

April 27, 2021

VIA ELECTRONIC MAIL TO FoodScrapsLaw@dec.ny.gov

New York State Department of Environmental Conservation  
Division of Materials Management  
625 Broadway  
Albany, NY 12233-7253

**Re: Comments on Proposed Part 350 - Food Donation and Food Scraps Recycling Law**

To Whom It May Concern:

The undersigned individuals and organizations submit these comments concerning the proposed 6 NYCRR Part 350 regulations published by New York State Department of Environmental Conservation (“DEC”) on January 27, 2021, implementing the requirements outlined in the Food Donation and Food Scraps Recycling Law.<sup>1</sup> The proposed regulations take a step forward in addressing greenhouse gas emissions attributable to food waste, but additional action is necessary. We urge DEC to support the development of additional organics recycling facilities, particularly composting infrastructure, and incentivize food donations.

Food waste is a top contributor to greenhouse gas emissions. When food waste rots in landfills, it produces methane, a greenhouse gas over 80 times more potent than carbon dioxide in its global warming strength.<sup>2</sup> According to New York State’s inventory of greenhouse gas emissions, in 2014, landfill emissions made up about 58% of the State’s methane emissions and about 5% of its total greenhouse gas emissions.<sup>3</sup> Food waste is primarily responsible for these emissions.<sup>4</sup> In addition, when food is wasted, so too are the greenhouse gas emissions associated with its production, including nitrous oxide from fertilizer overuse, methane from cattle and cow manure, and carbon dioxide from land conversion and the operation of equipment used in food production, processing, and distribution. For these reasons, experts view reducing the generation of food waste and ending its diversion to landfills as top climate change solutions.<sup>5</sup>

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<sup>1</sup> See *Proposed Part 350 Regulations*, Dep’t of Env’t Conservation, <https://www.dec.ny.gov/chemical/122245.html>.

<sup>2</sup> See *Methane: A Crucial Opportunity in the Climate Fight*, Env’t Def. Fund, <https://www.edf.org/climate/methane-crucial-opportunity-climate-fight#:~:text=Methane%20has%20more%20than%2080,by%20methane%20from%20human%20actions>.

<sup>3</sup> See N.Y. State, *Methane Reduction Plan* (2017), [https://www.dec.ny.gov/docs/administration\\_pdf/mrpfinal.pdf](https://www.dec.ny.gov/docs/administration_pdf/mrpfinal.pdf).

<sup>4</sup> See *Working to Solve New York’s Food Waste Problem*, NYLCV (Aug. 23, 2018), <https://nylcv.org/news/working-solve-new-yorks-food-waste-problem/>.

<sup>5</sup> See Chad Frischmann, *Opinion: The Climate Impact of the Food in the Back of Your Fridge*, Wash. Post (July 31, 2018), <https://www.washingtonpost.com/news/theworldpost/wp/2018/07/31/food-waste/>.

DEC has ample opportunity to reduce greenhouse gas emissions attributable to food waste. New Yorkers currently generate more than 3.9 million tons of food scraps annually, approximately 97% of which are allowed to rot in landfills.<sup>6</sup> Diverting food scraps from landfills to organics recycling facilities would significantly reduce greenhouse gas emissions. Organics recyclers “recycle[] food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, fermentation, or ethanol production,”<sup>7</sup> all of which are associated with reduced greenhouse gas emissions relative to landfill disposal.

New York State’s Food Donation and Food Scraps Recycling law represents a meaningful step toward the more sustainable management of New York’s food waste. In relevant part, the law requires entities that generate at least an annual average of two tons of wasted food per week, *first*, to separate and donate any edible food and, *second*, to separate and recycle all remaining food scraps if they are within 25 miles of an organics recycler.<sup>8</sup>

Effective implementation of this law is a unique state-level opportunity to tackle greenhouse gas emissions, combat climate change, and create a channel to improve food security. To make the most of this opportunity, we urge that DEC: (1) encourage the development of additional organics recycling facilities, particularly local composting infrastructure; (2) prioritize reduction of food waste at the source by incentivizing food donations; and (3) provide education, outreach, and training to decrease food waste contamination, which impairs composting efforts. We describe each recommendation more fully below.

**1. DEC must encourage the development of additional organics recycling facilities, particularly local composting infrastructure.**

New York State’s Food Donation and Food Scraps Recycling law states that “each designated food scraps generator that is within twenty-five miles of an organics recycler . . . shall . . . obtain a transporter that will deliver food scraps to an organics recycler, self-haul its food scraps to an organics recycler, or provide for organics recycling on-site via in vessel composting, aerobic or anaerobic digestion or any other method of processing organic waste that [DEC] approves by regulation.”<sup>9</sup> This 25-mile recycling requirement functionally exempts most food waste generators because, at present, there are few organics recyclers. Indeed, according to the New York State Pollution Prevention Institute, there are only 219 organics recyclers in New York State, and vast swathes of the State are located more than 25 miles from these facilities.<sup>10</sup>

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<sup>6</sup> See *Working to Solve New York’s Food Waste Problem*, NYLCV (Aug. 23, 2018), <https://nylcv.org/news/working-solve-new-yorks-food-waste-problem/>.

