

STATE OF NEW YORK

10699

IN ASSEMBLY

May 10, 2018

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the
Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the
donation of excess food and recycling of food scraps

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Approximately 40 percent of the food produced in the United
2 States today goes uneaten. Much of this organic waste is disposed of in
3 solid waste landfills, where its decomposition accounts for over 15
4 percent of our nation's emissions of methane, a potent greenhouse gas.
5 Meanwhile, an estimated 2.8 million New Yorkers are facing hunger and
6 food insecurity. Recognizing the importance of food scraps to our envi-
7 ronment, economy, and the health of New Yorkers, this act establishes a
8 food scraps hierarchy for the state of New York. The first tier of the
9 hierarchy is source reduction, reducing the volume of surplus food
10 generated. The second tier is recovery, feeding wholesome food to hungry
11 people. Third is repurposing, feeding animals. Fourth is recycling,
12 processing any leftover food such as by composting or anaerobic
13 digestion to create a nutrient-rich soil amendment. This legislation is
14 designed to address each tier of the hierarchy by: encouraging the
15 prevention of food waste generation by commercial generators and resi-
16 dents; directing the recovery of excess edible food from high-volume
17 commercial food waste generators; and ensuring that a significant
18 portion of inedible food waste from large volume food waste generators
19 is managed in a sustainable manner, and does not end up being sent to
20 landfills or incinerators. In addition, the state has supported the
21 recovery of wholesome food by providing grants from the environmental
22 protection fund to increase capacity of food banks, conduct food scraps
23 audits of high-volume generators of food scraps, support implementation
24 of pollution prevention projects identified by such audits, and expand
25 capacity of generators and municipalities to donate and recycle food.

26 § 2. Article 27 of the environmental conservation law is amended by
27 adding a new title 22 to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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TITLE 22

FOOD DONATION AND FOOD SCRAPS RECYCLING

Section 27-2201. Definitions.

27-2203. Designated food scraps generator responsibilities.

27-2205. Waste transporter responsibilities.

27-2207. Transfer station.

27-2209. Food scraps disposal prohibition.

27-2211. Department responsibilities.

27-2213. Regulations.

27-2215. Exclusions.

27-2217. Annual Report.

27-2219. Severability.

§ 27-2201. Definitions.

1. "Designated food scraps generator" means a person who generates at a single location an annual average of two tons per week or more of food scraps based on a methodology established by the department pursuant to regulations, including, supermarkets, restaurants, higher educational institutions, hotels, food processors, correctional facilities, sports or entertainment venues and health care facilities. For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for contracting for solid waste hauling services is responsible for managing food scraps from the independent businesses.

2. "Food scraps" means inedible food, trimmings from the preparation of food, food-soiled paper, and edible food that is not donated. Food scraps shall not include used cooking oil, yellow grease or food from residential sources, or any food identified in regulations promulgated by the department in consultation with the department of agriculture and markets or any food which is subject to a recall or seizure due to the presence of pathogens, including but not limited to: *Listeria Monocytogenes*, confirmed *Clostridium Botulinum*, *E. coli* 0157:H7 and all salmonella in ready-to-eat foods.

3. "Organics recycler" means a facility, permitted by the department, that recycles food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, fermentation, or ethanol production. Animal scraps, food soiled paper, and post-consumer food scraps are prohibited for use as animal feed or as a feed ingredient. The proportion of the product created from food scraps by a composting or digestion facility, including a wastewater treatment plant that operates a digestion facility, or other treatment system, must be used in a beneficial manner as a soil amendment and shall not be disposed of or incinerated.

4. "Person" means any business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, or organization.

5. "Single location" means contiguous property under common ownership, which may include one or more buildings.

6. "Incinerator" shall have the same meaning as provided in section 72-0401 of this chapter.

7. "Landfill" shall have the same meaning as provided in section 72-0401 of this chapter.

8. "Transfer station" means a solid waste management facility, whether owned or operated by a private or public entity, other than a recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another

solid waste management facility for processing, treating, disposal, recovery, or further transfer.

§ 27-2203. Designated food scraps generator responsibilities.

1. Effective January first, two thousand twenty-one:

(a) 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; and

(b) except as provided in paragraph (c) of this subdivision, each designated food scraps generator that is within fifteen miles of an organics recycler, to the extent that the recycler has capacity to accept all of such generator's food scraps based on the department's yearly estimate of an organic recyclers' capacity pursuant to section 27-2211 of this title, shall:

(i) separate its remaining food scraps from other solid waste;

(ii) ensure proper storage for food scraps on site which shall preclude such materials from becoming odorous or attracting vectors, such as a container that has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife and has sufficient capacity;

(iii) have information available and provide training for employees concerning the proper methods to separate and store food scraps; and

(iv) 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 the department approves by regulation, for some or all of the food waste it generates on its premises, provided that the remainder is delivered to an organics recycler.

(c) The provisions of paragraph (b) of this subdivision shall 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.

