

Environmental Law Alert

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A New Fate for Holiday Leftovers?

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New Massachusetts solid waste rules encouraging composting operations and organics-to-energy facilities took effect on November 23. The new rules are part of the Commonwealth's larger effort to promote clean energy, reduce greenhouse gas emissions, and remove organics from the waste stream.

Massachusetts Efforts to Redirect Organic Waste for Energy Production

In addition to the new rules, the Commonwealth already updated its energy regulations to make anaerobic digestion (AD) facilities eligible for net metering and the Alternative Portfolio Standard and it plans to issue a commercial and industrial food waste ban in 2014.

Wayne Davis, the Vice President of Government Affairs at Harvest Power, a Waltham-based developer and operator of organics-to-energy plants and compost production facilities, stated that "by simultaneously addressing environmental permitting, landfill diversion, and energy pricing, Massachusetts policy towards AD has emerged as the most coherent and integrated approach of any state in the country."

The New Rules

The [new rules](#) designate the Massachusetts Department of Environmental Protection (MassDEP), and not local Boards of Health, as the primary permitting authority over composting operations and AD facilities. The rules also provide a clear permitting pathway that divides these composting and organics conversion activities into three categories:

1. **Small-scale activities**

Certain small-scale organics-handling operations are exempted from MassDEP waste permits. These exempt operations include activities located at an agricultural unit; small composting operations; municipal food material collection centers; and certain yard waste transfer operations. These activities may be subject to other rules such as MassDEP wetland requirements or Department of Agricultural Resources regulations.

2. **Activities that qualify for a general permit**

The general permit is available to composting operations that receive fewer than 30 tons per day and 105 tons per week of organic material with high nitrogen content (e.g., food) and AD facilities that receive no more than 100 tons per day of any organics. Facilities covered by the general permit must implement best management practices and are subject to compliance certifications, reporting, and storage requirements. They must also implement a toxics control plan and maintain residual levels below 5% by weight.

3. **Activities subject to a Recycling, Composting or Conversion (RCC) permit**

Composting operations and AD facilities with throughputs higher than the general permit thresholds must obtain a facility-specific RCC permit through a public review process similar to that required to receive a solid waste facility site assignment. If MassDEP grants an RCC

permit, municipalities and groups of at least ten persons can request an adjudicatory hearing, but the hearing schedule is designed to produce a MassDEP decision within six months.

Existing Composting Operations and AD Facilities

Composting operations and AD facilities that received a conditional exemption from the solid waste rules before these new amendments must submit the certification necessary to be subject to the general permit by February 2014. Composting operations and AD facilities with a Determination of Need (DON) may operate pursuant to their DON until the DON expires or five years from the effective date of these rules, whichever is less.

Changes from the Proposed Rules

As a result of industry comments, the final amendments increased the AD organic waste limit in the general permit from 60 to 100 tons per day. MassDEP rejected industry comments which argued that the 5% residuals limit was infeasible. MassDEP also added that the affected municipality, and not just a group of ten persons, could request a public hearing and adjudicatory hearing for a RCC permit. Click [here](#) for more on the draft rules.

Opportunities for Organics-to-Energy Facilities

As part of the [Clean Energy Results Program](#), an initiative between MassDEP and the Massachusetts Department of Energy Resources (DOER), MassDEP will facilitate private development of three AD facilities on state land by 2014. Other opportunities for AD facilities can be found on the Clean Energy Results Program's [website](#), including sources of funding and technical assistance.

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