, §9-2104, Annotated Code of Maryland).

³³ COMAR 26.04.13.03B.

*diversion, for example, may increase the risk of insect and rodent infestation. Devices and procedures need to be developed and tested to ensure proper pest management, which require time to perfect.*³⁴

MDE recognizes that all establishments required to divert food residuals will experience unique operational impacts or challenges in developing and executing a food residuals diversion program. As authorized in the statute, if these impacts or challenges create an undue hardship for an establishment, they may apply to MDE for a waiver from the food residuals diversion requirement.³⁵ MDE has been actively working to engage with large food residuals generators before the food residuals diversion requirements take effect on January 1, 2023. Chapters 439 and 440 directed MDE to develop a plan for implementing the law's requirements, including a plan for educating large food residuals generators on the provisions of the law and the benefits of organics recycling. A more detailed description of MDE's outreach activities is provided in response to comment topic #18. Additionally, to engage large food residuals generators and other stakeholders in the rule-making process, MDE provided a 15-day opportunity, beginning July 6, 2022, for interested parties to review and comment on a draft version of the proposed regulations and compliance guide. MDE notified over 1,000 individuals and organizations of this opportunity through email.

For these reasons, MDE has chosen to adopt the 90-day compliance period as proposed.

11. Comment Topic: Food Residuals Weight Measurement Methodologies

Commenter(s) Name and Affiliation: Carol Adaire Jones and Linda Breggin, Environmental Law Institute; Chris Thomas, Divert, Inc.; Dave Mariano, B. Green & Company, Inc.; Elizabeth Egan, John Hopkins University Applied Physics Laboratory; and Melvin Thompson, Restaurant Association of Maryland

MDE Response: For the purpose of a person determining the amount of food residuals they generate, the proposed regulations establish the following methods:

- Taking an actual measurement of the weight of food residuals generated;
- If the person does not have an actual measurement of the weight of food residuals generated, estimating the weight of food residuals generated based on volume using a volume-to-weight conversion factor that is acceptable to MDE; or
- If the person does not have an actual measurement of the weight or volume of food residuals generated, estimating the weight of food residuals generated using a conversion factor appropriate for the type of food residuals generator that is acceptable to MDE.

The proposed regulations also require, if a person owns or operates multiple facilities or buildings located at a single location or campus that have a common system or contract for waste management, the person to use the aggregate weight of the food residuals generated each week by all the facilities or buildings, calculated using one of the above methods. MDE received several comments regarding the proposed weight measurement methodologies, quoted below.

*We commend the effective use of a range of alternative approaches to establishing food scrap quantities generated, which provide establishments to choose among options, which vary in cost and accuracy, the one that best suits their needs. Rationale: For establishments with sufficient resources and motivation, directly measuring the weight or volume of their food waste will produce more accurate measurements. However, establishments with limited resources have the option to use less costly methods. (Carol Adaire Jones and Linda Breggin, Environmental Law Institute).*³⁶

³⁴ See full text of comment on page 7 of Appendix A.

³⁵ Environment Article, §9-1724.1(d), Annotated Code of Maryland authorizes MDE to grant a waiver to a person that demonstrates, to the satisfaction of MDE, undue hardship because of the following: (i) the cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system; or (2) other reasonable circumstances.

³⁶ See full text of comment on pages 11 of Appendix A.

Ensure that community and industry stakeholders are engaged in the development of the methodology used to calculate the amount of food residuals generated...By creating an opportunity for conversation and industry input through comment periods, webinars, or roundtables, the Department of Environment has the opportunity to create a sound and scientifically based calculation to ensure that the data is accurately outlining diversion goals. (Chris Thomas, Divert, Inc.).³⁷

I had a question/comment regarding the approved methods for capturing tonnage, as we independently own and operate retail supermarkets under the Green Valley Marketplace and Food Depot banners in Maryland. We currently have a system that is managed by UNFI (our primary supplier) that utilizes handhelds to scan all product loss; this includes “out of date”, “spoiled”, “damaged”, etc., so basically anything unsaleable that leaves our facilities. In addition we have an existing provider who handles our “fats, oils, and grease” remediation, as well as each store having a Partner Food Pantry that takes donations, which are also captured on the devices. This handheld system allows us to measure loss down to the UPC level, so we can make better decisions around production, purchasing, etc. We are seeking your approval, and are hoping to leverage this existing system to complete our “waste assessments”, rather than the three options listed in the attached document[, “Determination of Applicability of the Food Residuals Diversion Requirement under 2021 House Bill 264/Senate Bill 483”]. (B. Green & Company, Inc.).³⁸

MDE agrees that providing several methods of determining the weight of food residuals generated allows a person to select the method that best suits their operations. While weighing food residuals will provide the most accurate measure, it is the most labor-intensive method and requires access to a weight scale. For establishments unable to take actual weight measurements, a person may choose to estimate the weight using alternative MDE-approved conversion factors based on volume (i.e., container size) or based on the person’s industry sector/business practices. MDE has also published two guidance documents that may assist a person in determining the amount of food residuals they generate, which are available on the Department’s website.³⁹

Chapters 439 and 440 required MDE to establish guidelines to assist businesses with complying with the provisions of the law, including guidelines for estimating the weight of the food residuals generated by a business.⁴⁰ The weight measurement methodologies provided in the proposed regulations, as well as MDE guidance documents, are based on methods for conducting food waste assessments described in toolkits and guidance documents published by U.S. EPA.⁴¹ The proposed regulations provide flexibility by allowing a person to use qualitative conversion factors as long as they are approved by MDE. The method/technology described by B. Green & Company in their comment is an example of a conversion factor based on industry sector/business practices that MDE may approve, upon request, as a method for estimating the weight of food residuals generated.

According to the regulations, a person who owns or operates multiple facilities or buildings at a single location that has a common system or contract for waste management shall use the aggregate weight of food residuals generated each week by all the facilities. The Compliance Guide also mentions this in Q&A #15 (page 13). The law does not appear to authorize aggregating in this manner for multiple, independently owned businesses operating at a single location. The law authorizes the Department to

³⁷ See full text of comment on page 15 of Appendix A.

³⁸ See full text of comment on page 16 of Appendix A.

³⁹ MDE’s “Determination of Applicability of the Food Residuals Diversion Requirement under 2021 House Bill 264/Senate Bill 483” and “Maryland Food Residual Generation Factor Estimates by Industry Sector” guidance documents are available at <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>.

⁴⁰ Chapters 439 and 440 of 2021 (pp. 6).

⁴¹ U.S. EPA, *Volume-to-Weight Conversion Factors* (April 2016) https://www.epa.gov/sites/default/files/2016-04/documents/volume_to_weight_conversion_factors_memorandum_04192016_508fml.pdf; U.S. EPA, *A Guide to Conducting and Analyzing a Food Waste Assessment* (March 2014) https://www.epa.gov/sites/default/files/2015-08/documents/r5_fd_wste_guidebk_020615.pdf.

establish “guidelines for estimating the weight of the food residuals generated by a business.” Per our reading of the law, the food residuals diversion mandate applies to the person who generates the food residuals. We are concerned that aggregating food residuals generated by all food establishments operating within a larger property could subject many businesses to the diversion mandate despite that their individual business operation may be below the weekly weight criteria.

What is the rationale for the Department’s interpretation otherwise? (Melvin Thompson, Restaurant Association of Maryland).⁴²

MDE does not propose to require aggregating the weight of food residuals generated by an *independently* owned food establishment with other buildings or facilities in the manner described in the Restaurant Association of Maryland’s comment. (The response for the compliance guide’s corresponding frequently asked question has been revised to clarify this). A food establishment’s food residuals tonnage would only be used in the calculation of the larger property’s food residuals generation if (1) the food establishment is owned or operated by the same person that owns or operates other facilities or buildings located at the single location or campus; and (2) the food establishment’s food residuals are co-managed with the food residuals generated by other facilities or buildings at that location or campus under a common system or contract for waste management.

I work at a corporate facility with roughly 56 odd buildings and 4 cafeterias. Some of these buildings are separated by a public road therefore the buildings where the cafeterias are located have unique street addresses. These cafeterias all serve the same company and the current waste contract for the facility covers all of these buildings under one contract. I am wondering if we need to add up all of the biological waste for these cafeterias as the total amount generated in one week OR if they can be added separately because they each have their own unique address? (John Hopkins University Applied Physics Laboratory).⁴³

When calculating the weight of food residuals generated, John Hopkins University (JHU) Applied Physics Laboratory will need to use the aggregate weight of the food residuals generated each week by all cafeterias located at the JHU campus since these cafeterias are owned or operated by the same entity and served by a single waste management contract.

The Compliance Guide does not mention how the food residual diversion mandate would apply to caterers and various related circumstances. The weekly volume of food residuals generated by caterers can vary significantly, depending on the number and size of events. Caterers who may meet the established criteria for the diversion mandate are also concerned about the potential challenges associated with post-consumer food residuals at parties and events. Such separation/collection would require additional staff resources to ensure compliance among guests.

How would the food residuals diversion mandate and related weight calculation/documentation apply to the various operating circumstances of caterers? Also, for events held at other private venues (many of which have onsite receptacles for event related refuse), who would be responsible for complying with the law – the caterer or the venue? And how would the weekly food residuals weight criteria apply to individual events held at private venues? (Melvin Thompson, Restaurant Association of Maryland).⁴⁴

⁴² See full text of comment on page 23 of Appendix A.

⁴³ See full text of comment on page 17 of Appendix A.

⁴⁴ See full text of comment on page 23 of Appendix A.

In terms of determining when a caterer is responsible for complying with the food residuals diversion requirement, it depends on how waste is managed at a property. For the following scenarios, we will assume that the property where the food is prepared or served meets the applicability criteria and is required to divert its food residuals from final disposal in a refuse disposal system.⁴⁵

- If a caterer prepares meals at a kitchen/property that is owned or operated by the caterer, the caterer is responsible for complying with the food residuals diversion requirements for that site.
- An owner or operator that leases a commissary kitchen in which a caterer prepares meals is responsible for complying with the diversion requirements for that site; however, the owner or operator of the commissary kitchen may enter into an agreement in which the caterer agrees to divert all or some of its food residuals it generates when preparing meals. Additionally, any food residuals discarded by the caterer at the commissary kitchen must be included by the owner or operator of the property when calculating the weight of food residuals generated that week at the commissary kitchen.
- An owner or operator of a venue where the catered food is served is responsible for complying with the food residuals diversion requirements for that site; however, the owner or operator of the venue may enter into an agreement in which the caterer agrees to divert all or some of its post-consumer food residuals. Additionally, any catered food discarded at the venue must be included the owner or operator of the venue when calculating the weight of food residuals generated that week at the venue.

12. Comment Topic: Prioritization of Certain Food Residuals Diversion Methods

Commenter(s) Name and Affiliation: Chris Thomas, Divert, Inc.; and Sydney Daigle, Prince George's County FEC

MDE Response: MDE received the following comments recommending MDE encourage, generally and by revising the proposed regulations, the diversion of food residuals through food donation and in accordance with a certain food recovery hierarchy:

Encourage entities that are subject to the food residuals law to arrange to recover the maximum amount of their edible food that would otherwise go to landfills. According to the Maryland Food Bank, 1 in 3 Marylanders is food insecure.⁴⁶ As the State works to divert organic material from landfills, this material must be put towards its best and highest use by prioritizing food donation efforts....By encouraging these generators and processors of organic material to donate the maximum amount of food that they can, Maryland will effectively save landfill space and lower methane emissions that are generated by organic waste in landfills. Divert is recommending that, to the extent possible, the Department of Environment expand upon the recommended regulations by incorporating language that actively encourages donation through partnership with food pantries, food banks and food rescue organizations. By doing so, Maryland will be poised to meet their goals, actively conserve the maximum amount of energy and resources in the process, and will help to reduce food insecurity within the State. (Chris Thomas, Divert, Inc.).⁴⁷

For [COMAR 26.04.13.03D(2)]: The language should note the order of priority or ranking for ways that persons should divert food from final disposal, according to the Environmental Protection Agency's Food Recovery Hierarchy. The current order (a-c) is the correct diversion order; however, this is not noted in the current language...While not all food recovery organizations can handle such large food donations, MDE should work with food recovery organizations to help persons under the law donate edible food to willing food recovery organizations across the state, including Prince George's County Food Rescue, Howard

⁴⁵ COMAR 26.04.13.03B establishes persons meeting the following criteria are required to divert their food residuals from final disposal in a refuse disposal system: (1) the person generates at least an average of 2 tons or 1-ton of food residuals each week that they are in operation and generating food residuals beginning 2023 and 2024, respectively; (2) the person generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that has the capacity and willingness to enter into a contract to accept all of the person's food residuals for recycling.

⁴⁶ Maryland Food Bank, *Food Insecurity in Maryland: An MFB Strategy Group Research Report, July 2022* (pp. 5), as cited by Chris Thomas, Divert, Inc. (pp. 14 and 15, Appendix A). A copy of the report is available at <https://mdfoodbank.org/wp-content/uploads/2022/07/MFB-Strategy-Group-Research-Report-Food-Insecurity-in-Maryland.pdf>.

⁴⁷ See the full comment on pages 14 and 15 of Appendix A.

*County Food Rescue, Anne Arundel Food Rescue, Celestial Manna, Food Rescue Baltimore, 4MyCiTy, Community Food Rescue, and any other Maryland-based food recovery programs. We would be happy to help convene the above-mentioned food recovery programs to collaborate, including working with MDE to connect persons under the law with local food recovery organizations. (Sydney Daigle, Prince George’s County FEC).*⁴⁸

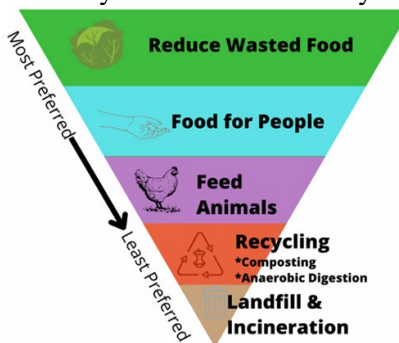
Chapters 439 and 440 of 2021 do not prioritize diversion methods in a hierarchical fashion, instead requiring a person ensure food residuals are diverted from final disposal in a refuse disposal system by:

- Reducing the amount of food residuals generated by the person;
- Donating servable food;
- Managing the food residuals in an organics recycling system installed on-site;
- Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed;
- Providing for the collection and transportation of the food residuals for processing in an organics recycling facility; or
- Engaging in any combination of the waste diversion activities listed above.⁴⁹

The proposed regulations are consistent with the provisions of Chapters 439 and 440.⁵⁰ Therefore, the applicable regulatory provision was adopted as proposed. MDE has developed a food recovery hierarchy that encourages, in order of preference, the management of food through source reduction (i.e., prevention of waste), providing food that was intended to feed people, feed animals, organics recycling (e.g., composting and anaerobic digestion), and, as a last resort, disposal. MDE encourages on its website, publications related to waste diversion, and outreach efforts the management of food residuals in accordance with this hierarchy. MDE also provides on its website information on implementing a food donation program, legal protections for food donations, and organizations that accept or facilitate food donations.⁵¹ MDE welcomes any opportunities to work with stakeholders in promoting and facilitating the donation of food residuals, and encourages interested parties to email MDE’s point of contacts for implementing the proposed regulations:

Tim Kerr (Timothy.Kerr2@maryland.gov) and Shannon McDonald (Shannon.McDonald@maryland.gov).

Figure 1 – Maryland’s Food Recovery Hierarchy



⁴⁸ See the full comment on page 30 of Appendix A.

⁴⁹ Chapters 439 and 440 of 2021 (pp. 4 and 5).

⁵⁰ COMAR 26.04.13.03D(2) states a person subject to the food residuals diversion requirements shall divert food residuals from final disposal in a refuse disposal system through any combination of the following methods: (a) reducing the amount of food residuals generated by the person; (b) donating servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association; (c) managing the food residuals in an organics recycling system installed on-site in accordance with any applicable regulations adopted by the Secretary of the Environment; (d) providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed; and (e) providing for the collection and transportation of the food residuals for processing in an off-site organics recycling facility.

⁵¹ Information food donation and contacts for food recovery organizations can be found on the following MDE webpages: *Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals* webpage under the “food for people” header (<https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>); and *Food Scraps Management* webpage (<https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/FoodScraps.aspx>).

13. Comment Topic: Food Donation

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP; and Rick Condon, Maryland Food Bank

MDE Response: MDE received the following comments related to food donation:

The proposed regulations do not include a definition of “servable” food. MDE should provide a clear definition in materials, outreach and education provided by MDE. Specifically, DEP has heard concerns from food assistance providers regarding the donation of certain foods for human consumption that are not considered nutritious, i.e., foods high in sugar, sodium and fat content. (Alan Pultyniewicz, Montgomery County DEP).⁵²

The potential of businesses looking to food banks and pantries could create additional waste for pantries and food banks and may actually create an unintended consequence of additional waste and associated cost as these non-profit organizations may be ill equipped to store and distribute the increased food being presented.

Any prepared meals that would be provided from businesses to pantries or food banks must have ingredient statements listed as well as any/all allergens on any food donated, along with the required expiration dates.

By nature, businesses will make every attempt to sell product by the listed use/consume by date after which point they may seek donation as a solution to reduce their waste numbers. This has potential of putting food at risk of spoilage into the network of pantries and food banks. This puts further strain on these organization’s resources to manage the waste of other businesses rather than supporting the food insecure inside the State. (Rick Condon, Maryland Food Bank).⁵³

As it relates to food donation, there is no definition of “servable food” or similar term that has been established in law on the federal or State level. The U.S. Food and Drug Administration establishes the national Food Code, “a model that assists food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail and food service segment of the industry”.⁵⁴ However, the Food Code does not address the handling of donated food. Maryland law authorizes Maryland Departments of Agriculture and Health to inspect donated food for wholesomeness and to establish procedures for handling donated food; these sections of law providing for this inspection authority do not define what is considered to be “servable food”.⁵⁵

MDE believes the establishment of a Maryland-specific legal definition for “servable food” or food safety standard for food donations needs to be developed through a collaborative effort with Maryland Departments of Environment, Health, and Agriculture and stakeholders providing and accepting donated food in the State. For this reason, MDE has elected at this time not to define in regulation what is considered to be servable food. To ensure diverted food residuals are being handled in a manner to be considered “servable food” appropriate for donation, a person can consult guidance published by organizations that outline safe food handling practices for food recovery and donation programs. MDE will provide on its website and compliance guide for the adopted regulations the following information on handling donated food:

- The Center for EcoTechnology’s *Food Rescue Guidance* document, which explains “[most] categories of food can be donated, as long as the food is ‘apparently wholesome’ or ‘fit for human consumption’”

⁵² See the full comment on page 2 of Appendix A.

⁵³ See the full comment on pages 24 and 25 of Appendix A.

⁵⁴ U.S. Food and Drug Administration (FDA), *FDA Food Code* (<https://www.fda.gov/food/retail-food-protection/fda-food-code>).

⁵⁵ Health-General Article, §21-322(a), Annotated Code of Maryland.

and that “[donated] food should be properly packaged and stored to prevent contamination and spoilage”.⁵⁶

- The Conference for Food Protection’s *Comprehensive Guidance for Food Recovery Programs*, which provides guidance to food retailers wanting to participate in food recovery programs and provide safe food to needy people.⁵⁷
- The U.S. Department of Agriculture’s *Gleaning Toolkit*, which provides guidance on establishing programs to collect excess fresh produce for donation to needy people.⁵⁸

Individual food donation/recovery organizations may have specific nutrition or quality criteria for donated food they will accept. Additionally, a food donation/recovery organization’s ability to accept food donations may be limited by staffing, fiscal, and capacity resources. None of the provisions of Chapters 439 and 440 or the regulations, as adopted or proposed, require a food donation/recovery organization to accept all food residuals offered for donation, nor do they require a person to divert their food residuals through donation if there is no organization readily available to accept the food residuals. MDE recommends food residuals generators and food donation/recovery organizations establish agreements that outline the frequency of donations, the maximum or minimum quantity of donations, the types of food residuals to be donated, and any nutritional or quality standards donated food must satisfy.