2. All designated food scraps generators shall submit an annual report to the department on or before March first, two thousand twenty-two, and annually thereafter, in an electronic format. The annual report must summarize the amount of edible food donated, the amount of food scraps recycled, the organics recycler or recyclers and associated transporters used, and any other information as required by the department.

3. A designated food scraps generator may petition the department for a temporary waiver from some or all of the requirements of this title. The petition must include evidence of undue hardship based on:

(a) the designated food scraps generator does not meet the two tons per week threshold;

(b) the cost of processing organic waste is not reasonably competitive with the cost of disposing of waste by landfill;

(c) the organics recycler does not have sufficient capacity, despite the department's calculation; or

(d) the unique circumstances of the generator.

A waiver shall be no longer than one year in duration provided, however, the department may renew such waiver.

§ 27-2205. Waste transporter responsibilities.

1. Any waste transporter that collects food scraps for recycling from a designated food scraps generator shall:

(a) deliver food scraps to a transfer station that will deliver such food scraps to an organics recycler unless such generator has received a

1 temporary waiver under subdivision three of section 27-2203 of this
2 title; or

3 (b) deliver such food scraps directly to an organics recycler.

4 2. Any waste transporter that collects food scraps from a designated
5 food scraps generator shall take all reasonable precautions to not
6 deliver those food scraps to an incinerator or a landfill nor commingle
7 the material with any other solid waste unless such commingled waste can
8 be processed by an organics recycler or unless such generator has
9 received a temporary waiver under subdivision three of section 27-2203
10 of this title.

11 § 27-2207. Transfer station.

12 Any transfer station that receives food scraps from a designated food
13 scraps generator must ensure that the food scraps are taken to an organ-
14 ics recycler unless such generator has received a temporary waiver under
15 subdivision three of section 27-2203 of this title. A transfer station
16 shall take all reasonable precautions to not commingle the material with
17 any other solid waste unless such commingled waste can be processed by
18 an organics recycler.

19 § 27-2209. Food scraps disposal prohibition.

20 Incinerators and landfills shall take all reasonable precautions to
21 not accept food scraps from designated food scraps generators required
22 to send their food scraps to an organics recycler as outlined under
23 section 27-2203 of this title, after January first, two thousand twen-
24 ty-one, unless the designated food scraps generator has received a
25 temporary waiver under subdivision three of section 27-2203 of this
26 title.

27 § 27-2211. Department responsibilities.

28 1. The department shall publish on its website: (a) the methodology
29 the department will use to determine who is a designated food scrap
30 generator; (b) the waiver process; (c) procedures to minimize odors and
31 vectors; and (d) a list of all designated food scraps generators, organ-
32 ics recyclers, and all waste transporters that manage source-separated
33 organics.

34 2. No later than June first, two thousand twenty and annually there-
35 after, the department shall assess the capacity of each organic recycler
36 and notify designated food scraps generators if they are required to
37 comply with the provisions of paragraph (b) of subdivision one of
38 section 27-2203 of this title.

39 3. The department shall develop and make available educational materi-
40 als to assist designated food scraps generators with compliance with
41 this title. The department shall also develop education materials on
42 food waste minimization and encourage municipalities to disseminate
43 these materials both on their municipal websites and in any such future
44 mailings to their residents as they may distribute.

45 4. The department shall regulate organics recyclers to ensure that
46 their activities do not impair water quality or otherwise harm human
47 health and the environment.

48 § 27-2213. Regulations.

49 The department shall, after one or more public hearings, promulgate
50 rules and regulations necessary to implement the provisions of this
51 title including: (a) the methodology the department will use to deter-
52 mine who is a designated food scraps generator; (b) the waiver process;
53 (c) procedures to minimize odors and vectors; (d) a list of all desig-
54 nated food scraps generators, organics recyclers, and all waste trans-
55 porters that manage source-separated organics; and (e) how designated
56 food scraps generators shall comply with the provisions of paragraph (a)

1 and subparagraph (i) of paragraph (b) of subdivision one of section
2 27-2203 of this title.

3 § 27-2215. Exclusions.

4 1. This title shall not apply to any designated food scraps generators
5 located in a city with a population of one million or more which has a
6 local law, ordinance or regulation in place which requires the diversion
7 of edible food and food scraps from disposal.

8 2. This title does not apply to hospitals, elementary and secondary
9 schools.

10 § 27-2217. Annual report.

11 No later than January first, two thousand twenty-two, and on an annual
12 basis thereafter, the department shall submit an annual report to the
13 governor and legislature describing the operation of the food donation
14 and food scraps recycling program including amount of edible food
15 donated, amount of food scraps recycled, sample educational materials,
16 and number of waivers provided.

17 § 27-2219. Severability.

18 The provisions of this title shall be severable and if any portion
19 thereof or the applicability thereof to any person or circumstance is
20 held invalid, the remainder of this title and the application thereof
21 shall not be affected thereby.

22 § 3. This act shall take effect immediately.