April 26, 2021

Sally Rowland
Organic Reduction and Recycling
625 Broadway, Albany, New York 12233-725

Dear Ms. Rowland:

The US Composting Council commends the DEC on its work to increase the recycling of food scraps through the proposed Part 350 regulations. However, we believe more could and should be done to discourage mixed solid waste composting, though we understand that by legislation it must be allowed in Delaware County. History shows that most mixed waste composting ventures have had a very high failure rate and one of the primary reasons for this is that the compost they produced was so contaminated it was unmarketable.

We believe that to achieve the healthy soils, climate mitigation and economic development that was envisioned when this law was written and passed by the New York General Assembly in 2019, several changes should be made to the proposed regulations. These are detailed below.

Our organization’s mission and vision revolve around these goals: our belief that compost manufacturing and compost utilization are central to creating healthy soils, clean air and water, a stable climate, and a sustainable society. Our 1,200-plus members, plus the additional 3,000 folks from the State of New York who have attended our training, conferences and participated in development of composting, would agree that your proposed regulations, which would allow generators of food scraps and haulers who pick them up to bypass separation before digestion or composting, does not produce healthy soils, the aim of the 2019 law.

Additionally, as we have seen in nearby New England states, the allowance of non-source separated wastes would impede New York from participating in the economic expansion of this rapidly growing industry. It could even drive companies in New York, who have invested in compost infrastructure and are providing green manufacturing jobs, out of business.

Note that we are not opposed to the technology of depackaging itself; but this technology should be reserved to remove packaging from inedible packaged food products, not as a method for dealing with mixed solid waste. While they are excellent at doing what they are designed for, like getting out-of-date soup from cans or salad greens from plastic bags, when used for contaminant reduction they cannot discriminate between compostable products and look alike products. That means that the investment and effort that went into using compostable food service ware or packaging will be wasted when it is mixed with non-compostable wastes. Source separation is the key to closing the organics loop with quality products...
applied to soil. Again, we are firmly against mixed waste processing as a legitimate substitution for source separation.

To meet the intent of the law as passed, NY State’s regulations must result in the highest and best use of soil amendments; to do this, source separation of organics must be required for all generators, regardless of the end destination.

We propose several amendments to the regulations to encourage the source separation producing product with beneficial use as intended by the law:

- In section 2.4(a)(1) certified compostable products should be identified as non-contaminants if the receiving facility has the capacity to compost them.

- A food waste generator that uses compostable products to increase the capture of food scraps shall send their source-separated organics to a facility that will compost the compostable products.

- Clarify that depackagers fall under 361-3.6 Other organics recycling facilities. Depackagers that are used solely or primarily for contaminant removal, as opposed to separation of organic wastes from packaging, should not be eligible for exemption or registration.

- To increase the ability of compost businesses to operate in an environmentally sound manner and produce marketable compost, the regulation should require compost operator certification for compost facilities taking material under this regulation. Compost facilities should be given at least a year to come into compliance with the rule.

- Under the law, a food scrap generator is required to send their organic residuals to a recycler if the options exist within 25 miles (either a processor or a transfer station that will send the material to a processor), but the generator is not required to send their materials to the facility that is within 25 miles. This is a disincentive for investment, since there is no guarantee that organics within 25 miles will go to the facility. Consider requiring a waiver from the generator or hauler to send organic residuals to a facility (processor or transfer station) beyond 25 miles. The waiver would need to show that the closer facility is at least 10% more expensive than the further alternative.

We would be pleased to meet with you about ways to better craft and implement these regulations, but at this time we are opposed to this regulation as written.

Regards,

Frank Franciosi - Executive Director

CC: Sen. Todd Kaminsky, sponsor, HR S2995