<sup>7</sup> N.Y. Env’t Conservation L. § 27-2201(3) (2019).

<sup>8</sup> See *Id.* § 27-2203(1)(a),(b) (2019).

<sup>9</sup> *Id.* § 27-2203(1)(b)(iv).

<sup>10</sup> See *Organic Resource Locator*, N.Y. State Pollution Prevention Inst., <https://www.rit.edu/affiliate/nysp2i/organic-resource-locator> (Follow hyperlink “See the full dataset for all categories on the map” under “References,” click on Google Sheets “ORL Dataset April 2021”).

The expansion of local composting infrastructure would increase the effectiveness of New York State's Food Donation and Food Scraps Recycling law, while also reducing the emissions and costs associated with hauling services.<sup>11</sup> In addition, composting and compost use protects watersheds, improves soil health, and builds local economies.<sup>12</sup> DEC already has allocated some funding to support the development of additional organics recyclers.<sup>13</sup> We urge DEC continue to allocate funding and otherwise incentivize and assist in the development of additional organics recycling facilities, with an emphasis on helping establish or expand local composting infrastructure.

## **2. DEC must prioritize reduction of food waste at the source by incentivizing food donations.**

New York State's Food Donation and Food Scraps Recycling law states that "all designated food scraps generators shall separate their excess edible food for donation for human consumption to the maximum extent practicable, and in accordance with applicable laws, rules and regulations related to food donation."<sup>14</sup> However, without proper oversight and incentives, food scraps generators may opt to recycle edible food instead of donating it due to perceived convenience. To avoid this outcome, we urge DEC to create incentives for food waste generators to reduce food waste at the source and encourage separation of edible food for donation.

Although our current system produces vast amounts of food, in New York State, over 1 in 10 households (10.5%) experience food insecurity.<sup>15</sup> By incentivizing food donations, encouraging partnerships between haulers and food recovery organizations, and providing technical assistance to promote food rescue and food safety, DEC can help to address food insecurity and increase access to nutritious food. DEC should implement these activities without delay.

## **3. DEC must provide education, outreach, and training to decrease food waste contamination that impairs composting efforts.**

New York State's Food Donation and Food Scraps Recycling law states that "designated food scraps generators shall separate [their] remaining food scraps from other solid waste."<sup>16</sup>

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<sup>11</sup> See Ambreen Ali, *Local South Orange-Maplewood Composters See Growth in the Long Haul*, The Vill. Green (Oct. 25, 2019), <https://villagegreennj.com/community/local-south-orange-maplewood-composters-see-growth-in-the-long-haul/>.

<sup>12</sup> See Brenda Platt & Nora Goldstein, *State of Composting in the U.S.*, BioCycle (2014), <https://www.biocycle.net/state-of-composting-in-the-u-s/>.

<sup>13</sup> See *Governor Cuomo Announces \$4.3 Million in Grants to Reduce Food Waste, Help Hungry New Yorkers and Cut Greenhouse Gas Emissions*, N.Y. State, Gov. Andrew Cuomo (Feb. 11, 2020), <https://www.governor.ny.gov/news/governor-cuomo-announces-43-million-grants-reduce-food-waste-help-hungry-new-yorkers-and-cut>.

<sup>14</sup> N.Y. Env'tl. Conserv. Law § 27-2203(1)(a).

<sup>15</sup> See *Hunger in NYS*, Hunger Solutions N.Y., <https://hungersolutionsny.org/resources-action/hunger-in-nys/>.

<sup>16</sup> N.Y. Env'tl. Conserv. Law § 27-2203(1)(b)(i).

However, this provision does not apply to “any designated food scraps generator that has all of its food scraps processed in a mixed solid waste composting or mixed solid waste anaerobic digestion facility.”<sup>17</sup> This loophole increases the risk of contaminated compost and will accelerate the growth of large-scale industrial sites at the expense of community-level and community-owned waste management solutions.

We request increased funding for proper education, outreach, and training to decrease the contamination of food waste with plastics, persistent herbicides, and other harmful substances. Decreased contamination will create a larger market for compost, which improves soil health and reduces the need for energy-intensive fertilizers and hazardous pesticides.<sup>18</sup>

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The proposed regulations provide an opportunity for DEC to implement a new less capital-intensive and more cost-effective approach to tackle greenhouse gas emissions, combat climate change, and create a channel to improve food security. We urge DEC to do so, and we appreciate your consideration of the foregoing comments.

Respectfully submitted,

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<sup>17</sup> *Id.* § 27-2203(1)(c).

<sup>18</sup> See Cole Rosengren & Maria Rachal, *7 Takeaways on Organics Recycling Trends from COMPOST2021*, Wastedive (Feb. 3, 2021), <https://www.wastedive.com/news/7-takeaways-compost-organics-recycling-climate/594428/>.

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