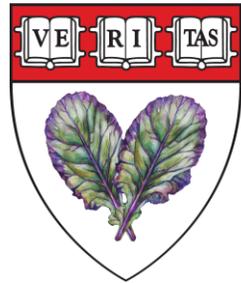


POLICY MEMO



Harvard
Food Law and Policy Clinic
A Division of the Center for Health Law and Policy Innovation

STRENGTHENING CONNECTICUT'S ORGANICS RECYCLING MANDATE

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INTRODUCTION

Connecticut was the first state in the country to pass a commercial organics recycling law.¹ This legislation was motivated by a waste characterization study that found that in 2009, residences and businesses in Connecticut produced nearly 2,380,000 tons of municipal solid waste.² Organic materials made up over a quarter of that waste and constituted the largest category of waste materials,³ and food waste was the most prevalent single material disposed of in the waste stream.⁴

This memorandum will begin by providing a brief overview of Connecticut's Organics Recycling Mandate and its requirements. It will then analyze some elements of the law that have limited its efficacy. Finally, this section will outline some recommendations for ways to strengthen the law, as well as ways to support the larger goals of the law through other incentives for food diversion and food recycling.

OVERVIEW OF CONNECTICUT'S ORGANICS RECYCLING MANDATE

In 2011, Connecticut was the first state to pass a law requiring that certain entities recycle their food waste.⁵ That law was updated in 2013, and together those bills now make up Section 22a-226e of the state's Solid Waste Management Statute.⁶ Connecticut is currently one of four states—Massachusetts, Rhode Island, and Vermont are the others—with an organics recycling law in place.

Section 22a-226e requires covered entities to source-separate their organic waste and dispose of it at an authorized composting facility,⁷ or treat these materials on-site.⁸ Covered entities include any “commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort, or conference center,” if the entity is located within twenty miles of an authorized composting facility.⁹ When the law took effect in 2014, only entities that produced 104 tons of source-separate organic waste per year were covered.¹⁰ Beginning in 2020, entities

¹ *Connecticut—Organics Recycling Mandate*, Institute for Local Self-Reliance (Jul. 11, 2014), <https://ilsr.org/rule/food-scrap-ban/connecticut-organics-recovery/>.

² See DSM Environmental Services, Inc., *Connecticut State-Wide Solid Waste Composition and Characterization Study, Final Report 11* (May 26, 2010), http://www.ct.gov/deep/lib/deep/waste_management_and_disposal/solid_waste/wastecharstudy/ctcompositioncharstudymay2010.pdf.

³ *Id.* at 13.

⁴ *Id.* at 14.

⁵ *Connecticut—Organics Recycling Mandate*, Institute for Local Self-Reliance (Jul. 11, 2014), <https://ilsr.org/rule/food-scrap-ban/connecticut-organics-recovery/>.

⁶ *Id.*

⁷ Conn. Gen. Stat. § 22a-226e(a)(1)(A)-(B) (2016).

⁸ Conn. Gen. Stat. § 22a-226e(a)(2)(b) (2016).

⁹ Conn. Gen. Stat. § 22a-226e(a)(1) (2016).

¹⁰ Conn. Gen. Stat. § 22a-226e(a)(1) (2016).

that produce 52 tons of source-separated waste per year will be covered.¹¹ The law also requires that permitted composting facilities that receive organic waste report their fees to the Commissioner of Energy and Environmental Protection.¹²

SHORTCOMINGS OF CONNECTICUT'S ORGANICS RECYCLING LAW

Although Connecticut was the first state to pass an organics recycling mandate, some of the states that followed have passed broader and more comprehensive mandates in order to divert more organic waste. This section will identify how Connecticut's law is more limited than the laws in these other states or otherwise not as comprehensive as it could be.

The Law Covers Limited Categories of Food Waste Generators

Connecticut's law is particularly narrow in terms of the categories of entities covered by the law. Connecticut's law covers only the specifically listed commercial and industrial generators identified in the previous section.¹³ Notably, neither residents nor institutions, including schools, colleges and universities, government facilities, prisons and hospitals, are covered by the law. In contrast, Massachusetts' law covers organic waste from all non-residential generators,¹⁴ while Vermont covers all categories of generators, including individual residents.¹⁵ Even Rhode Island, whose law is narrow in many respects, covers institutions such as prisons, hospitals, and higher educational institutions, in addition to commercial and industrial food wholesalers, distributors, and manufacturers.¹⁶

By exempting the institutional sector, Connecticut's law likely fails to address a large portion of the state's waste. A 2012 study estimates that 10% of the food waste sent to landfills in the U.S. comes from the institutional sector.¹⁷

The Law Only Covers Businesses that Generate Large Amounts of Food Waste

In addition to covering only a small subset of businesses that generate food waste, Connecticut's law only applies to these businesses if they produce a certain amount of organic waste each year. Currently, that amount is 104 tons per year, although it will drop to 52 tons per year in 2020.¹⁸ Although Connecticut is going further than

¹¹ Conn. Gen. Stat. § 22a-226e(a)(2) (2016).

¹² Conn. Gen. Stat. § 22a-226e(a)(2)(c) (2016).

