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New York and New Jersey Food Waste Recycling and Disposal Regulatory Update

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New York and New Jersey will soon begin to regulate recycling and disposal of food waste at certain facilities that generate food scraps or food waste including, among others, those facilities owned and operated by colleges and universities.

New York Food Recycling Program

On January 27, 2021, the New York State Department of Environmental Conservation ("NYSDEC") issued proposed regulations to implement the Food Donation and Food Scraps Recycling Act,[1] which was enacted in 2019 and becomes effective January 1, 2022. The proposed regulations apply to "Designated Food Scraps Generators" including, but not limited to, supermarkets, restaurants, higher education institutions, hotels, food processors, correctional facilities and sports entertainment venues that generate an annual average of two tons per week or more of food scraps.[2] NYSDEC will determine what facilities are Designated Food Scraps Generators and will notify them by July 1, 2021 that they are required to comply with the new regulations.

The proposed regulations would require Designated Food Scraps Generators to separate their edible food for donation from food scraps that would be designated for recycling or disposal.[3] Designated Food Scraps Generators would be required to cooperate with local food relief organizations to meet applicable donation criteria to minimize food waste.[4] When there is an organic's recycler or recycling transfer facility within 25 miles of a Designated Food Scraps Generator that has sufficient capacity, such generators must separate food scraps from other solid waste streams, properly store scraps to avoid odors/pests, train employees on food scrap separation and storage, and contract with a transporter to deliver food scraps to an organics recycler or provide on-site recycling.[5] Designated Food Scraps Generators will also be required to submit annual reports to NYSDEC documenting their food donation and recycling activity.[6] At facilities with multiple independent food service businesses, such as college campuses, the contractor responsible for solid waste transportation services would also be responsible for managing food scraps from those independent businesses.[7]

Facilities exempt from the proposed regulations include those generators in a city with a population greater than one million with a local law with requirements that are as least as stringent as the new regulations, as well as hospitals, nursing homes, adult care facilities, and elementary and secondary schools.[8] The proposed regulations also provide procedures and requirements for Designated Food Scraps Generators to request a temporary (1 year) waiver from the donation/recycling requirements. The waiver request must be filed by

November 1st of the year prior to the calendar year in which it would apply.[9]

NYSDEC is accepting comments regarding the proposed regulations through April 27, 2021.[10]

New Jersey Food Waste Recycling Act

On April 14, 2020, Gov. Murphy signed the Food Waste Recycling Act ("the Act"), bill number A-2371/S-865, into law. [11] The Act requires large food waste generators including, educational institutions, to separate and recycle food waste. [12] The Act takes effect on December 31, 2021.

Initially, an entity is considered a "large food waste generator" — triggering the obligation to comply with the requirements of the Act — if an average of 52 or more tons of food waste is produced annually. The Act requires regulated large food waste generators, for each individual establishment or location owned or operated within 25 road miles of an authorized food waste recycling facility, to: (1) source separate its food waste from other solid waste; and (2) send the source separated food waste to an authorized food waste recycling facility that has available capacity and will accept it. If a particular establishment or location of a large food waste generator is not located within 25 road miles of an authorized food waste recycling facility, or the authorized food waste recycling facility will not accept the food waste, the food waste may be disposed of at a solid waste facility pursuant to the approved district solid waste management plan applicable to a large food waste generator's particular location.

As an alternative to recycling or disposing food waste off-site, the Act permits a large food waste generator to perform on-site composting, anaerobic or aerobic digestion of its source separated food waste, or to recycle food waste using an alternative authorized food waste recycling method. Under the Act, "alternative authorized food waste recycling method" means: (1) recycling food waste at the site at which it is generated as authorized by New Jersey Department of Environmental Protection ("NJDEP"); (2) treating food waste at the site at which it is generated pursuant to a permit issued by NJDEP; (3) sending food waste for off-site use for agricultural purposes; (4) sending food waste off-site for treatment with sewage sludge in an anaerobic digester for renewable natural gas or biogas recovery as authorized by NJDEP; or (5) any other method of recycling or reuse of food waste, as authorized by NJDEP.

In addition, under limited circumstances, the Act permits a large food waste generator to petition NJDEP for a waiver of the requirements of the Act based on the cost of transporting/disposing of food waste. Otherwise, any person who violates the Act, or any rule or regulation adopted pursuant thereto, is subject to civil penalties.[13]

The Act requires NJDEP to adopt rules and regulations to implement the Act including, providing guidelines and procedures for preparing food waste generation estimates, audits or assessments, and for petitioning NJDEP for a waiver as permitted under the Act, among other things. In light of the Act's effective date of December 31, 2021, NJDEP's proposed rules and regulations to this end are expected in 2021.

Regulated entities should be prepared to comply with these new laws/regulations or begin to consider whether they may be eligible for a waiver.

If you have any questions concerning the New York food donation and recycling program, please contact Brendan Mooney at bmooney@cullenllp.com or 516-357-3757. If you have any questions regarding New Jersey's food waste recycling requirements, please contact Amie Kalac at akalac@cullenllp.com or 609-279-0900.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

[1] New York Environmental Conservation Law ("ECL") § 27-2201 et seq.

[2] 6 NYCRR § 350-1.4(d) (proposed).

[3] Id.at § 350-2.3.

[4] Id.

[5] Id. at § 350-2.4(a).

[6] Id. at § 350-2.5.

[7] Id. at § 350-1.4(d).

[8] Id. at § 350-1.2.

[9] Id. at § 350-2.6.

[10] Instructions on how to file comments regarding the proposed regulations are available at: https://www.dec.ny.gov/chemical/122245.html

[11] A copy of the Act is available at: https://www.nj.gov/dep/dshw/recycling/rule_link.htm.

[12] Prior to the Act, guidelines were issued by NJDEP to assist higher education institutions in reducing, recovering, and recycling food waste. The guidelines are available at: www.nj.gov/dep/seeds/sfwg/index.htm.

[13] Penalties assessed by NJDEP under the Act are to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 12 et seq.). The Superior Court of New Jersey, as well as municipal courts, have jurisdiction to enforce.

Practices

- Environmental

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