14. Comment Topic: Documentation Requirements

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP; and Sydney Daigle, Prince George’s County FEC

MDE Response: MDE received the following comments on the proposed regulations’ documentation provisions under COMAR 26.04.13.03E:

For [COMAR 26.04.13.03E(1)]: Documentation should be required for all correspondence between the person and an organics recycling facility, food rescue entity, or farm. Currently, the law only specifies a documented correspondence between the person and an organics recycling facility. (Sydney Daigle, Prince George’s County FEC).⁵⁹

The documentation that a person may be requested to submit to the Department does not include examples of the types of documentation that would be necessary if a person donates “servable” food for human consumption, including the donation of food to a nonprofit corporation, organization, or association. What type of documentation would be acceptable to demonstrate compliance? Guidance should be provided via materials, outreach and education provided by MDE. (Alan Pultyniewicz, Montgomery County DEP).⁶⁰

MDE initially proposed requiring a person provide the following documentation to MDE within 30 days of receiving the request or by an alternative deadline set by the Department:

- The actual or estimated weight of food residuals generated by the person each week;
 - Any correspondence between the person and an organics recycling facility located within a 30-mile radius of the person that demonstrates the organics recycling facility’s willingness to accept all of the person’s food residuals or enter into a contract to accept and process all of the person’s food residuals;
- or

⁵⁶ A copy of the Center for EcoTechnology’s *Food Rescue Guidance* document is available at <https://wastedfood.cetonline.org/wp-content/uploads/2018/04/CET-Food-Donation-Guidance.pdf>.

⁵⁷ A copy of the Conference for Food Protection’s *Comprehensive Guidance for Food Recovery Programs* document is available at <http://www.foodprotect.org/guides-documents/comprehensive-guidance-for-food-recovery-programs/>.

⁵⁸ A copy of the U.S. Department of Agriculture’s *Gleaning Toolkit* is available at https://www.usda.gov/sites/default/files/documents/usda_gleaning_toolkit.pdf.

⁵⁹ See the full comment on page 30 of Appendix A.

⁶⁰ See the full comment on page 2 of Appendix A.

- Any correspondence from all of the organics recycling facilities located within 30 miles of the person that demonstrates an organics recycling facility is not able or unwilling to enter a contract with the person to accept and process all of the person’s food residuals.⁶¹

Upon consideration of the above comments, this proposed requirement on adoption was revised to clarify the documentation that may be requested by MDE includes any other information the Department deems necessary (see item (d) under adopted COMAR 26.04.13.03E(1)).⁶² Information regarding the types/examples of documentation to be maintained and methods for recordkeeping, including types documentations related to food donations, is discussed in the compliance guide for the adopted regulations.⁶³

15. Comment Topic: Reporting Requirements

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP; Carol Adaire Jones and Linda Breggin, Environmental Law Institute; and Stephanie Lansing, University of Maryland

MDE Response: MDE received several comments on the proposed regulations’ reporting provisions under COMAR 26.04.13.05. The Department’s response to each comment follows.

*We commend the inclusion of mandatory reporting requirements for covered generators...As state and local government food scrap diversion mandates/landfill bans have evolved, imposing reporting requirements on large generators has become a best practice. This information is critical to establish accountability for individual establishments, as well as to inform state and county planning for the growth of food scrap processing over time, including collections capacity and facility development. (Carol Adaire Jones and Linda Breggin, Environmental Law Institute).*⁶⁴

MDE appreciates the Environmental Law Institute’s comments regarding the regulations’ annual reporting requirement. Under COMAR 26.04.13.05 as adopted, on or before March 1, 2024, and annually thereafter, a person required to divert food residuals must report on their solid waste and recycling materials management activities to the county where the materials were generated. The Maryland Recycling Act mandates that each county reduce its solid waste stream by 20 or 35 percent through recycling, depending on population size.⁶⁵ Maryland law also requires that each county: (1) develops a 10-year comprehensive solid waste management plan that includes a plan for managing recyclable materials and achieving its mandated recycling rate; and (2) annually reports to MDE on the amount of solid waste and recyclable materials generated within the county and how these materials were managed.⁶⁶ The information submitted to counties by affected large food residuals generators in their annual reports will assist recipient counties in complying with the Maryland Recycling Act’s county planning, reporting, and recycling rate requirements.

As MDE is aware, since 1993 Montgomery County has had annual waste reduction and recycling reporting mandates for businesses, organizations, and government facilities, using a form required by Montgomery County, with deadlines of either February 1 or March 1 established by County regulation, and covering the same information listed in Section .05 Reporting as well as other information. While food residuals recycling is not mandatory at this time in Montgomery County this information should be reported in the supplemental information portion of its report. Pursuant to previous discussions and practice established between MDE and Montgomery County, businesses, organizations, and government facilities subject to recycling related reporting requirements are referred to Montgomery County (DEP), and follow Montgomery County mandates and deadlines, including reporting of data and information,

⁶¹ COMAR 26.04.13.03E(1)(a)—(c).

⁶² The final action was published on December 16, 2022 in volume 49, issue 26 of the *Maryland Register*.

⁶³ A copy of the compliance guide for the adopted regulations is available at <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>.

⁶⁴ See the full comment on page 9 of Appendix A.

⁶⁵ Environment Article, §9-505, Annotated Code of Maryland.

⁶⁶ Environment Article, §§9-503, 9-505, 9-1703, and 9-1705, Annotated Code of Maryland.

and use of the County's established reporting forms. The language in this Section .05 Reporting, as well as in guidance materials, outreach and education provided by MDE should clearly reflect this important point so there is no confusion for generators required to report information to both the State and Montgomery County. (Alan Pultyniewicz, Montgomery County DEP).⁶⁷

MDE is developing an online portal where persons may submit the required annual reports to counties; this online reporting portal will be available for use for the calendar year 2023 reporting period. MDE recognizes that some counties, such as Montgomery County, have local requirements in which certain establishments must report their solid waste and/or recycling activities to the county. A person subject to MDE's and a county reporting requirement will need to comply with both, and ensure they are satisfying the most stringent reporting requirements of MDE and the county. For example, if a person is required to report on their recycling activities to Montgomery County DEP by February 1st each year, the person must submit their first annual county report required under COMAR 26.04.13.05 to Montgomery County DEP on or before February 1, 2024, not March 1, 2024. If a person has confusions regarding how to comply with a MDE and local reporting requirement, they may contact the Department or the local government for clarification.⁶⁸

The following is an excerpt of the comment submitted by Dr. Stephanie Lansing of the University of Maryland (the whole comment may be found on pages 27 and 28 of Appendix A):

The law states the following: "For a person subject to the food residuals diversion mandate, establish methods to be used by the person in determining the weight of food residuals generated, a schedule under which the person must begin diverting food residuals, and a requirement for the person to provide MDE with certain documentation demonstrating their compliance with the food residuals diversion mandate." And: ".05 Reporting. On or before March 1, 2024, and each March 1 thereafter, a person subject to the food residuals diversion requirements under Regulation .03 of this chapter shall submit a report." ...The law should mandate that all food manufacturers and processors need to report the weight that they found and the method for determining this weight (regardless if they are over or below the 2 tons per week) – under the Reporting Section. Then, those that are determined to be above 2 tons per week should be placed on a map (anonymously) that is public, so potential collectors can be aware of the food residual opportunities. Right now, the map is one-sided with only the acceptors mapped, but that will not help grow the food waste diversion industry nor will generators be aware of their non-compliance when new diversion operators add themselves to the map, as there is no record of who generates more than 2 tons of waste per week if they are currently outside the 30 mile zone (currently, a generator can look at the map, see no generator is nearby and not engage in the process). If MDE had a record of the facility, then they could notify those within 30 miles (based on their generator mapping – which is missing) that a new facility is now open and they are now "a person subject to the diversion requirement."

Dr. Lansing expressed, for the reasons quoted above and further elaborated in her entire comment, that she does not think the proposed regulations' annual reporting requirement "fulfills the spirit of the law to grow residual diversion and encourage more composting, digestion, farming, and food bank facilities to take these residuals".⁶⁹ Additionally, Dr. Lansing recommended that if the regulations mandated that all food manufacturers and processors were required to annually report the weight of food residuals generated and methods used in determining the weight, MDE could anonymously place those establishments reporting they generate more than 2 tons per week on a map that can be used by food recovery and recycling organizations to identify opportunities to collect diverted food residuals.

MDE believes there are existing online mapping resources that may be used by the interested parties to identify the location of potential large food residuals generators in Maryland, as well as food recovery organizations, organics recycling facilities, and agricultural properties that accept diverted food residuals. MDE will describe

⁶⁷ See the full comment on pages 3 and 4 of Appendix A

⁶⁸ Contact information for each county recycling coordinator may be found at https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Documents/County_Recycling_Coordinators.pdf.

⁶⁹ See full comment on page 27 of Appendix A.

two such online resources; however, there are other online resources maintained by private and public food recovery and/or recycling organizations. The U.S. EPA has developed an online [Excess Food Opportunities Map](#) to support nationwide diversion of excess food from landfills. The map identifies and displays facility-specific information about potential food residuals generators and provides estimates of their food residuals generation. Chapters 439 and 440 required MDE to develop mapping and other systems to identify existing composting facilities and the geographic areas within the 30-mile radius of each facility.⁷⁰ In compliance with this requirement, MDE developed an online [Organics Recyclers Map](#) that displays the location and contact information for composting facilities *and* anaerobic digestion facilities known to the Department located in the State and those in neighboring states located within 30 miles of Maryland. MDE will periodically update this map as it becomes aware of operating organics recycling facilities located in, or within 30 miles of, Maryland that were permitted by MDE or an equivalent agency of another state.

16. Comment Topic: Waivers – Notifications of Approved Waiver Request

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP

MDE Response: Montgomery County DEP submitted the following comment regarding providing notifications of approved waiver requests:

The Department should notify the local government entity where the person is located if a waiver is granted by the Department to ensure the waiver does not impact the requirements of a local government entity that has requirements that are as stringent or more stringent than the State requirements, as well as provide a listing of businesses granted a waiver from MDE for public awareness. MDE should provide an online resource where this information is readily available and updated regularly. (Alan Pultyniewicz, Montgomery County DEP).

MDE will post online, and update a list, of food residuals generators that have been issued approved waivers by the Department. This list will include the name and location of the food residuals generator, and the start and end date of the waiver period. If a government agency or a member of the public would like more information regarding a waiver issued to a specific food residual generator, a copy of written waiver application or the subsequent approval, they will need to submit a Public Information Act request. Learn more about submitting such a request on MDE’s Public Information Act webpage.⁷¹

17. Comment Topic: Waivers – Eligible and Ineligible Expenses

Commenter(s) Name and Affiliation: Melvin Thompson, Restaurant Association of Maryland; and Rick Cordon, Maryland Food Bank

MDE Response: Chapters 439 and 440 authorize MDE to grant a person a waiver from food residuals diversion requirement if a person demonstrates, to the satisfaction of MDE, undue hardship because of the following: the cost of diverting food residuals from a refuse disposal system is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system; or other reasonable circumstances. The law also directs MDE to establish waiver application procedures.⁷² The proposed regulations establish the specific information to be included in a waiver request for undue hardship because the cost of diverting food residuals from a refuse disposal system is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system, and the compliance guide for proposed regulations further elaborated by specifying the types of expenses that may not be submitted for this type of waiver request.⁷³

⁷⁰ Chapters 439 and 440 (pp. 6).

⁷¹ MDE’s Public Information Act webpage (<https://mde.maryland.gov/programs/Marylander/PublicInfoAct/Pages/index.aspx>).

⁷² Chapters 439 and 440 of 2021 (pp. 5).

⁷³ COMAR 26.04.13.04. See page 18 of Appendix C to review the compliance guide for the proposed regulations’ explanation regarding which cost a person may not submit for waiver request for undue hardship because the cost of diverting food residuals from a refuse disposal system is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system.

The Maryland Food Bank commented the following: “[the] cost that would be inherent in separating organic from non-organic waste could be prohibitive. As we look at [COMAR 26.04.13.04D(2)] there is mention of a potential waiver if the cost to move to a compost site or digester is greater than 10%. It is our assumption that this extra labor would be included in this extra cost. Thus allowing support for a waiver”.⁷⁴ The Restaurant Association of Maryland commented “[regarding] the Waiver Requests section of the Compliance Guide, nearly all the disallowed expenses (for demonstrating that the cost of diverting food residuals is more than 10 percent more expensive than refuse disposal) are directly related to complying with the diversion mandate”, and asked “why are these unmistakably related expenses prohibited”?⁷⁵

Upon receipt of these comments, MDE further evaluated what expenses would be appropriate for consideration when processing a waiver request based on the cost of diverting food residuals being more than 10% more expensive than disposing of the material in a refuse disposal system. The primary expenses associated with disposing of food residuals in a refuse disposal system are transportation costs and tipping fees. All persons required to divert food residuals from a refuse disposal system may incur costs to (1) separate food residuals from other solid waste; (2) train staff; (3) identify sources and determine the weight of food residuals generated; (3) install equipment needed to store, process, and/or recycle food residuals onsite; (4) transport food residuals for reuse to feed humans or animals; and (5) transport food residuals to, and pay tipping fees of, an off-site organics recycling facility. Out of all of these potential expenses, the costs most comparable to those associated with disposing of food residuals to a refuse disposal system would be costs related to diverting food residuals to an organics recycling facility.

For this reason, MDE will only accept costs associated with transporting and paying the tipping fees of refuse disposal systems and organics recycling facilities when considering a waiver request for undue hardship because the cost of diverting food residuals is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system. However, other diversion expenses may be submitted for consideration for a waiver request for undue hardship because of “other reasonable circumstances”. MDE has revised the compliance guide for the adopted regulations to specify the documentation a person may submit to demonstrate undue hardship for each type of waiver request.

18. Comment Topic: Technical Assistance and Outreach

Commenter(s) Name and Affiliation: Carol Adaire Jones and Linda Breggin, Environmental Law Institute

MDE Response: The Environmental Law Institute’s comment included several recommendations related to MDE’s technical assistance and outreach efforts, an excerpt of the comment is provided below:

*We commend the provision on the MDE website of guidance materials to assist generators in complying with the law, and recommend MDE expand the offerings and offer translation into other languages in wide usage in Maryland... We do note however that the website could be more consistent in highlighting prevention as the top ranked strategy in the food waste hierarchy, and showcasing resources to help commercial generators accomplish that... We recommend providing a more balanced discussion of benefits, and adding links to guides for generators on how to prevent food waste, and a list of companies that provide consulting services to support prevention... It would be valuable to add guidance documents targeted to different sectors of generators on strategies for prevention, recovery and recycling, in addition to the one for schools... We recommend that the State allocate resources to establish a free technical assistance program for food residual generators, providing direct consultations by phone or in person with generators at no cost to the generators. Technical assistance should also be available for haulers and food scrap processors... We recommend creating a state-wide Food Residuals Diversion Mandate Working Group with representatives from each of the counties to cross-fertilize development of implementation strategies and coordinate actions to support implementation.*⁷⁶

⁷⁴ See full comment on page 24 of Appendix A.

⁷⁵ See full comment on page 23 of Appendix A.

⁷⁶ See full comment on pages 11 and 13 of Appendix A.

MDE has developed the *Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals* webpage, dedicated to the food residuals diversion requirements under Maryland law (see <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>). This webpage contains guidance and educational materials to support persons required to divert food residuals, including information on: diversion methods that establishments can implement to change their current food management practices; organizations providing food recovery, hauling, and recycling services in Maryland; and funding opportunities for food residuals diversion programs. MDE will continue to update these materials and, as suggested, add more information on the webpage regarding the benefits of preventing food waste and consultants providing food waste prevention services. Currently posted on the webpage are guidance documents designed to assist a person in determining whether they're required to divert their food residuals from disposal, and calculating the average weight of food residuals they generated each week.⁷⁷ Versions of these two documents translated into Spanish are already available online. Also posted online is a compliance guide describing how a business can comply with the adopted regulations' requirements and responses to frequently asked questions.⁷⁸ MDE will work on translating into non-English languages more of the guidance and education materials found on this webpage.

It is a priority of MDE to engage with the public, food residual generators, and food recovery and recycling stakeholders to facilitate and promote the diversion of food residuals in Maryland. On Thursday, January 19, 2023, MDE will host a webinar on how food residuals generators can comply with the food residuals diversion requirements of the adopted regulations (information on how to attend is provided in the footnote).⁷⁹ Over the last year, MDE has presented on the diversion requirements of Chapters 439 and 440 at several industry conferences and meetings, as well as met one-on-one with specific businesses and organizations upon request. MDE has hosted meetings with county solid waste managers and recycling coordinators and county environmental health inspectors to educate them on the requirements of Chapters 439 and 440 and the type facilities that may be subject to the law, and how county representatives and the public can contact MDE with question or complaints. MDE welcomes any opportunities to work with stakeholders in promoting and facilitating food residuals diversion, and encourages interested parties to email MDE's point of contacts for implementing the regulations: Tim Kerr (Timothy.Kerr2@maryland.gov) and Shannon McDonald (Shannon.McDonald@maryland.gov).

⁷⁷ The "Determination of Applicability of the Food Residuals Diversion Requirement under 2021 House Bill 264/Senate Bill 483" and "Maryland Food Residual Generation Factor Estimates by Industry Sector" documents are available at <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>.

⁷⁸ A copy of the compliance guide for the adopted regulations available on MDE's webpage at <https://mde.maryland.gov/programs/land/RecyclingandOperationsprogram/Pages/Solid-Waste-Management---Organics-Recycling-and-Waste-Diversion---Food-Residuals.aspx>.

⁷⁹ Sign up to attend the webinar by visiting: https://docs.google.com/forms/d/e/1FAIpQLSfqCBOKvuhf0eGDhbnasgJShQe8X6taslwHtjJcXcGwsWxjKg/viewform?usp=sf_link.

19. Comment Topic: Food Residuals Recycling

Commenter(s) Name and Affiliation: Alan Pultyniewicz, Montgomery County DEP

MDE Response: Montgomery County DEP asked the following questions regarding diversion activities impact on a county's recycling rate:

What is the implication of servable food donations on the calculation of the [Maryland Recycling Act (MRA)] – will jurisdictions be able to count these donations in their MRA calculations...What is the implication of this diversion as animal feed on the calculation of the MRA – will jurisdictions be able to count usage as animal feed in their MRA calculations? MDE should provide guidance via materials, outreach and education provided by MDE to address these questions.⁸⁰

MDE is developing separate guidance and outreach materials for County Recycling Coordinators regarding when food residuals diverted for food donation or animal feed may be reported by a county as a MRA material and counted towards the county's MRA recycling rate. This guidance will be available in time for counties to prepare their 2023 MRA Tonnage Reporting Surveys, which will be due to the Department on or before April 1, 2024.

⁸⁰ See full comment on page 2 of Appendix A.

Appendix A

Public Comments on the Proposed Action

M E M O R A N D U M

TO: David Mrgich, Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment

FROM: Alan Pultyniewicz, Recycling Coordinator
Recycling and Resource Management Division
Department of Environmental Protection



SUBJECT: Comments on MDE Proposed Regulations: 26.04.13 Food Residuals - Organics
Recycling and Waste Diversion

DATE: October 21, 2022

The Montgomery County Department of Environmental Protection (DEP) has reviewed MDE's Proposed Regulations: 26.04.13 Food Residuals - Organics Recycling and Waste Diversion as posted in the Maryland Register on September 23, 2022 and submits the following comments. If you have any questions or would like to discuss these comments, please contact me at 240-777-6480 or via email at Alan.Pultyniewicz@MontgomeryCountyMD.gov or Eileen Kao, Chief, Waste Reduction and Recycling Section at 240-777-6406 or via email at Eileen.Kao@MontgomeryCountyMD.gov.

.02 Definitions.

B. (1) "Anaerobic Digestion"

DEP Comment: The term "anaerobic" should be further defined, rather than simply stating the word "anaerobic" again within the definition of "anaerobic digestion". The term "anaerobic" should be defined/explained in guidance, outreach and education provided by MDE.

B. (10) (b) (v) A business cafeteria, school cafeteria, or institutional cafeteria

DEP Comment: The term "cafeteria" should be clearly defined in guidance, outreach and education provided by MDE to affected businesses to address comments that Montgomery County DEP has received that are attempting to downplay their cafeterias and that they generate food residuals only in "kitchens" which is not defined in the proposed regulations.