¹³ Conn. Gen. Stat. § 22a-226e(a)(1) (2016).

¹⁴ 310 Mass. Code Regs. 19.006 (2016).

¹⁵ 10 Vt. Stat. Ann. tit. 10, § 6605k (2015).

¹⁶ R.I. Gen. Laws § 23-18.9-7(19)-(21) (2016).

¹⁷ *Food Waste: Tier 1 Assessment*, BSR 8, 12 (Mar. 2012), http://www.foodwastealliance.org/wp-content/uploads/2013/06/FWRA_BSR_Tier1_FINAL.pdf.

¹⁸ Conn. Gen. Stat. § 22a-226e(a)(1)-(2) (2016).

some states by reducing the threshold over time,¹⁹ this reduction is relatively modest, and the law will still exclude generators producing significant amounts of organic waste.

The Law's Distance Exemption Significantly Limits the Number of Businesses That Must Comply

Connecticut's law also exempts businesses that are not located within twenty miles of an authorized source-separated material composting facility.²⁰ Because of the limited number of approved composting facilities in the state, businesses in large portions of the state are exempted from the law's requirements, even if they otherwise meet the qualifications for coverage under the law.²¹

Connecticut's Permitting System May Discourage the Growth and Expansion of Small-Scale Composting Facilities

Small-scale composting operations are important to developing a composting infrastructure to support Connecticut's organics recycling law. These facilities are easier and less costly to manage than large-scale facilities,²² and encouraging their development across the state can help bring more food waste generators under the purview of the law. Connecticut already encourages the development of these facilities by exempting small-scale facilities—those with processing capacities of less than 1 ton per hour or 5,000 cubic yards per year—from the requirement that composting facilities must be approved for an individual solid waste volume reduction permit.²³ Smaller facilities may still need to register for a storm water discharge general permit,²⁴ but because general permits, which authorize similar activities by multiple applicants, are quicker and less expensive to obtain than individual permits,²⁵ Connecticut's system places fewer burdens on small-scale facilities.

One concern for small-scale composting facilities registered under the general permit, however, is what happens if their business grows and their processing capacity nears the 5,000 cubic yards per year threshold. Facilities above that

¹⁹ In contrast, Rhode Island has a threshold of 104 tons per year with no gradual reduction written into its legislation. R.I. Gen. Laws § 23-18.9-17 (a)(1) (2016).

²⁰ Conn. Gen. Stat. § 22a-226e(a)(1) (2016).

²¹ See *Food Residual Recycling*, Connecticut Dep't of Energy & Env'tl. Protection, <http://www.depdata.ct.gov/maps/recycling/foodresidualmap.htm> (last visited June 21, 2016).

²² *Mansfield Participants Needed for Mansfield Transfer Station Compost Demonstration Project*, Town of Mansfield, <http://www.mansfieldct.gov/controls/NewsFeed.aspx?FeedID=2407> (last visited Apr. 16, 2016).

²³ *Summary of Solid Waste and Water Protection Permits and Approvals that May Be Required for Composting Facilities in Connecticut*, Connecticut Dep't of Energy & Env'tl. Protection 1 (Oct. 22, 2013), http://www.ct.gov/deep/lib/deep/compost/compost_pdf/compost_permit_summary.pdf.

²⁴ See *Summary of Solid Waste and Water Protection Permits and Approvals that May Be Required for Composting Facilities in Connecticut*, Connecticut Dep't of Energy & Env'tl. Protection 1 (last modified Oct. 22, 2013), http://www.ct.gov/deep/lib/deep/compost/compost_pdf/compost_permit_summary.pdf.

²⁵ *General Permits: An Environmental Permitting Fact Sheet*, Connecticut Dep't of Energy & Env'tl. Protection, http://www.ct.gov/deep/cwp/view.asp?a=2709&q=324154&deepNav_GID=1643 (last visited Apr. 16, 2016).

threshold must apply for an individual solid waste permit.²⁶ The smallest available individual solid waste permit for composting facilities is for facilities that process up to 100 tons per day of organic waste material,²⁷ which is a significant jump from the upper threshold of the general permit. An application for this individual permit requires a fee of \$7,750.²⁸ In contrast, the general permit requires a registration fee of only \$500 or \$1,000, depending on the number of employees at the facility.²⁹

The significant jump in cost and capacity between the general permit for small-scale composting facilities and the individual solid waste permit may discourage smaller facilities from trying to expand. Small-scale facilities may be unable to afford the \$7,750 fee for the individual permit, especially if they know they will not approach the 100 tons per day threshold. These small-scale facilities may instead choose to turn away large haulers looking to contract with them, because those haulers would put them over their capacity.³⁰ This negatively impacts these composting businesses, and also has an adverse effect on the efficacy of the organic recycling law. If composting facilities in a state that has a limited number of these facilities turn away food waste, it will become even more difficult, or even impossible, for some generators to find a facility close by that can accept their food waste.

