STATE OF NEW YORK

6081

2019-2020 Regular Sessions

IN ASSEMBLY

February 27, 2019

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

AN ACT to amend the environmental conservation law and the tax 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 Assembly, do enact as follows:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 22 to read as follows:

TITLE 22

FOOD RECOVERY AND RECYCLING

Section 27-2201. Definitions.

27-2203. Designated food scraps generator responsibilities.

27-2205. Transporter responsibilities.

27-2207. Transfer facility or other intermediary responsibilities.

27-2209. Food scraps disposal prohibition.

27-2211. Department responsibilities.

27-2213. Regulations.

27-2215. Exclusions.

27-2217. Preemption and 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, prior to January first, two thousand twenty-three, and one ton per week on and after such date, or more of excess food and food scraps, based on a methodology established by the department pursuant to regulations, including, but not limited to, supermarkets, restaurants, higher educational institutions, hotels, food processors, correctional facilities, sports or entertainment venues, and hospitals or other health care facilities. For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for

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

LBD10014-01-9

contracting with a transporter for solid waste transportation services is responsible for managing excess food and food scraps from the independent businesses for the purposes of determining if the generator is a designated food scraps generator.

2. "Excess food" means wholesome food that is not sold or used by its generator.

3. "Food scraps" means inedible solid or liquid food, trimmings from the preparation of food, food-soiled paper, and excess food that is not donated. Food scraps shall not include used cooking oil, yellow grease or food from residential sources 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.

4. "Incinerator" shall have the same meaning as such term is defined in section 27-0707 of this article.

5. "Organics recycler" means a facility that recycles food scraps through use as animal feed or a feed ingredient, rendering, land application, composting, aerobic digestion, anaerobic digestion, or fermentation. 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. The department may designate other techniques or technologies by regulation, provided they do not include incineration or landfilling. If wastewater treatment plants recycling food scraps can demonstrate to the department's satisfaction that beneficial use of biosolids is not available or not economically feasible, the biosolids may be disposed of in a landfill or incinerated at a facility authorized to accept those wastes.

6. "Person" means any individual, business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, organization or any other group of individuals, or any officer or employee or agent thereof.

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

8. "Transfer facility" means a facility that receives solid waste for the purpose of subsequent transfer to another facility for further processing, treatment, transfer, or disposal.

§ 27-2203. Designated food scraps generator responsibilities.

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

(a) all designated food scraps generators shall separate their excess 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 a forty-mile radius of an organics recycler regulated by the department, to the extent that the recycler has capacity to accept a substantial portion or all of the generator's food scraps as determined by the department on a yearly basis, shall:

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

(ii) ensure proper storage for food scraps collection 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, 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 its food scraps to an organics recycler, either directly or through an intermediary, self-haul its food scraps to an organics recycler, either directly or through an intermediary, or provide for organics recycling on-site.

(c) The provisions of paragraph (b) of this subdivision shall not apply to any designated food scraps generator that has all of its solid waste processed in a mixed solid waste composting or other mixed solid waste organics recycling 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 excess food and food scraps generated, the amount of excess food donated, an outline of its efforts to establish a relationship with a food recovery organization, the amount of food scraps recycled, the organics recycler or recyclers and associated transporters used, and any other information as required by the department.

§ 27-2205. Transporter responsibilities.

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

(a) deliver collected food scraps to a transfer facility or other intermediary that will deliver such food scraps to an organics recycler; or

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

2. Any transporter that collects source-separated food scraps from a designated food scraps generator shall not commingle the food scraps with any other solid waste unless such waste can be processed by an organics recycler.

§ 27-2207. Transfer facility or other intermediary responsibilities.

Any transfer facility or other intermediary that receives source-separated food scraps from a designated food scraps generator must ensure that the food scraps are taken to an organics recycler. No transfer facility or other intermediary may commingle the food scraps with any other solid waste unless such waste can be processed by an organics recycler.

§ 27-2209. Food scraps disposal prohibition.

No incinerator or landfill shall knowingly accept or commingle with solid waste source-separated food scraps from designated food scraps generators required to send food scraps to an organics recycler as outlined under section 27-2203 of this title, either directly or from an intermediary, after January first, two thousand twenty-one.

§ 27-2211. Department responsibilities.

1. The department shall publish on its website a list of all designated food scraps generators, organics recyclers, food recovery organizations, and all transporters that manage source-separated food scraps.

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

3. The department shall develop and make available educational materials to assist designated food scraps generators with compliance with this title. The department shall also develop education materials on

food waste minimization and encourage municipalities to disseminate these materials both on their municipal websites and in any relevant future mailings to their residents as they may distribute.

§ 27-2213. Regulations.

The department shall promulgate rules and regulations necessary to implement the provisions of this title. At a minimum, the department shall promulgate rules and regulations that set forth the methodology the department will use to determine who is a designated food scraps generator, after consulting with industry representatives, and what process a designated generator must follow to dispute such determination, and how designated food scraps generators shall comply with the provisions of paragraph (a) and subparagraph (i) of paragraph (b) of subdivision one of section 27-2203 of this title.

§ 27-2215. Exclusions.

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

2. This title does not apply to elementary and secondary schools.

§ 27-2217. Preemption and severability.

1. Any provision of any local law or ordinance, or any regulation promulgated thereto, governing the recycling of food scraps shall upon the effective date of this title be preempted, except in a city with a population of one million of more. However, local laws or ordinances, or parts thereof, affecting the recycling of food scraps that include generators not covered by this title shall not be preempted.

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

§ 2. Section 606 of the tax law is amended by adding a new subsection (jjj) to read as follows:

(jjj) Food recovery and recycling tax credit. (1) For taxable years beginning on or after January first, two thousand twenty-one, a taxpayer who is a designated food scraps generator, as defined in section 27-2201 of the environmental conservation law, shall be allowed a credit against the tax imposed under this article for an amount equal to the cost of obtaining a transporter to deliver its food scraps to an organics recycler, pursuant to section 27-2203 of the environmental conservation law, provided, however, such credit shall not exceed fifteen thousand dollars.

(2) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(3) The commissioner, in consultation with the commissioner of environmental conservation, shall promulgate rules and regulations by January first, two thousand twenty-one to establish the documentation that will be provided to taxpayers to substantiate to the department eligibility to receive the credit provided by paragraph one of this subsection.

§ 3. This act shall take effect immediately.