Memorandum to David Mrgich
October 21, 2022
Page 2

B. (10) (c) (i) Person does not include: The aggregate of all school buildings and facilities in a local school system.

DEP Comment: The proposed language may preclude a local school system that wants to implement a program (or perhaps must implement a program per local County requirements) that covers multiple or the aggregate of school buildings and facilities in their local school system from doing so. If so, this language should be deleted so as not to preclude a local school system from implementing a system-wide program or for multiple buildings and facilities in their school system.

B. (13) (f) Any other solid waste acceptance facility.

Question for MDE: What type of facilities will MDE allow under this definition? MDE should provide a clear definition in materials, outreach and education provided by MDE.

.03 Food Residuals Diversion Requirement.

D. (2) (b) Donating servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association

DEP Comment: The proposed regulations do not include a definition of “servable” food. MDE should provide a clear definition in materials, outreach and education provided by MDE. Specifically, DEP has heard concerns from food assistance providers regarding the donation of certain foods for human consumption that are not considered nutritious, i.e., foods high in sugar, sodium and fat content.

Questions for MDE: What evidence will be necessary to document, capture data on, and track the donations of “servable” food? Will generators that make these donations need to weigh and keep receipts of these donations? Will recipients of these donations need to provide evidence to generators to document these donations? Will recipients need to maintain documentation and records of donations they’ve received? What is the implication of servable food donations on the calculation of the MRA – will jurisdictions be able to count these donations in their MRA calculations? MDE should provide guidance via materials, outreach and education provided by MDE to address these questions.

D. (2) (d) Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed

Question for MDE: What is the implication of this diversion as animal feed on the calculation of the MRA – will jurisdictions be able to count usage as animal feed in their MRA calculations? MDE should provide guidance via materials, outreach and education provided by MDE to address these questions.

E. Documentation

DEP Comment: The documentation that a person may be requested to submit to the Department does not include examples of the types of documentation that would be necessary if a person donates

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“servable” food for human consumption, including the donation of food to a nonprofit corporation, organization, or association. What type of documentation would be acceptable to demonstrate compliance? Guidance should be provided via materials, outreach and education provided by MDE.

.04 Waiver from the Food Residuals Diversion Requirement.

E. (1) Notification of the Department’s Decision.

DEP Comment: The Department should notify the local government entity where the person is located if a waiver is granted by the Department to ensure the waiver does not impact the requirements of a local government entity that has requirements that are as stringent or more stringent than the State requirements, as well as provide a listing of businesses granted a waiver from MDE for public awareness. MDE should provide an online resource where this information is readily available and updated regularly.

.05 Reporting.

On or before March 1, 2024, and each March 1 thereafter, a person subject to the food residuals diversion requirements under Regulation .03 of this chapter shall submit a report:

A. On the person’s solid waste and recyclable materials management activities during the preceding calendar year to each county where the solid waste and recyclable materials were generated;

B. In a format required by the Department; and

C. That includes all of the following information:

(1) The total amount, by weight, of solid waste generated;

(2) The total amount and types, by weight, of recyclable materials generated;

(3) The total amount, by weight, of solid waste disposed;

(4) The name and location of each refuse disposal system that accepted the solid waste for disposal;

(5) The total amount and types, by weight, of recyclable materials diverted from disposal;

(6) The name and location of each recycling facility that accepted the recyclable materials for recycling; and

(7) Any other information required by the Department.

Memorandum to David Mrgich
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DEP Comment: As MDE is aware, since 1993 Montgomery County has had annual waste reduction and recycling reporting mandates for businesses, organizations, and government facilities, using a form required by Montgomery County, with deadlines of either February 1 or March 1 established by County regulation, and covering the same information listed in Section .05 Reporting as well as other information. While food residuals recycling is not mandatory at this time in Montgomery County this information should be reported in the supplemental information portion of its report. Pursuant to previous discussions and practice established between MDE and Montgomery County, businesses, organizations, and government facilities subject to recycling related reporting requirements are referred to Montgomery County (DEP), and follow Montgomery County mandates and deadlines, including reporting of data and information, and use of the County's established reporting forms. The language in this Section .05 Reporting, as well as in guidance materials, outreach and education provided by MDE should clearly reflect this important point so there is no confusion for generators required to report information to both the State and Montgomery County.

Fwd: Food Residuals Diversion Regulations

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Oct 25, 2022 at 11:48 AM

To: Erica Chapman -MDE- <erica.chapman@maryland.gov>, Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>

fyi

David Mrgich
Chief, Waste Diversion Division
Land and Materials Administration
Maryland Department of the Environment
[1800 Washington Boulevard, Suite 610](#)
Baltimore, Maryland 21230-1719
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410-537-3314 (O)
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[Website](#) | [Facebook](#) | [Twitter](#)



If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Crooms, Andrea L** <ACrooms@co.pg.md.us>

Date: Tue, Oct 25, 2022 at 11:01 AM

Subject: Food Residuals Diversion Regulations

To: dave.mrgich@maryland.gov <dave.mrgich@maryland.gov>

Cc: Naumann, Marilyn <MENaumann@co.pg.md.us>, Serrona, Kevin Roy B. <KRBSerrona@co.pg.md.us>

Mr. Mrgich,

I realize I missed the October 24 deadline for comments, but my team worked hard to put together comments, so I wanted to share them anyway. The Department supports these regulations, and includes technical commentary below regarding anticipated technical improvements needed to our facility to meet the increased demand for food scrap composting generated by these regulations.

Regulation Title: *Food Residuals - Organics Recycling and Waste Diversion*

Purpose: *To implement House Bill 264/Senate Bill 483 of 2021 entitled Solid Waste Management – Organics Recycling and Waste Diversion – Food Residuals. This law requires certain persons who generate, beginning January 1, 2023, certain quantities of food residuals to separate their food residuals from other solid waste, and divert those food residuals from final disposal in a refuse disposal system through reduction, reuse, and recycling.*

Increasing food waste generation is a growing challenge for Prince George's County as it faces an uptick in its population and as more small and big businesses locate in the County, which translate to increased food consumption. To address, the County has established a 250-acre compost facility that is equipped with Gore technology cover system and is considered as the largest municipal installation on the East Coast. Over the course of its operations, it saw the need to separately collect food scraps from its residents and so it started with a pilot curbside food scraps collection program in 2017 followed by expansions in 2021 and 2022, which have so far covered about 22,000 households. For FY2023, the goal is to add 60,000 residents and in FY2024, all 180,452 households will be covered making it one of the few local governments in the State of Maryland to have a county-wide curbside food scraps collection program. The rationale for these expansions is because of the positive feedback that the program has received from its constituents in terms of its importance and relevance to the climate change issues that Prince George's County is being faced with today.

The proposed new regulations requiring certain persons who generate certain quantities of food waste to separate their food residuals and bring them to compost facilities will significantly benefit the County's composting program in terms of creating a conducive environment for proper food scraps management and maximizing the capacity of the facility. On the average, the Prince George's County Organics Compost Facility (PGCOCF) processes about 19,000 tons of food waste and 44,000 tons of yard trim or a total of 63,000 tons annually. The maximum capacity for food waste is 32,500 tons based on the existing infrastructure. While, the facility has not fully utilized its full capacity, the new residential curbside food scraps collection program and the PGCP food scraps pilot and its subsequent expansion to cover all County public schools, it is expected that the facility will be at or more than its maximum capacity.

There are financial and technical impacts as it relates to the proposed regulations. With a potential surge in client portfolio, the PGCOCF will need to invest about 12 million to 13 million dollars for additional 12 bunkers in order to accept the commercial sector's food waste. Since the commercial sector can very likely help off-set our residential and school costs of operations and infrastructure investment, and because it would be a tremendous benefit to the environment and saving to landfill airspace, it would likely be a prudent investment for the County to fund and provide for an expansion at our composting facility. In addition, it needs to develop a robust online registration and documentation system to optimize the hauler account activation process. To reduce contamination, the facility will have to invest in a depackaging machine to segregate contaminants/unwanted materials from the (preprocessed) food waste stream, which could cost about \$900,000 (including a mobile generator). The mentioned equipment would accelerate all intake operations to retain a clean material base for processing. Further, it will also require the County to conduct public outreach tailored to food residual parameters for acceptance and processing. It may also provide incentives to generators that haul to the facility in the form of reduced tipping fees which may alleviate increased reception of food waste at the Brown Station Road Sanitary Landfill (BSRSL).

In summary, the proposed regulations will benefit Prince George's County in terms of reducing methane emission from landfills, creating more local jobs for its compost industry and creating a healthy and vibrant environment, where composting infrastructures are easily accessible to residents and businesses. Therefore, DOE supports the regulations as they will ensure the optimal and sustained use of the PGCOCF.

Regards,

Andrea Crooms



Andrea L. Crooms

Director | Prince George's County Government

Department of the Environment

1801 McCormick Drive | Suite 500 | Largo, MD 20774

Phone: 301.883.5812 | Cell: 240.315.8436 | Fax: 301.952.5444

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Maryland
Hospital Association

October 24, 2022

David Mrgich
Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Blvd., Suite 610
Baltimore, MD 21230
Submitted to dave.mrgich@maryland.gov

Re: 26.04.13 Food Residuals—Organics Recycling and Waste Diversion

Dear Division Chief Mrgich:

On behalf of the Maryland Hospital Association's (MHA) 60 member hospitals and health systems, we appreciate the opportunity to comment on proposed regulations COMAR 26.04.13 Food Residuals—Organics Recycling and Waste Diversion. MHA supports the goal to divert food residuals from landfill or incineration through reduction and recycling activities, but we are concerned the 90-day period for program preparation and adoption underestimates the implementation difficulties hospitals face. **We urge the agency to adopt a 180-day compliance period to allow hospitals sufficient time to meet the challenges.**

The purpose of the proposed regulations is to implement Chapter 439 and 440, Acts of 2021, entitled Organics Recycling and Waste Division — Food Residuals. The law requires businesses that generate food residuals to separate and divert their food residual from final disposal. Although the statutes were enacted in 2021, the proposed regulations and guidance were only made available in late September, with an expected effective date of Jan. 1, 2023, for larger businesses. Under the circumstances, the proposed 90-day compliance period is insufficient for hospitals to establish contracts with vendors, develop internal procedures and protocols, and procure the necessary collection devices. Food residual diversion, for example, may increase the risk of insect and rodent infestation. Devices and procedures need to be developed and tested to ensure proper pest management, which require time to perfect.

We are also concerned that the requirement to divert post-consumer food residuals may cause contamination and jeopardize implementation. While pre-consumer diversion of food residuals is conducted by trained staff, post-consumer food residual collection—or the collection of food scraps in public spaces by patients and guests—presents unique challenges. Patients and guests, unlike our trained staff, may improperly dispose food residuals despite education materials and bin signage. If patients and visitors deposit improper items into publicly available food residual collection devices, it can result in contamination, which may lead to rejected loads by our organics recycling facility. **We encourage the agency to consider delaying or exempting**

diversion of post-consumer food residuals until there is greater public awareness of the new requirements.

Thank you again for this opportunity to comment. We appreciate the chance to work with the agency to advance policies that improve the wellbeing of Marylanders.

Sincerely,



Brian Frazee
Vice President, Government Affairs

TO: David Mrgich, Maryland Department of the Environment
FROM: Carol Adaire Jones and Linda Breggin, Environmental Law Institute
DATE: October 24, 2022

**Comments re: Proposed new regulations under Code of Maryland Regulations (COMAR) 26.04.13
Food Residuals - Organics Recycling and Waste Diversion (“Food Residuals Diversion Regulations”)**

The Environmental Law Institute (ELI) offers the following comments on the September 23, 2022 proposal for *Food Residuals Diversion Regulations*. ELI is an environmental non-governmental organization that does non-partisan research, publishing, and education to strengthen environmental protection in the US and globally. The comments are based on ELI’s research on food scrap landfill bans and diversion mandates and its development of a model ordinance on mandatory reporting for large food waste generators, as well as its experience working in localities, including Nashville TN and Montgomery County MD. ¹ Carol Adaire Jones serves as Chair, Solid Waste Advisory Committee, Montgomery County, and Co-Lead, Food Waste Reduction, Montgomery County Food Council.

Mandatory reporting requirement for covered generators

1. We commend the inclusion of mandatory reporting requirements for covered generators.

Rationale: As state and local government food scrap diversion mandates/landfill bans have evolved, imposing reporting requirements on large generators has become a best practice. This information is critical to establish accountability for individual establishments, as well as to inform state and county planning for the growth of food scrap processing over time, including collections capacity and facility development.

Process for determining which generators are covered

2. We recommend that the Maryland Department of Environment (MDE) take a more active role in the process of determining which generators are covered, in order to support generators and expedite the process.

Specifically, we recommend that MDE assume responsibility for publishing a preliminary list of **potentially covered “persons”** (facilities), based on an assessment it conducts of Maryland establishments in the food waste generating sectors listed in the definition of *persons covered* (§ .02.B.(10)). In its assessment, MDE would estimate (a) weight of food scraps generated by applying the algorithms that re cited in § .03.C. of the proposed regulations to publicly available data sets (such as NAICS or Hoover D&B) in order to estimate food scraps generated, and (b) proximity to a processing facility, using the mapping program on the MDE website.

A generator would be identified as a potentially covered person if its estimated food residuals exceed the food residuals thresholds and it is located within 30 miles of a processing facility. Each potential covered facility would then be given the opportunity — within a specified time period set by MDE — to provide updated or corrected information on its calculations of food waste and

¹ **Website:** <https://www.eli.org/food-waste-initiative/food-waste-prevention-recovery-and-recycling>.

Key documents: [New England Organics Disposal Bans and Processing Infrastructure](#), BioCycle (September 2017, Part I and November 2017, Part II); [Model Ordinance on Mandatory Reporting for Large Food Waste Generators With Commentaries | Environmental Law Institute \(eli.org\)](#)

whether it is covered under § .02.B.(10) definition of “person”, as well as information about whether the processing facility within 30 miles has capacity and is willing to accept its food scraps. During this time period, the establishment also would be able to apply for an undue hardship waiver. Based on the updating information and waiver requests received, MDE would then publish a final list of covered facilities.

For example, if MDE published a preliminary list by March 1, 2023, it could require information to update the list and waivers by June 1, 2023, and could publish an updated list of covered facilities by October 1, 2023. As specified in § .05, the generators covered in 2023 would be responsible for reporting on or before March 1, 2024 their solid waste and recyclable materials management activities for the prior calendar year.

Rationale: While the proposed regulations clearly define the responsibilities of covered generators, they do not clearly specify the timing by which the State will determine **which generators are covered**. As it currently stands, the full burden of making a determination as to whether they meet the conditions for coverage rests with the generators. They must maintain the records of their determination, and they must provide them within 30 days of a request from MDE.

We believe this process places too much burden on the generator, and is likely to result in a very prolonged period in which covered establishments are identified. Further generators do not have a clear understanding of when MDE may request information from them and may postpone making their determination until that request actually occurs.

The process of identifying covered generators will be greatly expedited if MDE does a preliminary screen of establishments in the State to determine the pool of potentially covered facilities, publishes the list, and independently informs the establishments. These establishments then will be on notice that they have a certain time period to provide their own determination, as set by MDE.

The process can be informed by NY State’s experience implementing its [Food Donation and Food Scraps Recycling law](#), which mandates that the State prepare a LIST OF DESIGNATED FOOD SCRAP GENERATORS each year. Mid-year of each year, the New York State Department of Environmental Conservation publishes the list of designated generators for the following year, along with the methodology used in the determinations. The listed generators have three months to seek waivers.²

We recognize that the Maryland law is different, in that it places the full responsibility on the generator to document whether it is covered or not. We recommend that MDE facilitate the process for generators by assuming responsibility for identifying a list of “potentially covered generators”, ones that -- based on NAICS code and size factors -- most likely meet the food residual threshold, and publish that information. Most likely, MDE would do such an analysis anyway, in order to target its requests for information. The difference here is that they would make public the list. The generators would then be on notice that they need to evaluate whether the conditions for coverage do indeed apply:

- Do the generic algorithm calculations accurately represent the quantity of food scraps they generate? If not, they can apply the alternative methods identified in the proposed

² See the website of DEC NY State for more information about their law, the List of Designated Food Scrap Generators, the methodology for creating the list, and more: <https://www.dec.ny.gov/chemical/114499.html>

regulations for assessing the quantity of food scraps they generate, including direct measurement.

- Do they meet the definition of “person” as set out in the regulations?
- Is there a facility within 30 miles that has capacity and is willing to enter into a contract to process their food residuals?

It is important to establish that omission from the list – for example, for new entrants in the sectors not captured by the public data - does not mean that the establishments are not covered, if they meet all the conditions.

3. **We commend the effective use of a range of alternative approaches to establishing food scrap quantities generated, which provide establishments to choose among options, which vary in cost and accuracy, the one that best suits their needs.**

Rationale: For establishments with sufficient resources and motivation, directly measuring the weight or volume of their food waste will produce more accurate measurements. However, establishments with limited resources have the option to use less costly methods.

Expanding guidance materials and offering free technical assistance

Our [research on outcomes from the original four New England food scrap bans found that](#) that complementary policies, including outreach, technical assistance and financial assistance, are critical to promoting understanding and compliance among food scrap generators.

The [ELI/NRDC model ordinance on mandatory reporting for large food waste generators](#) (p. 5) recommends that educational materials address:

- benefits of food waste reduction (including prevention, recovery and recycling);
- benefits of measuring food waste; and
- resources to facilitate measures to prevent food from going to waste, to rescue surplus food, and to recycle food scraps.

The model ordinance recommends that compliance assistance shall include;

- a platform for receiving and responding to compliance questions from covered entities;
- resources on methods or quantifying food waste generation
- other materials determined to be useful in aiding timely and effective compliance

Further it recommends that all educational and compliance assistance materials be translated for businesses in communities with a substantial number of non-English speaking business owners.

4. **We commend the provision on the MDE website of guidance materials to assist generators in complying with the law, and recommend MDE expand the offerings and offer translation into other languages in wide usage in Maryland.**

Food scrap recovery and recycling organizations that support compliance: The [interactive map of organics recyclers](#) is a terrific resource! Also the lists with links to hauling companies and to food recovery organizations are useful. Maintaining the utility of all of these materials over time will require regular updating.

Food waste hierarchy: We do note however that the website could be more consistent in highlighting prevention as the top ranked strategy in the food waste hierarchy, and showcasing resources to help commercial generators accomplish that. This is essential (as MDE is fully aware): prevention reduces GHG emissions and wasted resources along the food supply chain by a factor of 8-10x per ton relative to composting. Yet, see for example, on the [main webpage for the regulations](#), there is a section near the top, *Why is it important to reduce the amount of wasted food?*, which has one sentence on prevention, one sentence on food recovery, and the rest (including the graphic) focuses on the benefits of composting! We recommend providing a more balanced discussion of benefits, and adding links to guides for generators on how to prevent food waste, and a list of companies that provide consulting services to support prevention.³

Resources targeting specific sectors: It would be valuable to add guidance documents targeted to different sectors of generators on strategies for prevention, recovery and recycling, in addition to the one for [schools](#). National organizations such as EPA, NRDC, and WWF, have developed guidance materials. Further the solid waste programs of various Maryland counties are also developing resources to which the MDE website could link. (Also see comment 6 below.) For example, Montgomery County MD has developed a series of brochures on reducing food waste targeting specific sectors (cafes, restaurants, grocery stores, hotels, schools).

5. **We recommend that the State allocate resources to establish a free technical assistance program for food residual generators, providing direct consultations by phone or in person with generators at no cost to the generators. Technical assistance should also be available for haulers and food scrap processors.**

Such programs have been very successful in other states in promoting acceptance and compliance with diversion mandates or landfill/disposal bans.⁴ Though lack of processing facility capacity is well understood as a constraint, several states with bans/mandates (including Vermont, New York and Massachusetts) have cited the lack of haulers as a greater impediment to recycling food scraps than the lack of facilities.

6. **We recommend creating a state-wide Food Residuals Diversion Mandate Working Group with representatives from each of the counties to cross-fertilize development of implementation strategies and coordinate actions to support implementation.**

Solid waste management is conducted at the municipality or county level throughout the State of Maryland. County agencies can serve as a terrific resource for reaching generators located in their jurisdictions. At the same time, coordinating the development of outreach and technical assistance resources across the counties within Maryland can result in substantial cost-savings.

