



February 09, 2023

The Honorable Brian J. Feldman, Chair
Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, Suite 2W
Annapolis, Maryland 21401

Re: Senate Bill 262 – Environment – On–Farm Composting Facilities – Permit Exemption

Dear Chair Feldman and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed Senate Bill 262 and we would like to provide information and a proposed amendment regarding this bill.

Senate Bill 262 would amend §9-1725 of the Environment Article to require MDE’s regulations to exempt an on–farm composting facility from the requirement to obtain a Composting Facility Permit if the on–farm composting facility uses 40,000 square feet of area or less in support of food scrap composting and meets any other condition for a permit exemption specified in regulation.

MDE regulations currently exempt an on-farming composting facility from the Composting Facility Permit if the facility uses 40,000 square feet of area or less in support of composting; however, the exemption allows for the composting of food scraps only if those materials were generated on site or at another farm controlled by the same operator. The exemption also allows for the composting of Type 1 feedstocks (e.g., yard waste) and animal manure and bedding, regardless of the site of generation (see COMAR 26.04.11.06D). Under Senate Bill 262, MDE would need to amend the regulations to include a Composting Facility Permit exemption for on-farm composting facilities using 40,000 square feet of area or less in support of food scrap composting, regardless of the site of generation.

House Bill 817 of 2011 required MDE, in consultation with the Maryland Environmental Service (MES) and the Maryland Department of Agriculture (MDA), to study composting in the State, develop recommendations on how to promote composting in the State, and report findings and recommendations to the General Assembly. To conduct the study, MDE convened a Composting Workgroup that included representatives from MDA, MES, the composting industry, local governments, and other stakeholders. The final report from the study recommended that MDE adopt regulations with a tiered system of permits and permit exemptions for composting facilities. The final report from the study specifically recommended a tiered approach to on-farm composting, with certain on-farm composting activities exempt from the permit requirement and others subject to the same permit and operational conditions required of non-farm facilities. This approach was further refined, with additional stakeholder

consultation, during the development of the composting facility regulations.

MDE supports initiatives that promote composting of food scraps and on-farm composting operations. In 2021, an estimated 240,168 tons or 22.7 percent of food waste generated in Maryland was recycled, an estimated 104,808 tons of which were composted. Composting of surplus food that cannot be diverted for human or animal consumption helps to reduce greenhouse gas emissions related to disposal, conserve existing landfill capacity, and create a valuable soil amendment that improves soil health.

Despite the benefits of composting, poorly managed composting operations can result in issues like leachate or other material discharging to surface and groundwaters of the State, nuisance odors, and insect and rodent infestations. The regulations were developed with the intention of preventing these issues at permitted facilities through design and operational controls and oversight, including provisions to prevent uncontrolled runoff or groundwater contamination from water that has contacted the feedstocks. MDE also sought to balance these environmental safeguards with more flexibility for smaller or lower-risk sites, including smaller facilities and on-farm facilities that managed the types of materials already typically managed on farms. Allowing a commercial-scale composting facility to accept and manage significant quantities of food scraps without a Composting Facility Permit as long as it is located on a farm would be inconsistent with the original rationales for the permit requirements and exemptions. Additionally, as the bill would allow a commercial-scale food scraps composting facility on a farm to operate without a permit and the accompanying safeguards, while still imposing those requirements on an identical facility located elsewhere, it may put operations on unequal competitive footing without any meaningful environmental distinction.

Another consideration that needs to be explored with this bill is that new sources or expanding sources not identified for that watershed's current Total Maximum Daily Load need to identify offsets due to lack of wasteload allocations. In addition to this, this bill would not eliminate the requirement for a National Pollutant Discharge Elimination System discharge permit, currently provided under the stormwater permit. However, the coverage under the general permit depends on the protections in the compost permit. The unintended consequence of this would be that smaller operators are forced into more expensive and time-consuming individual permits.

Amendment: MDE recognizes the need to expand capacity for composting food scraps in particular and is willing to work with bill's proponents and relevant stakeholders on any necessary regulatory adjustments to the composting facility regulations to ensure they are not overly burdensome to on-farm composting facilities but remain protective of public health and the environment. MDE would be willing to entertain expansion of the current 5,000 square foot exemption to 10,000 square feet, double the current exemption, to help address concerns of small on-farm operations.

Thank you for your consideration. We will continue to monitor Senate Bill 262 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6304 or by e-mail at gabrielle.leach@maryland.gov.

Sincerely,

Gabrielle Leach

Gabrielle Leach, Deputy Director, Legislative and Intergovernmental Relations

cc: The Honorable Jason C. Gallion
Tyler Abbott, Director, Land and Materials Administration