

November 15, 2012

Organics Facility Siting Regulations Final

On November 23, 2012 the Massachusetts Secretary of State will publish final regulations that will streamline and clarify the siting and permitting of facilities that handle source separated organic materials. In celebration of this accomplishment, MassDEP Commissioner Kenneth Kimmell and Department of Energy Resources Commissioner Mark Sylvia literally high-fived each other on the morning they announced Governor Deval Patrick's approval of the new regulations. The culmination of more than 18 months of stakeholder processes and public hearings, the regulations make it clear that a solid waste site assignment is not required for certain classes of facilities that process only source separated organic materials.

Although the rules are long and involved, their overall impact is to allow facilities to accept and process source separated organics. Under the new regulations existing waste water treatment plants will be allowed to accept and process source separated organics without prior approval from the MassDEP and "stand alone" organics facilities may do so either under a "General Permit" or a site specific "Recycling, Composting or Conversion" ("RCC") permit without a solid waste site assignment. The tonnage and type of organics received will determine whether the General Permit or the RCC permit process applies. The regulations

continue to allow conditionally exempt composting operations at farms, residences and small operations that compost only on-site generated materials.

Faced with significant opposition from boards of health, the MassDEP has included very robust enforcement and public review processes in the regulations that are intended to forestall local objection to the MassDEP's elimination of board of health site assignment jurisdiction over these facilities. However, Commissioner Kimmell has been emphatic that the MassDEP is not removing local jurisdiction under zoning laws. His hope is that the first projects that developers advance will serve as a model to encourage other communities not to oppose, but to welcome projects. To prime the pump and create such a model, the Commonwealth expects to issue a Request for Proposals some time in 2013 for development of a privately run project at a state owned site.

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