³ There is a link to the ReFED website from prevention in the discussion linked to the hierarchy graphic – but that is a huge resource covering lots of topics.

⁴ Link to NY State technical assistance: <https://www.centerforecototechnology.org/nywasteassistance/>



Divert, Inc.
23 Bradford Street, Third Floor
Concord, MA 01742

October 24, 2022

VIA ELECTRONIC FILING

David Mrgich, Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 610
Baltimore, Maryland 21230-1719

Re: Food Residuals Diversion Regulations

Divert is an impact technology company with a mission to protect the value of food. We are founded on the purpose of creating innovative and efficient solutions toward eliminating food waste. We are passionate about proving that environmental sustainability can be as good for business and consumers as it is for the planet. To that end, Divert is focused on decarbonizing unconsumed food through source reduction, food rescue, and recycling.

We work toward our purpose every day, and have achieved successes such as:

- Using our technology platform to optimize the reduction of food waste generation for the retail food industry, which is the largest generator of food waste in the U.S.
- Cultivating partnerships with retailers and food banks to increase donations for unsold food that meets food donation guidelines but would otherwise be bound for the landfill.
- Establishing ourselves as the largest anaerobic digestion processor of food waste in the U.S., converting food waste to renewable energy via proprietary liquefaction and anaerobic digestion.

Divert is committed to helping Maryland reduce the amount of methane and other short-lived climate pollutants through the rescue, recovery, and recycling of food waste. As Maryland sets forth these regulations to achieve its food waste reduction goals, Divert is:

- Partnering with Feeding America, local food banks, and a private retailer to service over 900 stores to identify and facilitate the rescue of unsold food to provide to local communities and families in need.
- Providing Maryland food retailers access to Artificial Intelligence (AI) and Internet of Things (IoT) technology to maximize source reduction and improve the proper handling and freshness of perishable goods.
- Expanding food waste processing and anaerobic digestion capabilities with a new food waste-to-energy facility located in York, Pennsylvania, right across the Maryland state line that makes carbon negative renewable natural gas (RNG).



Divert, Inc.
23 Bradford Street, Third Floor
Concord, MA 01742

As the Maryland Department of Environment and the State of Maryland embarks on this new divert food residuals from final disposal in a refuse disposal system, Divert would like to offer our support and guidance where needed. We respectfully submit the following comments and suggestions in response to the Notice of Proposed Action that was published on September 23, 2022 in Volume 49, Issue 20 of the Maryland Register.

Adjust language to ensure that depackaging is not required by persons subject to the food residuals diversion requirements unless specified in their individual contract with the organics recycling facility that is accepting the person’s food residuals.

As new organic recycling facilities come online in the state of Maryland to help process the waste streams that will develop with the implementation of HB 264, it is likely that each facility will have different capabilities of processing these residuals. Currently, the proposed regulations state that, “A person subject to the food residuals diversion requirements under §B of this regulation shall: (1) Separate food residuals from other solid wastes and non-compostable materials, including separating food residuals from any film or containers.”¹ As the current regulation is written, persons appear to be required to separate food residuals from solid waste and non-combustible waste streams and remove residuals from any film or containers, effectively depackaging the waste. Divert is recommending that this language be clarified to ensure that depackaging is only required if needed by the facility accepting that person’s residuals, as such a requirement would place an unnecessary and expensive burden on generators who may be sending their materials to a facility that is capable of depackaging the material that is being processed.

Encourage entities that are subject to the food residuals law to arrange to recover the maximum amount of their edible food that would otherwise go to landfills.

According to the Maryland Food Bank, 1 in 3 Marylanders is food insecure.² As the State works to divert organic material from landfills, this material must be put towards its best and highest use by prioritizing food donation efforts. Currently, Divert is working with retailers across the country to expand donation efforts for edible food in communities where major retailers operate. With our program, retailers collect unsold, shelf stable products to be sent to our recovery facility where our technologies gather UPC data on every product and automatically sorts the products into categories for beneficial use. The unsold food is then sent to local food recovery organizations for community distribution. Divert currently works with over 900 retail locations in California and 3 Feeding America Food Banks and has donated over 9 million pounds of food. This example is one of many different types of donation programs that exist and could be implemented by Maryland organic materials generators. By encouraging these generators and processors of organic material to donate the maximum amount of food that they can, Maryland will effectively save landfill space and lower methane emissions that are generated by organic waste in landfills. Divert is recommending that, to the extent possible, the Department of Environment expand upon the recommended regulations by incorporating language that actively

¹ Maryland Department of Environment, *Notice of Proposed Action: Food Residuals — Organics Recycling and Waste*, Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals - Organics Recycling and Waste Diversion

² Maryland Food Bank, *Food Insecurity in Maryland*, 5



Divert, Inc.
23 Bradford Street, Third Floor
Concord, MA 01742

encourages donation through partnership with food pantries, food banks and food rescue organizations. By doing so, Maryland will be poised to meet their goals, actively conserve the maximum amount of energy and resources in the process, and will help to reduce food insecurity within the State.

Ensure that community and industry stakeholders are engaged in the development of the methodology used to calculate the amount of food residuals generated.

Divert is supportive of the Department of Environment's efforts to streamline calculations of food residuals to determine if generation thresholds are being met. At Divert, we work with our customers to provide insight into their food product sales and donation efforts. We help retailers optimize their food product sales by using new technologies and customized processes to obtain high resolution and actionable data from the food products that leave stores unsold, creating an enhanced food production system. Our role is to profile what goes unsold at each retail outlet and, through in-depth store management experience and data analytics, help customers identify sources and causes of unsold food and eliminate it. Eliminating the source of unsold products is complex and can come from a host of root causes and we believe it is important to document where food waste can be eliminated in each stage of the food system. As these regulatory requirements become more widespread with new facilities coming online, it is important to understand how different stakeholders may calculate their output early on. By creating an opportunity for conversation and industry input through comment periods, webinars, or roundtables, the Department of Environment has the opportunity to create a sound and scientifically based calculation to ensure that the data is accurately outlining diversion goals.

Conclusion

By considering the above recommendations, Department of Environment staff has the opportunity to inspire further collaboration in the effort to reduce food waste in the state of Maryland. Divert is encouraged by the efforts of the Department and hopes to be a reliable partner in the implementation of these regulations.

We would welcome an opportunity to discuss these suggestions further and additionally talk through our operations to provide further context to our suggestions. If you have any questions, please do not hesitate to contact me at cthomas@divertinc.com or at 202-421-1107. We are eager to collaborate further on this critical effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris M. Thomas". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Chris Thomas
Vice President of Public Affairs
Divert Inc.

Fwd: Food Residuals Diversion Regulations

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Oct 18, 2022 at 12:45 PM

To: Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>, Erica Chapman -MDE- <erica.chapman@maryland.gov>

264 comment

dave

David Mrgich
Chief, Waste Diversion Division
Land and Materials Administration
Maryland Department of the Environment
[1800 Washington Boulevard, Suite 610](#)
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If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Dave Mariano** <Dave.Mariano@bgreenco.com>
Date: Tue, Oct 18, 2022 at 12:43 PM
Subject: Food Residuals Diversion Regulations
To: dave.mrgich@maryland.gov <dave.mrgich@maryland.gov>
Cc: Dave Mariano <Dave.Mariano@bgreenco.com>

Good afternoon - I had a question/comment regarding the approved methods for capturing tonnage, as we independently own and operate retail supermarkets under the Green Valley Marketplace and Food Depot banners in Maryland.

We currently have a system that is managed by UNFI (our primary supplier) that utilizes handhelds to scan all product loss; this includes "out of date", "spoiled", "damaged", etc., so basically anything unsaleable that leaves our facilities. In addition we have an existing provider who handles our "fats, oils, and grease" remediation, as well as each store having a Partner Food Pantry that takes donations, which are also captured on the devices. This handheld system allows us to measure loss down to the UPC level, so we can make better decisions around production, purchasing, etc.

We are seeking your approval, and are hoping to leverage this existing system to complete our "waste assessments", rather than the three options listed in the attached document. As an Industry overall, Grocers are continuously looking for ways to reduce shrink, and many are using similar systems to track product loss.

Early indications, based on our know loss, are that we would be well under the 2-ton per week qualifier, but we would like to be certain that we are compliant with the regulation.

Please let me know if you have any questions, or have additional information that you may feel is helpful.

Thank you,

Dave Mariano
Vice President of Operations
B. Green & Company, Inc.
[300 S. Monroe Street](#)
[Baltimore, MD. 21230-1739](#)
410-303-3397

Re: Public Comment House Bill 264/Senate Bill 483

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Fri, Oct 28, 2022 at 10:17 AM

To: "Egan, Elizabeth D." <Elizabeth.Egan@jhuapl.edu>

Cc: Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>, Erica Chapman -MDE- <erica.chapman@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>

Elizabeth,

Thanks for your email. Under the scenario outlined in your email, the material generated would need to be added together and counted as a single entity.

I've ccd the people working on the implementation of the law to see if the compliance guidance we put out on the law needs to be updated to reflect your scenario.

Thank you

David Mrgich
Chief, Waste Diversion Division
Land and Materials Administration
Maryland Department of the Environment
[1800 Washington Boulevard, Suite 610](#)
Baltimore, Maryland 21230-1719
dave.mrgich@maryland.gov
410-537-3314 (O)
410-537-3321 (F)
[Website](#) | [Facebook](#) | [Twitter](#)



If I could be half the person my dog is, I'd be twice the human I am.

On Thu, Oct 27, 2022 at 11:17 AM Egan, Elizabeth D. <Elizabeth.Egan@jhuapl.edu> wrote:

Hello Dave,

Apologies for my late comment I understand if this cannot be included in the public record. I spoke with Shannon McDonald and she asked me to submit this scenario and question:

I work at a corporate facility with roughly 56 odd buildings and 4 cafeterias. Some of these buildings are separated by a public road therefore the buildings where the cafeterias are located have unique street addresses. These cafeterias all serve the same company and the current waste contract for the facility covers all of these buildings under one contract. I am wondering if we need to add up all of the biological waste for these cafeterias as the total amount generated in one week OR if they can be added separately because they each have their own unique address?

Thank you,

Liz

[Click here](#) to complete a three question customer experience survey.

David Mrgich, Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 610
Baltimore, Maryland 21230-1719

October 24, 2022

RE: COMAR 26.04.13 Food Residuals - Organics Recycling and Waste Reduction

Dear Mr. Mrgich,

Thank you for the opportunity to comment on the implementation regulations for HB264/SB843 of 2021. In July, we, along with twenty other groups, submitted comments that asked the Maryland Department of the Environment to:

- Change the definition of “food residuals” to exclude non-compostable packaging,
- Clarify that food waste generators may use any combination of methods,
- Clarify how average tonnage is measured,
- Not use the EPA Food Recovery Hierarchy, but instead use the general principle that source reduction, feeding people and animals, and recycling through both composting and anaerobic digestion, are preferred (in that order) to disposal,
- Provide guidelines or estimation tools for food waste tonnage,
- Clarify that “willingness to enter into a contract” can be determined through any correspondence.

We appreciate how the State has responded to these comments and how they are reflected in the final regulations. Thank you and we appreciate the hard work that MDE put into creating these regulations and the guidance documents.

Sincerely,

Emily Ranson
Maryland Director
Clean Water Action & Clean Water Fund
eranson@cleanwater.org
410-921-9229

Proposed Food Residuals Source Separating Regulations Comments by Jeffrey Neal 22-10-24
Submitted by Jeffrey Neal at jeffrey@loopclosing.com and admin@loopclosing.com

Source material:

Title 26 DEPARTMENT OF THE ENVIRONMENT Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, [AND] SOLID WASTE, AND RECYCLABLE MATERIALS
[26.04.13 Food Residuals—Organics Recycling and Waste Diversion](#)

[Proposed Guidelines](#)

Cover letter overview to comments:

The proposed regulations cover well a lot of important issues and in a manner for us to make a product of value for MD, vice inadvertently making unintended issues or skirting the intent of the law. Thanks for your hard work on this.

I see that the regs are "including separating food residuals from any film or containers..." I want to stress how important this is require for the recycling market to be feasible.

I see that the regs require that an end product for the marketplace be made by whatever system is employed. I question that

Thank you!
Jeffrey Neal

Comment 1:

Current language:

(b) "Food residuals" does not include: (i) Animal mortalities; (ii) Compostable products; or (iii) Wastewater that contains material derived from the processing or discarding of food.

Change 1:

Change (iii) to prevent using equipment to send large amounts of food residuals to the Water Resource Recovery Facilities defeating the purpose of the regulation. Such equipment could include grinders, pulpers, digesters, garbage disposals. They do not create an end product of value that can be used, rather a product that needs further processing.

Change 2:

Add "(iv) Food packaging.

This should not be considered a food residual and needs to be source separated out so that the food residuals can be properly processed to make an end product that will have a market and provide the desired benefits. We don't want recreate the market problems that contaminated recycling feedstock created resulting in China to refuse to continue to accept the recyclables and the recycling market collapsing. We don't want the composting market to have a similar collapse from contamination.

Comment 2:

Q&A currently as written:

26. Is the use of food residual processing technologies such as grinders, pulpers, dehydrators, and aerobic digesters considered recycling? Under the Maryland Recycling Act, "recycling" is defined as any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products (Environment Article, §9-1701, Annotated Code of Maryland). As long as the material that goes through a grinder, pulper, dehydrator, or aerobic digester is returned to the marketplace in the form of raw materials or products it is considered recycling. For example, pulpers mechanically process food residuals into a semi-dry pulp that can be transported to a composting facility.

Change request:

It would appear in the example above that the pulper making the pulp would not meet the intent of a product ready for the marketplace, but having a pulp that is composted into a finished compost would meet that requirement as the compost is an end product of value while the pulp was a product that one pays to have further processed into a product of value, providing the intended benefits. Request the answer wording be changed to match this criteria.

Thank you for your consideration.

Please contact me directly with any questions or to discuss further any topics.

Fwd: Public Comment on Proposed Food Residuals Diversions Regulations

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Sep 27, 2022 at 6:59 AM

To: Erica Chapman -MDE- <erica.chapman@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>, Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>

FYI

dave

David Mrgich
Chief, Waste Diversion Division
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Maryland Department of the Environment
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If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Dallaire, Jennifer P. (she/her/hers)** <Jennifer.Dallaire@va.gov>

Date: Mon, Sep 26, 2022 at 10:31 AM

Subject: Public Comment on Proposed Food Residuals Diversions Regulations

To: dave.mrgich@maryland.gov <dave.mrgich@maryland.gov>

Cc: Maistros, Angela <Angela.Maistros@va.gov>, Maichle, Richard (VAMHCS) <Richard.Maichle2@va.gov>

Good Morning Mr. Mrgich,

I was reviewing the proposed "Food Residuals Diversions Regulations" definition of a "person" and noticed State and Local government is considered in this definition but not Federal government. Will federal government be exempt? If they are (or even if they are not) would you please clarify that in the final rule? [References: [Laws - Statute Text \(maryland.gov\)](#) and [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals \(maryland.gov\)](#)]

Thank you,

Jen Dallaire

Green Environmental Management System (GEMS) Manager | Safety



VA Maryland Health Care System|410-642-2411 x25227 (O) | 443-206-9394 (M)| jennifer.dallaire@va.gov

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October 24, 2022

David Mrgich, Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 610
Baltimore, Maryland 21230-1719
via email: dave.mrgich@maryland.gov

Re: Food Residuals Diversion Regulations

Dear Mr. Mrgich:

The Restaurant Association of Maryland is a statewide trade association representing the food service and hospitality industry. Our members include full-service restaurants, limited-service restaurants, quick-service (a.k.a. fast food), bars and taverns, caterers, and other food service businesses. We appreciate the opportunity to provide the following comments/concerns about the proposed Food Residuals Diversion Regulations and related Compliance Guide.

1. According to the proposed regulations, the Department may request documentation of the actual or estimated weight of food residuals generated each week by a person subject to the food residuals diversion mandate and located within a 30-mile radius of an organics recycling facility that has the capacity (and is willing) to accept the material.

We are concerned that weighing and maintaining documentation of food residuals generated each week would be unreasonable and overly burdensome on those who generate significantly less than the established thresholds. Instead, the regulations and related guidance should allow for an alternative annual baseline measurement period of 30 days (and during the operating season for seasonal businesses) to determine the weekly average weight of food residuals generated over this period. If the average weekly weight over this period is 1 ton or less in 2023 and ½ ton or less in 2024 and subsequent years, such entities should not be required to maintain documentation for weekly weighing of food residuals during that year.

2. The Compliance Guide for Proposed Regulations seems to broadly interpret “*cafeteria*” to include food establishments in locations with common dining tables/seating areas that operate within properties such as malls/shopping centers, rest stops, airports/transportation hubs, food halls, etc. “*Cafeteria*” is not defined in the proposed regulations nor in the law. A business cafeteria, school cafeteria or institutional cafeteria is typically operated by a single food service entity. Merriam-Webster defines *cafeteria* as “*a restaurant in which the customers serve themselves or are served at a counter and take the food to tables to eat.*” The Compliance Guide (pages 12-13, Q&A #14-#15 and Table 1) implies that food establishments operating in such locations could be considered to be part of cafeterias subject to the diversion mandate if the dining tables/seating areas are controlled by the property owner/operator (who may be separate from the food establishment); and regardless of whether the food establishments are independently owned/operated.

(more)

Do such restaurants/food establishments utilizing common dining tables/seating areas qualify for the restaurant exemption? And regarding Q&A #14, what factors would the Department use in its “discretion to reevaluate an entity’s determination?”

3. According to the regulations, a person who owns or operates multiple facilities or buildings at a single location that has a common system or contract for waste management shall use the aggregate weight of food residuals generated each week by all the facilities. The Compliance Guide also mentions this in Q&A #15 (page 13). The law does not appear to authorize aggregating in this manner for multiple, independently owned businesses operating at a single location.

The law authorizes the Department to establish “guidelines for estimating the weight of the food residuals generated by a business.” Per our reading of the law, the food residuals diversion mandate applies to the person who generates the food residuals. We are concerned that aggregating food residuals generated by all food establishments operating within a larger property could subject many businesses to the diversion mandate despite that their individual business operation may be below the weekly weight criteria.

What is the rationale for the Department’s interpretation otherwise?

4. The Compliance Guide does not mention how the food residual diversion mandate would apply to caterers and various related circumstances. The weekly volume of food residuals generated by caterers can vary significantly, depending on the number and size of events. Caterers who may meet the established criteria for the diversion mandate are also concerned about the potential challenges associated with post-consumer food residuals at parties and events. Such separation/collection would require additional staff resources to ensure compliance among guests.

How would the food residuals diversion mandate and related weight calculation/documentation apply to the various operating circumstances of caterers? Also, for events held at other private venues (many of which have onsite receptacles for event-related refuse), who would be responsible for complying with the law – the caterer or the venue? And how would the weekly food residuals weight criteria apply to individual events held at private venues?

5. Regarding the Waiver Requests section of the Compliance Guide, nearly all the disallowed expenses (for demonstrating that the cost of diverting food residuals is more than 10 percent more expensive than refuse disposal) are directly related to complying with the diversion mandate.

Why are these unmistakably related expenses prohibited?

Thank you for your consideration of these comments and concerns.

Sincerely,



Melvin R. Thompson
Senior Vice President
Government Affairs and Public Policy

Fwd: Food Residuals Diversion Regulations

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Oct 25, 2022 at 6:09 AM

To: Erica Chapman -MDE- <erica.chapman@maryland.gov>, Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>

FYI

dave

David Mrgich
Chief, Waste Diversion Division
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If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Rick Condon** <rcondon@mdfoodbank.org>
Date: Mon, Oct 24, 2022 at 12:46 PM
Subject: Food Residuals Diversion Regulations
To: dave.mrgich@maryland.gov <dave.mrgich@maryland.gov>

Dave,

Hope this finds you well.

In the midst of conversations with Shannon McDonald and Timothy Kerr around the upcoming regulations and several concerns arise for us as a not for profit food bank organization.

I would like to get them before you in no specific order:

The cost that would be inherent in separating organic from non-organic waste could be prohibitive. As we look at the regulations in section D 2.1 there is mention of potential waiver if cost to move to a compost site or digester is greater than 10%. It is our assumption that this extra labor would be included in this extra cost. Thus allowing support for a waiver.

The potential of businesses looking to food banks and pantries could create additional waste for pantries and food banks and may actually create an unintended consequence of additional waste and associated cost as these non-profit organizations may be ill equipped to store and distribute the increased food being presented.

Any prepared meals that would be provided from businesses to pantries or food banks must have ingredient statements listed as well as any/all allergens on any food donated, along with the required expiration dates.

By nature, businesses will make every attempt to sell product by the listed use/consume by date after which point they may seek donation as a solution to reduce their waste numbers. This has potential of putting food at risk of spoilage into the network of pantries and food banks. This puts further strain on these organization's resources to manage the waste of other businesses rather than supporting the food insecure inside the State.

Thank you for adding these into the topics of consideration over the next few months.

Regards,

Rick

--

Rick Condon
Senior Vice President, Operations
O: 443.297.5196 | M: 631.433.6005
www.mdfoodbank.org



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Fwd: Public Comment Submission- Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals - Organics Recycling and Waste Diversion implementation of 2021's HB264/SB483

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Sep 27, 2022 at 6:57 AM

To: Erica Chapman -MDE- <erica.chapman@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>, Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>

FYI

dave

David Mrgich
Chief, Waste Diversion Division
Land and Materials Administration
Maryland Department of the Environment
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If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Ryan K** <kmetzrm@gmail.com>

Date: Mon, Sep 26, 2022 at 10:14 AM

Subject: re: Public Comment Submission- Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals - Organics Recycling and Waste Diversion implementation of 2021's HB264/SB483

To: <dave.mrgich@maryland.gov>

Dear Mr. Mrgich et al.,

Thank you for the opportunity to comment on the *Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals - Organics Recycling and Waste Diversion implementation of 2021's HB264/SB483*. As a sustainability and climate change professional residing and working in Maryland, I'd like to take a moment to provide some commentary on this topic.

I would like to comment on the following:

- 1) .02 B (10) Person : The term person should be revised to entity. Person is confusing and implies a singular individual human rather than facility, business, cafeteria, etc.
- 2) .02 B (10) : The overall definition of "Person" should be expanded to specifically include all institutions of higher education and all institutions with meal service offered to institutionalized individuals. As it is written right now, colleges and universities do not need to provide the on-campus residents with accessible composting options. Subjecting the aggregate of all campuses to this legislation is an opportunity to enhance the enacted Climate Solutions Now Act by requiring these facilities to dispose of organic waste in such a manner as to reduce their emissions.
- 3) Exempting entities from this legislation creates a *de facto* condition of pollution since all other "Refuse disposal systems" generate emissions; including but not limited to: methane, carbon dioxide, sulfur oxides, nitrogen oxides, etc. Additionally, many refuse disposal systems are located in areas within close proximity to vulnerable and sensitive populations. It is unjust and inequitable to continue to harm these communities when alternative solutions exist.

In summary, the legislation is missing several opportunities to significantly improve Maryland's Environment by reducing emissions from traditional refuse disposal systems. The legislation does not require state institutions as a whole, specifically the University System of Maryland and Department of Corrections, to be required to divert organic waste. Additionally, any organic waste not sent to a composting facility creates a condition of pollution that harms some of the state's most vulnerable residents. I'd urge the DEP to revise the definitions, include USM and DOC, and think about vulnerable communities.

Respectfully,

Ryan Kmetz MS, ENV SP

Sincerely,
[Ryan Kmetz](#)

kmetzrm@gmail.com

ryankmetz.com
[linkedin.com/in/ryankmetz](https://www.linkedin.com/in/ryankmetz)

[Add my contact details or schedule a meeting](#)

Fwd: Food Residuals Diversion Regulations - Public Comment

1 message

Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Tue, Oct 25, 2022 at 6:21 AM

To: Erica Chapman -MDE- <erica.chapman@maryland.gov>, Shannon McDonald -MDE- <Shannon.McDonald@maryland.gov>, Timothy Kerr -MDE- <timothy.kerr2@maryland.gov>

FYI

dave

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If I could be half the person my dog is, I'd be twice the human I am.

----- Forwarded message -----

From: **Stephanie Lansing** <slansing@umd.edu>

Date: Mon, Oct 24, 2022 at 4:17 PM

Subject: Food Residuals Diversion Regulations - Public Comment

To: Dave Mrgich -MDE- <dave.mrgich@maryland.gov>

Cc: Shannon McDonald -MDE- <shannon.mcdonald@maryland.gov>, Timothy Kerr -MDE- <Timothy.Kerr2@maryland.gov>

My Comment is below:

The law states the following: “For a person subject to the food residuals diversion mandate, establish methods to be used by the person in determining the weight of food residuals generated, a schedule under which the person must begin diverting food residuals, and a requirement for the person to provide MDE with certain documentation demonstrating their compliance with the food residuals diversion mandate.”

And: “05 Reporting. On or before March 1, 2024, and each March 1 thereafter, a person subject to the food residuals diversion requirements under Regulation .03 of this chapter shall submit a report.”

I think the order of this is backwards. Food manufacturers and processors should report the residual weight that they found and report the method for determining this weight - regardless if they fall under the diversion requirements. Then, MDE will have a record of the facility, and MDE can determine if they are subject to the food residual mandate. Without documentation of those generating residuals (and documenting the amount they produce), MDE (or the generator) will not know if they are in compliance if a new composter/digestion comes into operation (for example) or a farmer/food bank that can take food waste becomes aware of the residuals. How will they be matched if MDE has no record of residual generators? Right now, a generator can look at a map and see they are not within 30 miles of a facility and not complete a waste audit or report anything at all, since they have to be within 30 miles to be “a person subject to the diversion requirement.” But the map can/will change over time, and MDE cannot expect generators to continually look for updates to the map to see if there is a facility within 30 miles, which would then require them to do the waste audit.

Additionally, how will new potential operations know where is the good place to locate a new facility without a record of those that are generating waste but do not have a site to accept it within 30 miles. As written, I do not think it fulfills the spirit of the law to grow residual diversion and encourage more composting, digestion, farming, and food bank facilities to take these residuals, since there is a mapping or documentation of those generating waste. The law is now based on a map that will likely evolve over time and input is now based on word of mouth for diversion receivers to know they should report availability (especially digester, farmers and food bank operators, where MDE does not control permits).

The law should mandate that all food manufacturers and processors need to report the weight that they found and the method for determining this weight (regardless if they are over or below the 2 tons per week) – under the Reporting Section. Then, those that are determined to be above 2 tons per week should be placed on a map (anonymously) that is public, so potential collectors can be aware of the

food residual opportunities. Right now, the map is one-sided with only the acceptors mapped, but that will not help grow the food waste diversion industry nor will generators be aware of their non-compliance when new diversion operators add themselves to the map, as there is no record of who generates more than 2 tons of waste per week if they are currently outside the 30 mile zone (currently, a generator can look at the map, see no generator is nearby and not engage in the process). If MDE had a record of the facility, then they could notify those within 30 miles (based on their generator mapping – which is missing) that a new facility is now open and they are now “a person subject to the diversion requirement.”

Sincerely,
Stephanie Lansing

--

Stephanie Lansing, Ph.D.
Professor - Director of the Bioenergy and Bioprocessing Technology Laboratory
Associate Chair, Department of Environmental Science & Technology
University of Maryland, College Park
President: American Ecological Engineering Society: www.ecoeng.org/
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<https://agnr.umd.edu/about/directory/stephanie-lansing>

Pronouns: She/Her/Hers

[Click here](#) to complete a three question customer experience survey.



October 24, 2022

David Mrgich, Waste Diversion Division Chief
Land and Materials Administration
Maryland Department of the Environment
1800 Washington Boulevard, Suite 610
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dave.mrgich@maryland.gov
410-537-3314 (Office)
410-537-3321 (Fax)

Re: Comments in Response to Food Residuals Diversion Regulations

Dear David Mrgich,

On behalf of the Prince George's County Food Equity Council (FEC), we are submitting comments in response to the Maryland Department of the Environment's (DOE) proposed action to establish new regulations under Code of Maryland Regulations (COMAR) 26.04.13 Food Residuals - Organics Recycling and Waste Diversion. We applaud DOE's leadership in establishing these regulations. With some minor amendments, we strongly support the ultimate goal of the proposed action: to establish regulatory conditions for persons required to divert food residuals from final disposal in a refuse disposal system.

The FEC is a local independent food policy council for Prince George's County, Maryland. Since 2013, our council has been a voice for county residents at the policymaking table. We develop and support policies and initiatives that create systemic change to the local food system while promoting health, environmental sustainability, economic opportunity, food security, and well-being, especially among communities that the current food system has negatively impacted.

In 2021, we launched the county's first food recovery platform to reduce food waste and food insecurity. Prince George's County Food Rescue uses technology powered by Food Rescue US, a national non-profit organization and leader in food rescue operations. Volunteer food rescuers directly transfer excess food from businesses to local social service agencies that feed food-insecure residents. Prince George's County Food Rescue was launched due to skyrocketing food insecurity rates during the pandemic and increased food and infrastructure needs among food assistance providers. While the program has made tremendous progress, donations have not kept up with the soaring demand for donated food items.



This proposed action has significant potential to redirect food residuals to food assistance providers throughout our county and across the state that have continued to see increased numbers of clients seeking food assistance services. The feedback below would support food recovery efforts in the county and across the state and increase the diversion of edible food residuals:

- *03 Food Residuals Diversion Requirement; B. Food Residuals Diversion Mandate:*
 - For item (1) (b) (i-ii): The language should specify organic recycling facilities that can accept all or some of the person's food residuals. If possible, persons under the law should be able to divert a portion of their food residuals to facilities that cannot accept the full amount.
- *03 Food Residuals Diversion Requirement; D. Methods of Diversion. A person subject to the food residuals diversion requirements under §B of this regulation shall:*
 - For item (2): The language should note the order of priority or ranking for ways that persons should divert food from final disposal, according to the Environmental Protection Agency's Food Recovery Hierarchy. The current order (a-c) is the correct diversion order; however, this is not noted in the current language.
- *03 Food Residuals Diversion Requirement; E. Documentation:*
 - For item (1) (a-c): Documentation should be required for all correspondence between the person and an organics recycling facility, food rescue entity, or farm. Currently, the law only specifies a documented correspondence between the person and an organics recycling facility.
 - For item (1) (c): The language reads that if an organics recycling facility is unable or unwilling to accept *all* food residuals, diversion is not required. The language should specify "all or a portion of the person's food residuals."

The above changes will clarify the language of the proposed action while simultaneously helping secure much-needed food donations for non-profit food assistance providers.

While not all food recovery organizations can handle such large food donations, MDE should work with food recovery organizations to help persons under the law donate edible food to willing food recovery organizations across the state, including Prince George's County Food Rescue, Howard County Food Rescue, Anne Arundel Food Rescue, Celestial Manna, Food Rescue Baltimore, 4MyCiTy, Community Food Rescue, and any other Maryland-based food recovery programs. We would be happy to help convene the above-mentioned food recovery programs to collaborate, including working with MDE to connect persons under the law with local food recovery organizations.



Thank you for the opportunity to submit comments on the Food Residuals Diversion Regulations. Please do not hesitate to contact the FEC to provide further information.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Sydney Daigle'. The signature is fluid and cursive, written over the printed name.

Sydney Daigle, Director
Prince George's County Food Equity Council

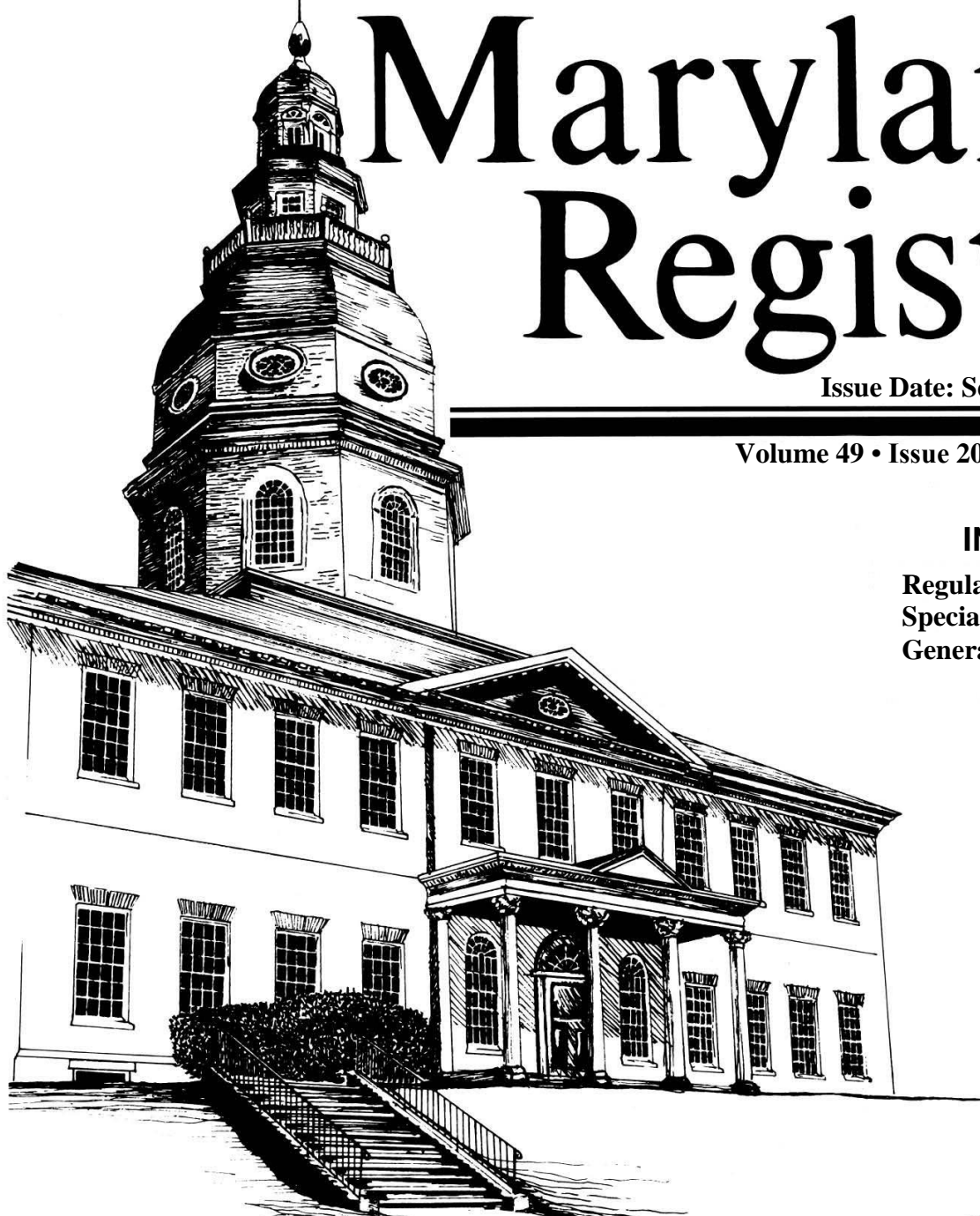
Appendix B

**Notice of Proposed Action published
in the *Maryland Register***

Maryland Register

Issue Date: September 23, 2022

Volume 49 • Issue 20 • Pages 903—932



IN THIS ISSUE

Regulations
Special Documents
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before September 2, 2022, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of September 2, 2022.

Gail S. Klakring
Administrator, Division of State Documents
Office of the Secretary of State



(2) *Limit on Total Outstanding Tax Debt.* To ensure that homeowners are enrolled in the Program who reside in each jurisdiction in a given fiscal year, the Ombudsman may set a maximum amount of total outstanding tax debt that the Department will incur on behalf of any one dwelling.

(3) *Affordability Requirement.* The total outstanding tax debt paid by the Department on behalf of an enrollee under Tax-Property Article, §14-887, Annotated Code of Maryland, may not exceed an amount that may reasonably be expected to be repaid by the enrollee within a three-year period. Consideration will be given to the homeowner's income, expenses other than total outstanding tax debt, and the likelihood of receiving tax credits, grants, and other benefits.

(4) *Long-term homeowner enrollment preference.* Applications from homeowners whose dwelling has been their principal residence for at least 10 years as of the date of application will be given enrollment preference over other applicants from the same jurisdiction.

.04 Priorities.

A. *The Department has established enrollment priorities for the Program in accordance with Tax-Property Article, §14-885(b), Annotated Code of Maryland.*

B. Enrollment Priorities.

(1) *Priority for Applicants Age 60 and Over.* Applications from homeowners who are at least 60 years of age as of the date of application will be given priority enrollment over applicants from the same jurisdiction who are under 60.

(2) *Priority for Applicants on Disability.* Applications from homeowners who are receiving disability benefits from the federal Social Security Disability Insurance program or the federal Supplemental Security Income program as of the date of application will be given priority enrollment over applicants from the same jurisdiction who are not receiving such benefits.

.05 Maintaining Enrollment.

A. *The Department has established requirements to maintain enrollment in the Program.*

B. Maintaining Enrollment.

(1) *Regular Communication.* An enrollee shall respond to communications from the Ombudsman within a reasonable time period as required by the Department. If an enrollee's contact information changes, the updated contact information must be shared seasonably with the Ombudsman.

(2) *Assistance Agreement.* An enrollee must follow any assistance plan created for them by the Ombudsman. The assistance plan may include an obligation to:

(a) *Apply for tax credits, grants, or other public benefits as recommended by the Ombudsman;*

(b) *Meet with housing and financial counselors and legal service providers; and*

(c) *Take advantage of other assistance strategies recommended by the Ombudsman to help an enrollee pay their total outstanding tax debt and improve their financial situation.*

(3) *Financial Information.* When requested by the Ombudsman, an enrollee shall provide detailed and complete information about their financial situation to aid in developing an appropriate assistance strategy. An enrollee shall immediately report to the Ombudsman any significant changes to their financial circumstances as they occur.

(4) *Repayment Requirement.* For any total outstanding tax debt paid by the Department on behalf of an enrollee under Tax-Property Article, §14-887, Annotated Code of Maryland, the enrollee shall repay the Department in monthly installments based on a plan agreed upon during the enrollment process.

.06 Collection Procedures.

A. *The Ombudsman may charge less interest under Tax-Property Article, §14-889, Annotated Code of Maryland, to enrollees who repay the Department using automatic electronic payments.*

B. *The total outstanding tax debt owed by an enrollee to the Department will be recorded in land records as a lien attached to the enrollee's dwelling until it is repaid.*

MICHAEL L. HIGGS, JR.
Director

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, [AND] SOLID WASTE, AND RECYCLABLE MATERIALS

26.04.13 Food Residuals—Organics Recycling and Waste Diversion

*Authority: Environment Article, §§1-101, 9-201, 9-1701, 9-1702, and
9-1724.1, Annotated Code of Maryland*

Notice of Proposed Action

[22-184-P]

The Secretary of the Environment proposes to adopt new Regulations .01—.05 under a new chapter, **COMAR 26.04.13 Food Residuals — Organics Recycling and Waste Diversion**.

Statement of Purpose

The purpose of this action is to implement Chs. 439 and 440, Acts of 2021, entitled Organics Recycling and Waste Division — Food Residuals. The law requires, beginning in 2023, certain persons who generate certain quantities of food residuals to separate their food residuals from other solid waste and divert those food residuals through reduction and recycling activities from final disposal in a refuse disposal system. This food residuals diversion mandate applies to a person that: (1) generates at least 2 tons of food residuals per week, beginning January 1, 2023, and at least 1 ton of food residuals per week, beginning January 1, 2024, and (2) is located within 30 miles of an organics recycling facility with the capacity and willingness to accept the material for recycling. The law authorizes the Maryland Department of the Environment (MDE) to grant a person otherwise subject to the food residuals diversion mandate a waiver from the mandate if the person demonstrates, to the satisfaction of MDE, undue hardship because of the cost of diverting food residuals is more than 10 percent more expensive than disposing of the material in a refuse disposal system, or for other reasonable circumstances. MDE is required under the law to establish waiver application procedures. Lastly, MDE is required to annually report on the implementation of the law, including the impacts on waste diversion in the State.

The proposed action would:

- Define certain terms not defined under the 2021 law;
- Clarify that a person subject to the food residuals diversion mandate includes manufacturers and processors, as well as the types of materials considered to be food residuals;

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- Prohibit a person from diverting food residuals in a manner likely to cause pollution or certain nuisance conditions;
- For a person subject to the food residuals diversion mandate, establish methods to be used by the person in determining the weight of food residuals generated, a schedule under which the person must begin diverting food residuals, and a requirement for the person to provide MDE with certain documentation demonstrating their compliance with the food residuals diversion mandate;
- Establish procedures for applying for a waiver, and conditions under which MDE may approve or deny a waiver request or revoke an approved waiver; and
- Require a person subject to the food residuals diversion mandate to annually report on their solid waste and recyclable materials management activities to each county where the solid waste and recyclable materials were generated.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to David Mrgich, Waste Diversion Division Chief, Land and Materials Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230, or call 410-537-3314, or email to dave.mrgich@maryland.gov, or fax to 410-537-3321. Comments will be accepted through October 24, 2022. A public hearing has not been scheduled.

.01 Purpose.

The purpose of this chapter is to establish certain requirements pertaining to the diversion of food residuals from final disposal in a refuse disposal system pursuant to Environment Article, §9-1724.1, Annotated Code of Maryland, including:

A. Clarifying the types of entities and individuals that meet the definition of "person", for the purpose of complying with the food residuals diversion requirements;

B. Clarifying the types of materials that meet the definition of "food residuals";

C. For a person required to divert food residuals from final disposal in a refuse disposal system, establishing:

(1) The methods for determining the weight of food residuals generated by the person;

(2) A schedule for complying with the food residuals diversion requirements;

(3) The documentation to be maintained by a person required to divert food residuals from final disposal in a refuse disposal system; and

(4) A requirement to submit a certain report annually to counties; and

D. Establishing application and approval procedures for waivers issued to persons otherwise required to divert food residuals from final disposal in a refuse disposal system.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Anaerobic digestion" means the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate.

(2) "Animal mortality" means an animal carcass that is generated:

(a) At a farm during the normal course of operations;

(b) At another location and managed by State or local government as part of roadway or other maintenance activities; or

(c) At a farm or other location and managed under an emergency exemption under COMAR 26.04.11.06.

(3) "Compostable products" means containers, films, or food service items, such as bowls, plates, cups, or cutlery, composed of materials such as:

(a) Vegetable matter;

(b) Paper;

(c) Cardboard; and

(d) Compostable plastics that are, within the length of time and process employed at the composting facility at which they are used, capable of biological decomposition to a degree that they result in marketable compost meeting the standards established by the Secretary of Agriculture under Agriculture Article, §6-221, Annotated Code of Maryland.

(4) "Composting" means the controlled aerobic biological decomposition of organic waste material.

(5) "Final disposal" means the complete and ultimate disposal of solid waste.

(6) Food Residuals.

(a) "Food residuals" means material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats.

(b) "Food residuals" does not include:

(i) Animal mortalities;

(ii) Compostable products; or

(iii) Wastewater that contains material derived from the processing or discarding of food.

(7) "Generates" means creates material destined for management in a refuse disposal system if not otherwise diverted through reduction or recycling activities.

(8) Organics Recycling.

(a) "Organics recycling" means any process in which organic materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.

(b) "Organics recycling" includes anaerobic digestion and composting.

(9) "Organics recycling facility" means a facility where organics recycling takes place.

(10) Person.

(a) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(b) "Person" includes:

(i) An individual facility owned or operated by a local school system;

(ii) An individual public primary or secondary school;

(iii) An individual nonpublic school;

(iv) A supermarket, convenience store, mini-mart, or similar establishment;

(v) A business cafeteria, school cafeteria, or institutional cafeteria;

(vi) A cafeteria operated by or on behalf of the State or a local government;

(vii) A manufacturer, processor, or similar establishment; and

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(viii) Any other entity listed under §B(10)(a) of this regulation that is not excluded under §B(10)(c) of this regulation.

(c) "Person" does not include:

(i) The aggregate of all school buildings and facilities in a local school system; or

(ii) A restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.

(11) **Recyclable Materials.**

(a) "Recyclable materials" means those materials that:

(i) Would otherwise become solid waste for disposal in a refuse disposal system; and

(ii) May be collected, separated, composted, or processed and returned to the marketplace in the form of raw materials or products.

(b) "Recyclable materials" does not include incinerator ash.

(12) "Recycling" means any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.

(13) "Refuse disposal system" includes:

(a) An incinerator;

(b) A transfer station;

(c) A landfill system;

(d) A landfill;

(e) A solid waste processing facility; and

(f) Any other solid waste acceptance facility.

.03 Food Residuals Diversion Requirement.

A. General Provisions.

(1) The Department may inspect a site or business owned or operated by a person suspected or known to be subject to this regulation and Regulation .04 of this chapter in accordance with Environment Article, §1-404(k), Annotated Code of Maryland.

(2) A person subject to the food residuals diversion requirements under §B of this regulation may not divert food residuals from final disposal in a refuse disposal system in accordance with the regulation in a manner likely to:

(a) Be conducive to insect and rodent infestation or the harborage of animals;

(b) Cause nuisance odors or air pollution in violation of Environment Article, Title 2, Annotated Code of Maryland, or involve the construction of a source of air pollution subject to a permit to construct or the operation of a source of air pollution subject to a permit to operate unless permitted by the Department under Environment Article, Title 2, Annotated Code of Maryland;

(c) Cause a discharge of pollutants to waters of this State unless permitted by the Department under Environment Article, §9-323, Annotated Code of Maryland;

(d) Impair the quality of the environment; or

(e) Create other hazards to the public health, safety, welfare, or comfort as may be determined by the Department.

B. Food Residuals Diversion Mandate.

(1) Except as provided in a waiver issued by the Department under Regulation .04 of this chapter, a person shall divert their food residuals from final disposal in a refuse disposal system in accordance with this regulation if the person meets all of the following criteria:

(a) The person generates:

(i) On or after January 1, 2023, at least an average of 2 tons of food residuals each week that they are in operation and generating food residuals; or

(ii) On or after January 1, 2024, at least an average of 1 ton of food residuals each week that they are in operation and generating food residuals; and

(b) The person generates the food residuals at a location that is within a 30-mile radius of an organics recycling facility that:

(i) Has the capacity to accept and process all of the person's food residuals;

(ii) Is willing to accept all of the person's food residuals for recycling; and

(iii) Is willing to enter into a contract to accept and process the person's food residuals.

(2) A person shall begin diverting their food residuals from final disposal in a refuse disposal system not later than 90 days after the person meets the criteria under §B(1) of this regulation.

C. Determining the Weight of Food Residuals Generated. For the purpose of determining if a person meets the food residuals generation thresholds specified under §B(1)(a) of this regulation:

(1) A person shall calculate the amount of food residuals generated using a methodology provided by the Department and based on one of the following measurements:

(a) An actual measurement of the weight of food residuals generated;

(b) If the person does not have an actual measurement of the weight of food residuals generated, an estimate of weight based on volume using a volume-to-weight conversion factor that is acceptable to the Department; or

(c) If the person does not have an actual measurement of the weight or volume of food residuals generated, an estimate of weight using a conversion factor appropriate for the type of food residuals generator that is acceptable to the Department; or

(2) A person that owns or operates multiple facilities or buildings located at a single location or campus that have a common system or contract for waste management shall use the aggregate weight of the food residuals generated each week by all the facilities or buildings, calculated using one of the methods specified under §C(1) of this regulation.

D. Methods of Diversion. A person subject to the food residuals diversion requirements under §B of this regulation shall:

(1) Separate food residuals from other solid wastes and non-compostable materials, including separating food residuals from any film or containers; and

(2) Divert food residuals from final disposal in a refuse disposal system through any combination of the following methods:

(a) Reducing the amount of food residuals generated by the person;

(b) Donating servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association;

(c) Managing the food residuals in an organics recycling system installed on-site in accordance with any applicable regulations adopted by the Secretary of the Environment;

(d) Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed; and

(e) Providing for the collection and transportation of the food residuals for processing in an off-site organics recycling facility.

E. Documentation.

(1) In order to administer and enforce the food residuals diversion requirements of this regulation, the Department may request that a person subject to the food residuals diversion requirements under §B of this regulation provide documentation of:

(a) The actual or estimated weight of food residuals generated by the person each week;

(b) Any correspondence between the person and an organics recycling facility located within a 30-mile radius of the person demonstrating the organics recycling facility's willingness to accept all of the person's food residuals or enter into a contract to accept and process all of the person's food residuals; and

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(c) Any correspondence from an organics recycling facility located within a 30-mile radius of the person that the organics recycling facility is unable or unwilling to enter a contract with a person and accept and process all of the person's food residuals.

(2) If the Department requests that a person provide the documentation described under §E(1) of this regulation, the person shall submit the requested documentation to the Department not later than 30 days after the request, unless an alternative deadline is provided by the Department.

.04 Waiver from the Food Residuals Diversion Requirement.

A. The Department may grant a waiver from the requirement to divert food residuals from final disposal in a refuse disposal system under Regulation .03 of this chapter if:

(1) A person demonstrates, in accordance with §D(2) of this regulation, undue hardship for the following reasons:

(a) The cost of diverting food residuals from a refuse disposal system is more than 10 percent more expensive than the cost of disposing the food residuals at a refuse disposal system; or

(b) For other reasonable circumstances as determined by the Department; or

(2) A person generates food residuals identified by a federal or State agency as having a biosecurity or food safety concern.

B. Waiver Conditions.

(1) The Department may grant a waiver to a person for a period that is the shorter of the following:

(a) A period established by the Department not to exceed 12 months;

(b) If the waiver was granted for an undue hardship as described under §A(1) of this regulation, until an alternate organics recycling facility becomes available that is:

(i) Located within a 30-mile radius of the person subject to the waiver;

(ii) Capable of accepting and processing all of the person's food residuals; and

(iii) Willing to enter into a contract to accept and process the person's food residuals; or

(c) A period that ends upon the date of a notification that the Department had revoked a previously approved waiver.

(2) There is no limit to the number of times the Department may grant a person a waiver.

C. The application requirements established under §D of this regulation do not apply to a waiver requested by, or granted to, a person that generates food residuals identified by a federal or State agency as having a biosecurity or food safety concern.

D. Application Procedures for Undue Hardship Waiver Requests.

(1) A person shall submit a written waiver request to the Department electronically, in a format required by the Department.

(2) A person shall include in a waiver request:

(a) A description of the basis for the waiver request;

(b) If the waiver request is based on undue hardship due to diversion costs as described under §A(1)(a) of this regulation:

(i) A list of all off-site organics recycling facilities located within a 30-mile radius of the person and a quote or other supporting documentation provided by each off-site organics recycling facility on the list detailing the cost to accept and process all of the person's food residuals;

(ii) If owned or operated by an entity that is separate from one of the off-site organics recycling facilities described under §D(2)(b)(i) of this regulation, a quote or other supporting documentation provided by one or more recyclable materials haulers detailing the cost to collect and haul the person's food residuals to an off-site organics recycling facility;

(iii) A quote or other supporting documentation provided by one or more refuse disposal systems detailing the cost to accept all of the person's food residuals for final disposal; and

(iv) If owned or operated by an entity that is separate from the refuse disposal systems described under §D(2)(b)(iii) of this regulation, a quote or other supporting documentation provided by one or more solid waste haulers detailing the cost to collect and haul the food residuals to a refuse disposal system;

(c) Any other information considered necessary or required by the Department; and

(d) A certification that the information provided is true and correct to the knowledge of the person signing the waiver request.

(3) Reapplication for a Waiver.

(a) A person granted a waiver shall reapply for a waiver:

(i) At least 60 days before the end of the period for the current waiver term, or whenever an alternate organics recycling facility becomes available that meets the criteria in §B(1)(b) of this regulation, whichever occurs sooner; and

(ii) In accordance with the application procedures established under §D(1) and (2) of this regulation.

(b) If the waiver request is based on undue hardship due to diversion costs as described under §A(1)(a) of this regulation, a person shall include in the waiver request up-to-date versions of the documents listed under §D(2)(b) of this regulation, which shall be obtained by the person not earlier than 30 days before the waiver request is submitted to the Department.

E. Conditions for Approval, Denial, or Revocation of a Waiver.

(1) Notification of the Department's Decision.

(a) The Department shall notify a person in writing of the Department's decision to approve or deny a waiver request or to revoke a waiver previously approved by the Department.

(b) In a notification that a waiver request has been approved, the Department shall state the term of the waiver period.

(2) The Department may deny a waiver request or revoke a previously approved waiver if the Department determines:

(a) A violation of a requirement of this regulation, Regulation .03 of this chapter, or Environment Article, §9-1724.1, Annotated Code of Maryland, has occurred;

(b) False or inaccurate information or data was provided in an application for a waiver request; or

(c) Any other good cause exists for denying a waiver request or revoking an approved waiver.

.05 Reporting.

On or before March 1, 2024, and each March 1 thereafter, a person subject to the food residuals diversion requirements under Regulation .03 of this chapter shall submit a report:

A. On the person's solid waste and recyclable materials management activities during the preceding calendar year to each county where the solid waste and recyclable materials were generated;

B. In a format required by the Department; and

C. That includes all of the following information:

(1) The total amount, by weight, of solid waste generated;

(2) The total amount and types, by weight, of recyclable materials generated;

(3) The total amount, by weight, of solid waste disposed;

(4) The name and location of each refuse disposal system that accepted the solid waste for disposal;

(5) The total amount and types, by weight, of recyclable materials diverted from disposal;

(6) The name and location of each recycling facility that accepted the recyclable materials for recycling; and

PROPOSED ACTION ON REGULATIONS

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(7) Any other information required by the Department.

HORACIO A. TABLADA
Secretary of the Environment

Subtitle 11 AIR QUALITY

26.11.18 Control of Agriculturally Related Installations

Authority: Environment Article, Title 2, Annotated Code of Maryland

Notice of Proposed Action

[22-176-P]

The Secretary of the Environment proposes to amend Regulation .05 under **COMAR 26.11.18 Control of Agriculturally Related Installations**.

Statement of Purpose

The purpose of this action is to amend record-keeping requirements so that records are held on-site for a period of 5 years. This action will ensure that the record-keeping period is consistent with Department permits to operate and standard compliance procedures for affected facilities. The proposed amendments will not be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.

Sources Affected

The proposed amendments affect two permitted sources in Maryland.

Projected Emission Reductions

The proposed amendments do not impact emissions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

The Department of the Environment will hold a virtual public hearing on the proposed action on October 26, 2022, at 9:30 a.m. See the Department's website for virtual hearing information, <https://mde.maryland.gov/programs/Regulations/air/Pages/reqcomments.aspx>. Interested persons are invited to attend and express their views. Comments must be received by 5 p.m. on October 26, 2022. Comments may be submitted to Randy Mosier, Division Chief Regulation Development, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, MD 21230-1720, or by email to randy.mosier@maryland.gov. For more information contact Mr. Mosier at telephone (410) 537-4488 or email randy.mosier@maryland.gov.

.05 Control of Odors from the Reduction of Offal.

A. — B. (text unchanged)

C. Any person processing or incinerating gases, vapors, or gas-entrained matter, as required by §A[,] of this regulation, when ordered by the Department, shall install, operate, and maintain in good working order and calibration continuous recording devices for indicating temperature or pressure or other operating conditions. These devices shall be approved by the Department and all data

collected, when ordered by the Department, shall be made available to the Department or the control officer for inspection or copying. This data shall be kept on file by responsible persons for at least [60 days] 5 years.

D. — F. (text unchanged)

HORACIO A. TABLADA
Secretary of the Environment

Subtitle 11 AIR QUALITY

26.11.20 Mobile Sources

Authority: Environment Article, §§2-102, 2-103, and 2-301, Annotated Code of Maryland

Notice of Proposed Action

[22-175-P]

The Secretary of the Environment proposes to amend Regulation .02 under **COMAR 26.11.20 Mobile Sources**.

Statement of Purpose

The purpose of this action is to provide an exemption for new motor vehicles sold by a dealer, vehicles sold at wholesale, and by auto insurers, and vehicles sold at auctions conducted by auctioneers not in title as specified under COMAR 26.11.20.02 a Motor Vehicle Emission Control Devices. On February 7, 2022, the Maryland Department of the Environment (MDE or the Department) expanded prohibitions pertaining to (1) the removal or alteration of a motor vehicle's air pollution control systems; (2) the operation of motor vehicles with removed, altered, or inoperative air pollution control systems; (3) the manufacture, sale, installation, and use of any device that prevents a motor vehicle's air pollution control system from operating as originally designed; and (4) the offering for sale, sale, lease, auction, or transfer of any motor vehicle with removed, altered, or inoperative air pollution control systems.

Section (4) above applies to the retail transaction of motor vehicles that occur between a licensed dealer and the consumer. Under this action, exemptions are being extended to cover new motor vehicles, vehicles sold at wholesale and by auto insurers that take ownership of motor vehicles associated with total loss claims, which occur when a vehicle sustains so much damage it is more economical for the insurance company to purchase the vehicle for its pre-accident value rather than repair the vehicle. Auto insurers typically dispose of those vehicles at auction in an effort to recoup some of the claim costs. Exemptions will also cover auctions acting on behalf of a seller, secured party or owner where the title does not pass to the auctioneer or to the facilitating auction location. This action will exempt from compliance with COMAR 26.11.20.02 auto insurers and those transactions identified in COMAR 26.11.20.02C(1) that are conducted by auctioneers not in title, as specified under the conditions outlined in proposed COMAR 26.11.20.02C.

The Department will continue to enhance compliance investigations pertaining to the operation and transaction of tampered vehicles. The Department will continue to monitor auctions to determine whether the exemption for auctions results in significantly tampered vehicles operating on Maryland roadways, despite undergoing State safety inspections that examine emission control systems.

The proposed amendments to COMAR 26.11.20.02 will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's SIP.

Appendix C

Compliance Guide for Proposed Regulations Food Residuals - Organics Recycling and Waste Diversion



COMPLIANCE GUIDE FOR PROPOSED REGULATIONS

Food Residuals - Organics Recycling and Waste Diversion

This compliance guide provides a clear and concise explanation of how certain small businesses that generate food residuals may comply with the proposed regulations. This compliance guide is for informational purposes and should not be construed as legal advice. If the proposed regulations are adopted by the Secretary of the Environment and become effective, affected small businesses should consult the law, Environment Article, Annotated Code of Maryland or Code of Maryland Regulations (COMAR), or consult legal counsel. This document is subject to change if the proposed regulations are substantively changed during the regulatory proposal process.

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Summary of the Proposed Regulations

The state legislature passed a law in 2021 that requires, beginning January 1, 2023, certain persons who generate certain quantities of food residuals in Maryland to separate their food residuals from other solid waste and divert those food residuals from final disposal in a refuse disposal system (2021 Md. Laws 439 and 440). The law provides several waste diversion methods a person may implement to comply with the food residuals diversion mandate. Lastly, the law authorizes the Maryland Department of the Environment (MDE) to grant a waiver from the food residuals diversion mandate to a person under certain conditions and requires MDE to establish waiver application procedures. A [copy](#) of the law is available online on the General Assembly of Maryland website.

The regulatory proposal would establish new regulations under **COMAR 26.04.13 Food Residuals – Organics Recycling and Waste Diversion** to implement the 2021 law. The regulatory proposal would:

- Define certain terms not defined under the 2021 law;
- Clarify that a person subject to the food residuals diversion mandate includes manufacturers and processors;
- Clarify the types of materials considered to be food residuals;
- Prohibit a person from diverting food residuals in a manner likely to cause pollution or certain nuisance conditions;
- For a person subject to the food residuals diversion mandate, establish methods to be used by the person in determining the weight of food residuals generated, a schedule under which the person must begin diverting food residuals, and a requirement for the person to provide MDE with certain documentation demonstrating their compliance with the food residuals diversion mandate;

- Establish procedures for applying for a waiver, and conditions under which MDE may approve or deny a waiver request or revoke an approved waiver; and
- Require a person subject to the food residuals diversion mandate to annually report on their solid waste and recyclable materials management activities to each county where the solid waste and recyclable materials were generated.

A comprehensive and detailed explanation of all proposed regulatory changes and their effect on the entire regulated community and the public is included in the Notice of Proposed Action published in the [Maryland Register](#) on September 23, 2022, a copy of which is available on MDE's Proposed Land Regulations [webpage](#).

Definition of Key Terms

The following key terms are defined in the proposed regulations and are used throughout this compliance guide:

Anaerobic digestion means the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate.

Animal mortality means an animal carcass that is generated:

- a. At a farm during the normal course of operations;
- b. At another location and managed by State or local government as part of roadway or other maintenance activities; or
- c. At a farm or other location and managed under an Emergency Exemption under COMAR 26.04.11.06.

Compostable products means containers, films, or food service items, such as bowls, plates, cups, or cutlery, composed of materials such as: vegetable matter; paper; cardboard; and compostable plastics that are, within the length of time and process employed at the composting facility at which they are used, capable of biological decomposition to a degree that they result in marketable compost meeting the standards established by the Secretary of Agriculture under Agriculture Article, §6-221, Annotated Code of Maryland.

Composting means the controlled aerobic biological decomposition of organic waste material.

Final disposal means the complete and ultimate disposal of solid waste.

Food residuals mean material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats. Food residuals does not include animal mortalities, compostable products, or wastewater that contains material derived from the processing or discarding of food.

Generates means creates material destined for management in a refuse disposal system if not otherwise diverted through reduction or recycling activities.

Organics recycling means any process in which organic materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products. Organics recycling includes anaerobic digestion and composting.

Organics recycling facility means a facility where organics recycling takes place.

Person

- a. Person means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.
- b. A person includes: an individual facility owned or operated by a local school system; an individual public primary or secondary school; an individual nonpublic school; a supermarket, convenience store, mini-mart, or similar establishment; a business cafeteria, school cafeteria, or institutional cafeteria; a cafeteria operated by or on behalf of the state or a local government; a manufacturer, processor, or similar establishment; and any other entity listed under item (b) that is not excluded under item (c).
- c. A person does not include: the aggregate of all school buildings and facilities in a local school system; or a restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals.

Recyclable materials means those materials that: would otherwise become solid waste for disposal in a refuse disposal system; and may be collected, separated, composted, or processed and returned to the marketplace in the form of raw materials or products. Recyclable materials do not include incinerator ash.

Recycling means any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.

Refuse disposal system includes an incinerator, a transfer station, a landfill system, a landfill, a solid waste processing facility, and any other solid waste acceptance facility.

Entities Subject to the Proposed Regulations

Who is Subject to the Proposed Regulations?

An entity is subject to the proposed regulations if the entity meets the definition of “person,” as described above.

Examples of Affected Entities

The types of entities, including small businesses, that may meet the definition of “person” and be subject to the regulatory proposal include, but are not limited to:

- Commissary kitchens;
- Convenience stores, mini-marts, and similar retailers of food products;
- Wholesale distributors such as grocers, farmer’s markets, food and produce distributors, and similar entities that fall under the North American Industry Classification System (NAICS) Code 514 - Groceries and Related Products;
- One of the following entities with a cafeteria:
 - a. An individual public or private school that provides education and programs for preschool through grade 12;
 - b. An individual campus of a college, university, or vocational school;
 - c. An industrial building, manufacturing building, merchant building (e.g., mall or shopping center), or office building;
 - d. An individual institutional building or campus (e.g., a state or local government-owned or operated building, public or private correctional facility, or public or private health care facility);

- e. A religious institution (e.g., houses of worship and ancillary structures, faith-based schools, and other faith-based organizations);
- f. Airports and transit stations (e.g., a rail or light-rail station, ferry terminal, bus hub, or bus transfer station);
- g. Meeting venues, such as convention and conference centers;
- h. Entertainment and recreational venues such as a stadium, theater, performing arts center, theme park, fairground, or park; and
- i. Hotels, motels, and other lodging facilities; and
- The following entities involved in the manufacturing or processing of human food products:
 - a. Bakeries and tortilla manufacturers;
 - b. Dairy product manufacturers;
 - c. Fruit and vegetable preserving and specialty food manufacturers;
 - d. Grain and oilseed manufacturers;
 - e. Animal slaughters and processors, including meat packagers;
 - f. Seafood processors, including seafood packagers;
 - g. Sugar and confectionery product manufacturers; and
 - h. Similar entities that fall under NAICS Code 311 - Food Manufacturers.

Food Residuals Diversion

Food Residuals Diversion Mandate

Applicability Criteria

The proposed regulations require a person meeting both of the following criteria to divert food residuals from final disposal in a refuse disposal system:

- A person generating:
 - a. Beginning January 1, 2023, at least an average of 2 tons of food residuals each week that they are in operation and generating food residuals; or
 - b. Beginning January 1, 2024, at least an average of 1 ton of food residuals each week that they are in operation and generating food residuals; and
- A person generating food residuals at a location that is within a 30-mile radius of an organics recycling facility that:
 - a. Has the capacity to accept and process all of the person's food residuals;
 - b. Is willing to accept all of the person's food residuals for recycling; and
 - c. Is willing to enter into a contract to accept and process the person's food residuals.

Compliance Schedule

Beginning January 1, 2023, a person would be required to start diverting their food residuals from final disposal in a refuse disposal system not later than 90 days after the person meets the applicability criteria.

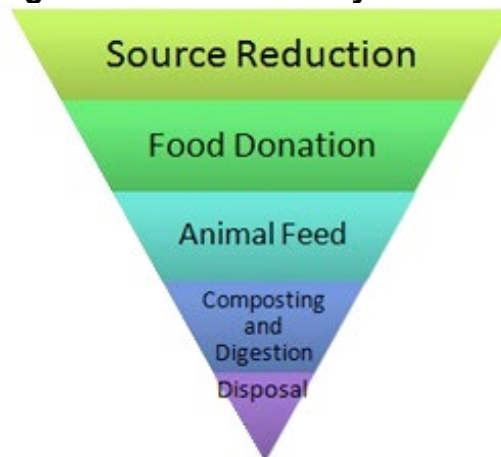
Diversion Methods

Waste diversion means to prevent materials from being disposed by reduction, reuse, or recycling. The proposed regulations require a person to separate their food residuals from solid waste and non-compostable materials, including separating food residuals from any film and containers, and to divert the food residuals from final disposal in a refuse disposal system. However, the proposal does not require a specific diversion method to be used.

Under the proposed regulations, one or a combination of the following methods may be used to divert food residuals from disposal:

- Reducing the amount of food residuals generated by the person;
- Donating servable food for human consumption, including the donation of food to a nonprofit corporation, organization, or association;
- Managing the food residuals in an organics recycling system installed onsite in accordance with any applicable regulations adopted by MDE;
- Providing for the collection and transportation of the food residuals for agricultural use, including for use as animal feed; and
- Providing for the collection and transportation of the food residuals for processing in an off-site organics recycling facility.

Figure 1. Food Recovery Hierarchy



Prohibited Activities

As described above, a person can comply with the food residuals diversion mandate by performing several diversion methods. However, poorly managed food residuals reduction, reuse, and recycling operations can result in issues like nuisance odors and insect and rodent infestations. In particular, improper processing of food residuals has the potential to generate leachate and other materials containing pollutants, such as nutrients and biochemicals, which can impair Maryland's surface waters and groundwaters. To prevent these issues, a person would be prohibited under the proposed regulations from diverting food residuals in a manner likely to:

- Be conducive to insect and rodent infestation or the harborage of animals;
- Cause nuisance odors or air pollution in violation of State air quality laws, or involve the construction or the operation of a source of air pollution subject to an [Air Quality Permit to Construct or Operate](#);
- Cause a discharge of pollutants to waters of this State unless authorized under a [State Discharge and/or National Pollution Discharge Elimination System Permit](#);
- Impair the quality of the environment; or
- Create other hazards to the public health, safety, welfare, or comfort as may be determined by MDE.

See question 30 in the FAQ section for more information on possible legal requirements applicable to installing and operating certain organics processing and organics recycling systems.

Determining if the Food Residuals Diversion Mandate Applies to You

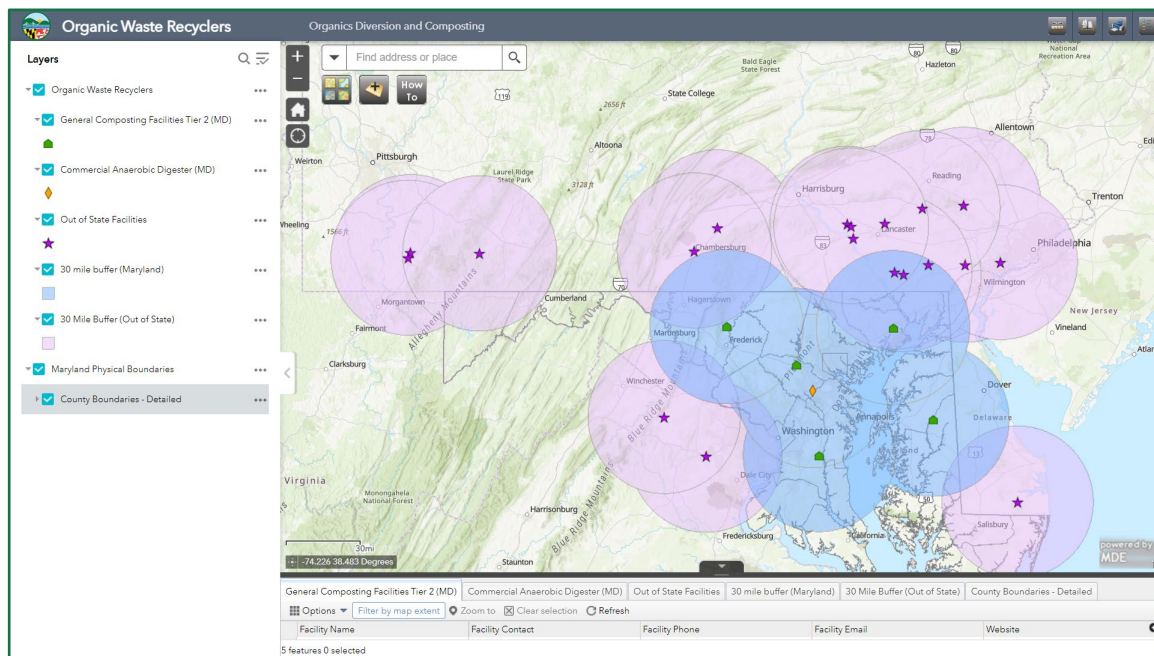
First, a person must calculate the amount of food residuals they generate in order to determine if they meet or exceed the weekly 2 tons or 1 ton generation threshold. This can be accomplished by using any of the following methodologies provided in the proposed regulations to calculate the tonnage of food residuals generated:

- Weighing the food residuals generated to obtain an actual measurement in tons;
- If the actual weight is unknown, estimating the weight based on volume using a volume-to-weight conversion factor acceptable to MDE; or
- If the actual weight and volume are unknown, estimating the weight based on a conversion factor appropriate for the type of food residuals generator acceptable to MDE.

The proposed regulations require a person that owns or operates multiple facilities or buildings located at a single location or campus that have a common system or contract for waste management to, using one of the methods described above, calculate the aggregate weight of the food residuals generated by all the facilities or buildings. MDE recommends an entity that meets the definition of “person” enact a program to assess the weight of food residuals generated on a weekly basis to ensure compliance with the proposed regulations. Information on how various industry types can estimate the amount of food residuals they generate is available on MDE’s [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

Second, a person must determine if any organics recycling facilities located within 30 miles of their location have the capacity and a willingness to accept for recycling, and enter into a contract to accept and process, all of their food residuals. It will be the responsibility of a person to directly contact organics recycling facilities to determine their ability to accept the person’s food residuals for recycling. To stay current on new Maryland-based organics recycling facilities permitted by MDE, [sign up](#) for email notifications.

Figure 2. Online Map of Organics Recycling Facilities



Click on the image to access the online map.

MDE has developed an online map that displays the location and contact information for organics recycling facilities known to MDE that are located in Maryland and neighboring states, as well as each facility's 30-mile radius (see figure 2). It should be noted that this map is to be used for informational purposes. The map will not contain real-time available capacity information for organics recycling facilities. If you would like your in-state or out-of-state organics recycling facility to be included on this map, please [contact](#) the Resource Management Program at MDE.

Third, if a person meets or exceeds the food residuals generation threshold after December 31, 2022, and is located within 30 miles of an organics recycling facility that is willing to contract with the person to recycle all of their food residuals, the person is required to divert their food residuals from disposal unless they receive a waiver from MDE. The Department has developed a [fact sheet](#) to assist a person in determining if they meet the applicability criteria and are required to divert food residuals from disposal. The fact sheet is available on MDE's [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

Recordkeeping

A person would need to maintain certain documentation demonstrating the person's compliance with the food residuals diversion mandate. Under the proposed regulations, a person must provide the following documentation to MDE within 30 days of receiving a request from MDE, or by an alternative deadline set by MDE:

- The actual or estimated weight of food residuals generated by the person each week;
- Any correspondence between the person and an organics recycling facility located within a 30-mile radius of the person that demonstrates the organics recycling facility's willingness to accept all of the person's food residuals or enter into a contract to accept and process all of the person's food residuals; and
- Any correspondence from all of the organics recycling facilities located within 30 miles of the person that demonstrates an organics recycling facility is not able or unwilling to enter a contract with the person to accept and process all of the person's food residuals.

Waiver

Waiver Conditions

Under the 2021 law, MDE may grant a waiver from the food residuals diversion mandate if a person demonstrates, to the satisfaction of MDE, undue hardship because of the following reasons:

- The cost of diverting food residuals from a refuse disposal system is more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system; or
- For other reasonable circumstances as determined by MDE.

In addition to the reasons for a waiver provided under the 2021 law, the proposed regulations would also authorize MDE to grant a waiver if a person generates food residuals identified by a federal or State agency as having biosecurity concerns (e.g., eggs laid by hens infected with avian influenza) or food safety concerns (e.g., food product recalled due to reports of salmonella contamination). This waiver would not apply to other food residuals not impacted by a biosecurity or food safety concern that are generated by the person.

The proposed regulations would authorize MDE to grant a waiver for a period that is the shortest of one of the following:

- A period established by MDE not to exceed 12 months;
- Until an alternate organics recycling facility becomes available that is located within a 30-mile radius of the person and is willing to and capable of entering into a contract to accept and process all of the person's food residuals; or
- A period that ends upon the date of a notification that MDE has revoked an approved waiver.

Application Procedures

The proposed regulations would establish application procedures for a person requesting from MDE a waiver from the food residuals diversion mandate due to undue hardship. These application requirements would not apply to a waiver for food residuals impacted by biosecurity and food safety concerns.

Method of Submission

A person must submit the waiver request to MDE electronically, in a format required by MDE.

Contents of the Waiver Request

A person must include the following information in the waiver request.

- A description of the basis for the waiver request.
- All of the following documentation if submitting an undue hardship waiver request based on the cost of diverting food residuals from a refuse disposal system being more than 10% more expensive than the cost of disposing the food residuals at a refuse disposal system:
 - a. A list of all off-site organics recycling facilities located within a 30-mile radius of the person and a quote or other supporting documentation provided by each off-site organics recycling facility on the list detailing the cost to accept and process all of the person's food residuals;
 - b. A quote or other supporting documentation provided by one or more recyclable materials hauler detailing the cost to collect and haul the person's food residuals to an off-site organics recycling facility if the hauler is owned/operated by an entity that is separate from the off-site organics recycling facilities described under item (a);
 - c. A quote or other supporting documentation provided by one or more refuse disposal systems detailing the cost to accept all of the person's food residuals for final disposal; and
 - d. A quote or other supporting documentation provided by one or more solid waste hauler detailing the cost to collect and haul the food residuals to a refuse disposal system if the hauler is owned/operated by an entity that is separate from the refuse disposal systems described under item (c).
- Any other information considered necessary or required by MDE.
- A certification that the information provided in the waiver request is true and correct to the knowledge of the person signing the waiver request.

Reapplication for a Waiver

The proposed regulations would not limit the number of times MDE may grant a particular person a waiver from the food residuals diversion mandate. A person granted a waiver would need to reapply for a waiver the earliest of the following: at least 60 days before the end of the period for the current waiver term; whenever an alternate organics recycling facility located within 30 miles of the person becomes available; or upon notification that MDE revoked the waiver. If reapplying for

a waiver based on undue hardship due to diversion costs, the person would also need to include in the reapplication up-to-date versions of: (1) the list of organics recycling facilities located within a 30-mile radius; and (2) quotes from haulers, organics recycling facilities, and refuse disposal systems. These up-to-date documents need to be obtained by the person not earlier than 30 days before the waiver reapplication is submitted to MDE.

Reports to Counties

Under the proposed regulations, on or before March 1, 2024, and annually thereafter, a person required to divert their food residuals from disposal must submit a report:

- On the person’s solid waste and recyclable materials management activities during the preceding calendar year (i.e., the reporting period);
- To each county where the solid waste and recyclable materials were generated in a format required by MDE; and
- That includes all of the following information:
 - a. The total amount, by weight, of solid waste and recyclable materials generated during the reporting period;
 - b. The total amount, by weight, of solid waste disposed of during the reporting period;
 - c. The total amount and types, by weight, of recyclable materials diverted from disposal during the reporting period;
 - d. The name and location of each refuse disposal system that accepted solid waste for disposal;
 - e. The name and location of each recycling facility that accepted recyclable materials for recycling; and
 - f. Any other information required by MDE.

To obtain the information required to be reported, a person may need to request the information from their contracted solid waste and recyclable materials service providers annually. MDE is developing an online portal where a person can submit the required reports to counties; this online reporting portal will be available for use for the calendar year 2023 reporting period.

Frequently Asked Questions

Scope and Application of the Food Residuals Diversion Mandate

1. Do the proposed regulations establish a food waste disposal ban?

No, the proposed regulations do not establish a ban on the disposal of food waste generated in Maryland. The 2021 law established that certain entities meeting the law’s definition of “person” are required to divert their food residuals through reduction, reuse, and recycling activities from final disposal in a refuse disposal system if the entity (1) generates at least 2 tons of food residuals per week, beginning 2023, and at least 1 ton of food residuals per week, beginning 2024, and (2) is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the material for recycling. The proposed regulations implement the requirements of the 2021 law.

Entities not considered a “person” under the 2021 law would not be subject to food residuals diversion mandate and, therefore, not be prohibited from disposing of food residuals. Additionally, if an entity considered a “person” under the law does not meet the food residuals generation thresholds or isn’t located within 30 miles organics recycling facility

with the capacity and willingness to accept their food residuals, the person would not be required to comply with the food residuals diversion mandate nor prohibited from disposing of food residuals.

2. Are packaged foods subject to the food residuals diversion mandate?

Yes, food residuals within packaging are subject to the mandate if generated by a person meeting the food residuals generation thresholds and located within 30 miles of an organics recycling facility with the capacity and willingness to accept their food residuals. Food residuals must be separated from packaging at the point of generation or hauled off-site to a facility that can remove the packaging.

3. Does the food residuals diversion mandate apply to a load of food residuals with contamination that gets rejected from a composting or anaerobic digestion facility?

It depends on the circumstance as follows:

- If the person that generated the food residuals can reasonably separate the food residuals from contaminants in accordance with the load acceptance requirements of their contracted organics recycling facility, the person is subject to the mandate as long as they meet the food residuals generation threshold.
- If it is not possible to separate the food residuals from contaminants to the criteria of the organics recycling facility rejecting the load and there is an alternate organics recycling facility located within 30 miles with the capacity and willingness to accept the food residuals, the person is subject to the mandate as long as they meet the food residuals generation threshold.
- If it is not possible to separate the food residuals from contaminants to the criteria of the organics recycling facility rejecting the load and there is not an alternate organics recycling facility located within 30 miles with the capacity and willingness to accept the material, the person generating the food residuals would not be subject to the mandate.

A final determination of whether the person can reasonably separate the food residuals from contaminants will be made by MDE.

4. Are liquid food residuals (e.g., process wastewater, liquid dairy products, and grease) subject to the food residuals diversion mandate?

Yes, if the liquid would otherwise be disposed of in a refuse disposal system and is generated by a person that meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the person’s food residuals. State regulations only allow liquid wastes and wastes containing free liquids to be disposed of at a solid waste acceptance facility that is specifically authorized by MDE to handle those wastes ([COMAR 26.04.07.03B\(8\)](#)). To be disposed of in a solid waste acceptance facility, the liquid must pass the Paint Filter Liquids Test ([Method 9095B](#)) as detailed by the US Environmental Protection Agency.

5. Do I need to comply with the food residuals diversion mandate if I transport my waste to an out-of-state refuse disposal facility?

If your food residuals are generated in Maryland and you meet the average weekly tonnage thresholds and are located within 30 miles of an organics recycling facility with the capacity

and willingness to accept all of your food residuals, you must comply with the food residuals diversion mandate even if your solid waste is disposed of out-of-state.

6. If a person reduces, reuses, or recycles sufficient amount food residuals to drop below the 2 tons or 1 ton per week threshold, are they still required to divert the remainder of their food residuals?

Yes, the requirement to divert food residuals is based on the tonnage of food residuals generated before any reduction, reuse, or recycling activities occur.

7. Are homeowners or tenants of residential properties subject to the food residuals diversion mandate?

Because a single or multi-family residential property is not expected to generate the tonnage of food residuals that trigger the requirement to divert food residuals from final disposal, individual households would not be subject to the food residuals diversion mandate.

8. Are local school systems responsible for complying with the food residuals diversion mandate?

No, the 2021 law excludes from the definition of “person” the aggregate of all school buildings and facilities in a local school system. Therefore, local school districts are exempt from the food residuals diversion requirement. However, individual schools are subject to the food residuals diversion mandate if at any time in the average weekly tonnage thresholds are met and they are located within 30 miles of an organics recycling facility with the capacity and willingness to accept all their food residuals.

9. Are adult and senior assisted living and/or care facilities subject to the food residuals diversion mandate?

While the residents of these facilities are not required to arrange for food residuals diversion, an assisted living or care facility that offers or serves food to residents must comply with the mandate if at any time in the average weekly tonnage thresholds are met and the facility is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all their food residuals.

10. Are one-time or special events subject to the food residuals diversion mandate?

Yes, a one-time or special event would be subject to the food residuals diversion mandate if at any time in which the event is occurring the average weekly tonnage thresholds are met and the event is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all the event’s food residuals. Either the owner/operator of the site where the event is located or the event organizers would need to arrange for the food residuals to be diverted from final disposal in accordance with the proposed regulations.

11. Are seasonal businesses subject to the food residuals diversion mandate?

Yes, a seasonal business would be subject to the food residuals diversion mandate if at any time throughout the year that the business is in operation, the average weekly tonnage thresholds are met and the business is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the business’ food residuals. If there

are times during the year when a seasonal business no longer meets these criteria, then the business would not be required to comply with the mandate during those periods.

12. Are food trucks subject to the food residuals diversion mandate?

A food truck may be required to divert its food residuals from final disposal in a refuse disposal system.

- If food served by a food truck is prepared in a commissary kitchen under the control of the food truck owner/operator and the commissary kitchen meets the average weekly tonnage thresholds and located within 30 miles of an organics recycling facility with the capacity and willingness to accept of all the location's food residuals, the owner/operator of the food truck would be required to comply with the food residuals diversion mandate for that site.
- If the food truck owner/operator leases a commissary kitchen where the food truck's food is prepared and the commissary kitchen otherwise meets the applicability criteria, the food residuals generated at the commissary kitchen would be subject to the mandate. The owner/operator and lessees of the commissary kitchen would need to determine who will be responsible for diverting food residuals in compliance with the mandate.
- An owner/operator of a property would be required to comply with the food residuals diversion mandate if the property where the food truck serves food otherwise meets the applicability criteria for complying with the food residual diversion mandate. The property owner would be responsible for diverting food residuals generated by customers of the food truck along with other food residuals generated onsite.

13. Does the food residuals diversion mandate apply to food residuals generated on airplanes, trains, buses, and cruise ships?

Airports, transit centers, and cruise ports are subject to the food residuals diversion mandate if the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all its food residuals. Therefore, it is the responsibility of the transportation property owner/operator to ensure any food residuals removed from vehicles (e.g., airplanes, trains, buses, cruise ships, etc.) to be managed by the transportation property are diverted from final disposal in accordance with the requirements of the proposed regulations. The entity that owns the vehicles would be required to comply with the transportation property's food residuals diversion requirements, provided there is no conflict with federal requirements for managing solid waste generated on these vehicles. In cases of conflict, vehicle owners and transportation properties should follow federal requirements.

14. The 2021 law establishes that the definition of "person" includes business, school, and institutional cafeterias, but excludes a restaurant establishment that accommodates the public and is equipped with a dining room with facilities for preparing and serving regular meals. What is the difference between a cafeteria and a restaurant?

Table 1, provided for informational purposes, may assist an entity in determining whether they operate a cafeteria and are subject to the food residuals diversion mandate, or operate as a restaurant that is not subject to the mandate. MDE has the discretion to reevaluate an entity's determination to ensure compliance with the food residuals diversion mandate.

Table 1. Cafeteria and Restaurant Comparison

	Cafeteria	Restaurant
Who controls the dining tables/seating	Property owner/operator who <u>may be</u> separate from food establishment(s) preparing and serving food	The food establishment preparing and serving food
^a Types of food service offered	Self-Service	Banquet Service Buffet Service Self-Service Semi-Self Service Waiter Service
Number of food establishments located onsite	One or more separately owned/operated food establishments	One food establishment
Customer types	Customer and/or employee of a business, institutional, or government operation specifically served by the food establishment. Attendee or resident of a school Customers of one or more food establishments located onsite	Customer of the food establishment preparing and serving the food

^a Learn more by reviewing Unilever Food Solutions' Chefmanship Academy module entitled [5 Types of Food Service](#).

15. A food establishment is located within a larger property and alone does not meet the 2 tons or 1 ton food residuals generation threshold. The property as a whole is required to comply with the food residuals diversion mandate. Are the food residuals generated by the food establishment required to be diverted from disposal? If yes, who is responsible for arranging for the diversion of the material?

If the food establishment contracts for waste management independently from the rest of the property, the food establishment would not be required to divert its food residuals from final disposal. If the property owner/operator contracts for waste management for the food establishment, then the property owner would be responsible for ensuring food residuals generated by the food establishment and the property overall are diverted from disposal.

16. How does the food residuals diversion mandate apply to a business that is a part of a chain or franchise that has multiple locations?

The food residuals diversion mandate would apply to individual locations, not all Maryland-based locations a part of the franchise or chain. A single location would be subject to the mandate if the average weekly tonnage thresholds are met and the business is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of its food residuals. Businesses that are part of a chain or franchise may have a centralized production kitchen that prepares food for delivery to individual locations. If the centralized production kitchen meets the above criteria, it would be required to comply with the mandate.

17. How does the food residuals diversion mandate apply to an institution with multiple satellite campuses or locations, such as a university or health care organization?

Similar to businesses a part of a chain or franchise, the application of the mandate would be based on individual campuses or locations, not for all of the campuses or locations combined. An individual campus or location would be subject to the food residuals diversion mandate if the average weekly tonnage thresholds are met and the site is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of the site's food residuals.

18. How does the food residuals diversion mandate apply to a campus or institutional property with multiple buildings onsite?

Each building located at the property would not need to meet the applicability criteria in order for the property to be subject to the food residuals diversion mandate. If the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all of its food residuals, then the property would be subject to the food residuals diversion mandate.

19. I am a building or shopping center owner with multiple businesses/tenants located at the property. How would the food residuals diversion mandate apply to my property?

The property would be subject to the food residuals diversion mandate if (1) the property owner or operator contracts for solid waste management for the entire property, and (2) the property as a whole meets the average weekly tonnage thresholds and is located within 30 miles of an organics recycling facility with the capacity and willingness to accept all food residuals generated by businesses/tenants at the property. If the businesses/tenants at the building or shopping center manage their waste independently, the owners of the property and businesses/tenants would both be responsible for ensuring food residuals generated by each business/tenant are diverted from disposal in accordance with the proposed regulations.

Food Residuals Diversion Requirements

20. What type of outreach or technical assistance will MDE provide regarding how to separate and divert food residuals from final disposal in a refuse disposal system?

MDE will host webinars and present at external meetings to provide guidance on how the regulated community may comply with the food residuals diversion mandate. Online, the MDE will provide outreach and technical assistance resources such as:

- Fact sheet on how to determine if the food residuals mandate applies to your operation;
- A methodology document detailing how a person can determine the average weekly weight of food residuals generated by the person;
- Sharable outreach materials that may be utilized by an organization or business required to divert food residuals from disposal;
- Information on how to manage food residuals, including links to toolkits, guidance documents, outreach materials, and webpages created by MDE and other organizations on the topic of food residuals management; and
- Information on grants, loans, and tax credits that may be used for the purpose of diverting food residuals from final disposal.

These resources will be available on MDE's [Solid Waste Management - Organics Recycling and Waste Diversion - Food Residuals](#) webpage.

21. Who is responsible for separating food residuals from other solid waste and non-compostable materials?

The generator subject to the food residuals diversion mandate is responsible for separating the food residuals from other solid waste and non-compostable material. The generator must arrange for their food residuals to be source separated at the point of generation or off-site at a facility under the control or contracted by the generator to source separate the material.

22. Are post-consumer food residuals that would otherwise be deposited in indoor and outdoor trash bins at a property required to be included in determining how much waste is generated on a weekly basis?

Yes, food residuals deposited by the public in trash bins under the control of a food residuals generator must be included in weight generation measurements and diverted from final disposal. The owner/operator of the property should place organics collection bins in areas where food is consumed or may be disposed of on the premise to allow for source separation. Signage can be used to encourage customers to deposit food residuals in organics collection bins. Also, signage can educate customers on the appropriate materials to be placed in organics collection bins, reducing contamination and assisting with source separation.

23. If a business partners with a food recovery or recycling program that only accepts certain types of food residuals, can that business limit the types of food residuals divert from final disposal?

No, a business subject to the food residuals diversion mandate would be responsible for arranging for the source separation and diversion of all of their food residuals generated. The 2021 law and proposed regulations provide that a person may divert food residuals through a combination of reduction, reuse, and recycling activities. Therefore, a business may need to implement several diversion strategies in order to divert all types of food residuals it generates from final disposal.

24. What is servable food that may be donated?

The Center for EcoTechnology (CET) explains in their [Food Rescue Guidance Document](#) that “[most] categories of food can be donated, as long as the food is ‘apparently wholesome’ or ‘fit for human consumption’ and that “[donated] food should be properly packaged and stored to prevent contamination and spoilage”. To ensure diverted food is being handled in a manner so it’s considered servable food appropriate for food donation, a person can consult guidance published by organizations that outline safe food handling practices for food recovery and donation programs. Individual food donation organizations may have specific criteria for the food donations they will accept.

Examples of guidance on safe food handling practices and establishing food recovery programs, including the CET document linked above, include:

- The Conference for Food Protection’s [Comprehensive Guidance for Food Recovery Programs](#) provides guidance to food retailers wanting to participate in food recovery programs and provide safe food to needy people, and
- The US Department of Agriculture’s [Gleaning Toolkit](#) provides guidance on establishing programs to collect excess fresh produce for donation to needy people.

25. How can a person diverting food residuals for animal feed ensure they’re meeting animal food safety standards?

It is the responsibility of the food residual generator and recipient to determine what legal animal food safety requirements may apply to their food recovery operation. Federal animal feeding laws (1) establish that animal feed may not be adulterated or handled in unsanitary conditions nor may food labels be false or misleading, (2) prohibit feeding food residuals containing mammalian protein to ruminant animals, and (3) require a person feeding food residuals containing animal products to swine to obtain a license and to boil the food residuals prior to feeding (21 USC §§342 and 343; 9 CFR §166; and 21 CFR §589.2001). Additionally, food residuals diverted for commercial animal food production may be subject to the US Food and Drug Administration’s [Food Safety Modernization Act’s Preventive Controls for Animal Food](#) rules, which require certain animal feed and pet food production facilities utilizing diverted food residuals to implement additional planning and preventive control measures (21 CFR §507.12).

A person can learn more about safely diverting food residuals for animal food by:

- Contacting your [county agricultural extension office](#) or public health agency;
- Contacting farms, zoological parks, wildlife sanctuaries, and animal feeding operations to learn about the nutritional and food safety standards for their animals; and
- Reviewing [Leftovers for Livestock: A Legal Guide for Using Food Scraps as Animal Feed](#), developed by the Harvard Food Law and Policy Clinic and the University of Arkansas School of Law’s Food Recovery Project.

26. Is the use of food residual processing technologies such as grinders, pulpers, dehydrators, and aerobic digesters considered recycling?

Under the Maryland Recycling Act, “recycling” is defined as any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products (Environment Article, §9-1701, Annotated Code of Maryland). As long as the material that goes through a grinder, pulper, dehydrator, or aerobic digester is returned to the marketplace in the form of raw materials or products it is considered recycling. For example, pulpers mechanically process food residuals into a semi-dry pulp that can be transported to a composting facility.

27. Is rendering considered recycling?

Animal waste tissue or solid fat that has been converted or melted down by heating can be considered recycling if the material (1) is returned to the marketplace as a raw material or product, and (2) is not converted to biofuel.

28. Is the production of biofuel or biogas considered recycling?

No, the production of biofuel or biogas is not considered recycling. However, if the process that converts food residuals into fuel also produces another by-product that can be returned to the marketplace as a raw material or product, then the production of the by-product is considered recycling. For example, anaerobic digestion generates two outputs: biogas and digestate. Digestate can be returned to the market as a fertilizer, soil amendment, or animal bedding. If an anaerobic digestion facility accepts food residuals, any production of digestate that is returned to the marketplace would be counted as recycling.

Note, haulers transporting waste kitchen grease for conversion into biofuel must be registered with the Maryland Department of Agriculture. Learn more [here](#).

29. Are you required to send your food residuals to an organics recycling facility located within 30 miles, or can you send food residuals to any organics recycling facility with the capacity and willingness to accept the material?

Even if you're located within 30 miles of an organic recycling facility(ies) documented as having the capacity and willingness to accept all of your food residuals, making you subject to the food residuals diversion mandate, you are not obligated to send your food residuals to that specific organics recycling facility. You may send your food residuals to any organics recycling facility and remain in compliance with the food residuals diversion mandate. You may also send your food residuals to any organization that recovers food residuals for an activity that satisfies the food residuals diversion methods allowed under the proposed regulations.

30. Do I need a permit or other approval to install and operate an organics processing system or organics recycling system onsite?

A person managing food residuals onsite by installing and operating a food residuals processing technology or organics recycling system is responsible for identifying and complying with any laws, regulations, and permits/approvals applicable to the activity. Table 2 may be used as a first step in identifying Maryland legal requirements. (Note, Table 2 is for informational purposes only and may not list all applicable federal, State, and local requirements). MDE has also published dedicated [composting facilities](#) and [anaerobic digestion facilities](#) permit guidance documents that identify several legal requirements for Maryland-based facilities.

Certain organics processing and recycling systems produce a liquefied food residuals or wastewater. The material can be disposed of into a sanitary sewer system or an onsite disposal system (i.e., septic system), or containerized and hauled offsite to a wastewater treatment plant or anaerobic digestion facility. A person must manage wastewater generated from organics processing and recycling systems in accordance with federal, State, and local wastewater discharge permitting requirements. Visit MDE's [Maryland Water Permit Applications and Other Forms](#) webpage for more information. Additionally, the discharge of industrial (non-domestic) wastewater to a publicly owned wastewater treatment (POTW) system may require a separate pretreatment permit issued by local municipal wastewater treatment utility. Contact information for local municipal wastewater treatment utilities can be found [here](#).

Table 2. Potential Legal Requirements for Organics Processing and Organics Recycling Systems

Subject/Activity	Maryland Permits and Approvals	COMAR
MDE – Recyclable Materials		
Composting Facility	Composting Facility Permit	26.04.11
MDE – Water		
Storm Water Discharge from Industrial Activities	General Permit for Discharges of Stormwater Associated With Industrial Activity	26.08.04
Groundwater Discharges	State Groundwater Discharge Permit (Municipal & Industrial)	26.08.04
Surface Water Discharges	State/NPDES Surface Water Discharge Permit (Municipal)	26.08.04
	State/NPDES Surface Water Discharge Permit (Industrial)	26.08.02.09
Discharges of Industrial Wastewater to POTW	Pretreatment Permit	26.08.08
Water & Sewerage Treatment Infrastructure Construction	Water and Sewerage Construction Permit	26.03.12
MDE – Air		
Construct Source of Air Pollution	Air Quality Permit to Construct	26.11.02
Operate Source of Air Pollution	Air Quality State Permit to Operate	26.11.02
Maryland Department of Agriculture – Soil Amendments		
Soil Conditioner or Fertilizer Quality and Sale/Distribution	Soil Conditioner or Fertilizer Registration	15.18.03
Compost Quality and Sale/Distribution	Compost Registration	15.18.04
Composting Facility Operator	Composting Facility Operator Certification	15.18.04

Waiver Requests

31. When applying for a waiver for undue hardship, what types of expenses may not be used to demonstrate that the cost of diverting food residuals is more than 10% more expensive than disposing of the material in a refuse disposal system?

A person may not submit any costs related to implementing an onsite (i.e., point of generation) food residuals diversion program, including:

- The purchase and maintenance of food residuals storage and collection containers, refrigeration, pre-treatment or processing technologies, or organics recycling equipment to be installed onsite;

- Providing education and training to employees or lessees on performing source separation of food residuals and conducting any onsite food residuals reduction and recycling activities; and
- Costs of conducting outreach to customers and other patrons regarding the entity's food residuals diversion program, such as costs to purchase signage directing customers and patrons to discard food residuals in organics collection bins.

Additionally, a person may not submit the costs of hauling food residuals to a food donation if the person is located within 30 miles of an organics recycling facility documented as being willing and having the capacity to accept the person's food residuals for organics recycling.

32. What is the rationale behind the waiver for biosafety or food safety concerns?

MDE recognizes that due to biosafety or food safety concerns, a person may temporarily generate food residuals that are not suitable for food donation or agricultural use, and the organics recycling facility contracted to accept the person's food residuals may not be willing or have the capacity to accept the additional food residuals impacted by the concern. Additionally, guidance from a federal or State agency overseeing the biosafety or food safety concern may recommend or require alternative waste management or treatment methods that do not involve the food residuals diversion methods allowed under the proposed regulations. In these circumstances, MDE would be able to issue an exemption for those food residuals impacted by the biosafety or food safety concern.

33. The proposed regulations require a person subject to the food residuals diversion mandate to submit annually to counties a report on the person's solid waste and recyclable materials management activities for the preceding calendar year. How will the information reported to counties be used?

Counties are required under existing law to submit to MDE annual county reports describing their solid waste management and diversion activities for the preceding calendar year (Environment Article, §9-1705, Annotated Code of Maryland). The 2021 law requires MDE to annually report on the implementation of the law's requirements, including how implementation of the law impacts waste diversion in the State (Environment Article, §9-1724.1(e), Annotated Code of Maryland). Any information reported by food residual generators to a county under the proposed regulations can be included by their county report submitted to MDE, which in turn would be used by MDE when reporting on the impact of the food residuals diversion mandate on waste diversion in the State in accordance with the 2021 law.

Enforcement

34. Who is responsible for enforcing the food residuals diversion mandate?

MDE is responsible for enforcing the requirements of the 2021 law and proposed regulations. MDE will investigate any complaints of alleged noncompliance received from other government agencies and the public. Also, MDE has the authority to inspect the premises of any person subject to the food residuals diversion mandate. As the proposed regulations implement 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 and compliance assistance on how to comply with the food residuals diversion mandate. If a person issued warnings or offered compliance

assistance continues to not comply with the food residuals diversion requirement, MDE is authorized under the 2021 law to collect civil penalties.

35. Can the local jurisdictions take enforcement actions against a noncompliant facility required to divert food residuals from disposal?

No, the 2021 law only authorizes MDE to enforce the food residuals diversion mandate. However, MDE is developing 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 2021 law and proposed regulations.