The Law Does Not Encourage Food Diversion Strategies Beyond Composting

A final shortcoming, not unique to Connecticut's law, is its focus on composting as the primary method of diverting food from landfills. The U.S. Environmental Protection Agency has created a Food Recovery Hierarchy, which prioritizes ways that businesses or individuals can divert food waste.³¹ Although composting is preferable to disposing of excess food in landfills, it is still very low on the hierarchy, with methods such as reduction of surplus food at the source and using surplus food to feed people being the most preferred methods of diversion. However, organics recycling mandates as currently structured do not distinguish between these strategies or directly encourage companies to engage in food recovery strategies beyond composting.

RECOMMENDATIONS

Expand Covered Entities to Include Institutional Generators

²⁶ Telephone interview with Jeff Demers, Founder, New England Compost (Mar. 29, 2016).

²⁷ Permit Application for Construction and Operation of a Solid Waste Facility, Connecticut Dep't of Energy & Evtl. Protection 1 (last visited Apr. 16, 2016), http://www.ct.gov/deep/lib/deep/Permits_and_Licenses/Waste_Permits/swf_app.pdf.

²⁸ *Id.*

²⁹ General Permit for the Discharge of Stormwater Associated with Industrial Activity 12, http://www.ct.gov/deep/lib/deep/Permits_and_Licenses/Water_Discharge_General_Permits/storm_indust_mod.pdf (last modified Dec. 3, 2013).

³⁰ Telephone interview with Jeff Demers, Founder, New England Compost (Mar. 29, 2016).

³¹ *Food Recovery Hierarchy*, U.S. Env. Protection Agency, <https://www.epa.gov/sustainable-management-food/food-recovery-hierarchy> (last visited June 21, 2016).

As discussed above, Connecticut's law is very narrow with regard to the categories of entities it covers. The law applies only to the small number of listed commercial and industrial generators. Most notably, of the four states with organic waste mandates, Connecticut is the only state that does not cover any institutions,³² which are significant generators of food waste.³³

Although amending legislation so soon after enactment may be difficult, altering Connecticut's law to cover at least some institutional generators would allow it to begin capturing this significant sector of food waste, and it would bring Connecticut's law more closely in line with that of other states.

Connecticut could attempt to change its law either by covering all institutions, or by enumerating specific categories of institutions that would have to comply with the law. The latter approach may be most feasible, as it could allow for compromises that might make an amendment easier to pass. This approach would allow Connecticut to focus on certain institutions such as hospitals and medical facilities, which have been shown to waste food at very high rates,³⁴ and which might have more sufficient resources to allow for compliance than institutions like public schools or correctional facilities.

Extend the Gradual Phase-In of Smaller Generators

In addition to including more categories of generators, Connecticut's law could be improved by extending its application to generators that produce smaller amounts of waste. Connecticut's law is currently structured so that it will decrease the amount of food waste a generator must produce in order to be covered by the law from 104 tons per year to 52 tons per year in 2020.

Connecticut could strengthen its law by gradually expanding to cover even smaller generators over time. Vermont's law provide a model for this phase-in structure; even if it were unfeasible for Connecticut's law to cover individual residents and households like Vermont's law, it could still further reduce the waste-production threshold over one- or two-year periods after 2020, such that smaller businesses would eventually be required to divert their food waste. This gradual phase-in structure can provide the necessary time and encouragement for the state and its municipalities to develop infrastructure and best practices for food waste diversion

³² See Linda Bilsens, Institute for Local Self-Reliance, *Food Scrap Diversion Policies in CT, MA, VT, and NYC* (Jul. 28, 2014), <https://www.mwcog.org/uploads/committee-documents/aV1YWlpd20140729080928.pdf>.

³³ *Food Waste: Tier 1 Assessment*, BSR 8, 12 (Mar. 2012), http://www.foodwastealliance.org/wp-content/uploads/2013/06/FWRA_BSR_Tier1_FINAL.pdf.

³⁴ Leon Kaye, *Seeking Creative Ways to Deal with Food Waste at Hospitals* (Dec. 2, 2014), <http://www.triplepundit.com/2014/12/seeking-creative-ways-deal-food-waste-hospitals/> (stating that U.S. hospitals may waste three to four pounds of food per bed each day).

before a larger number of generators are required to comply,³⁵ as well as the time for smaller businesses to make preparations to meet the requirements of the law.

Narrow or Phase Out Exemptions Based on Distance from Composting Facilities

Connecticut's exemption for businesses not located within twenty miles of an authorized composting facility makes it so that businesses in large portions of the state do not have to comply with the law.³⁶ Eliminating this exemption, or narrowing the exemption by increasing the distance from a composting facility within which businesses would be covered by the law, would ensure that many more businesses would divert their waste.

Addressing the distance exemption will be a particular challenge for Connecticut, however, because of the limited number of approved processing facilities in the state. As of March 2016, Connecticut has only three approved composting facilities and three proposed anaerobic digestion facilities.³⁷ As a result, eliminating the distance-based exemption would pose an unreasonable burden on many businesses, which would be required to transport their waste materials over long distances.

Connecticut should instead consider gradually phasing out this exemption over time, similar to the way other waste ban laws gradually phase in smaller generators and additional categories of materials. A gradual phase-out would allow for the development and approval of additional composting and anaerobic digestion facilities, as well as support for businesses to donate or repurpose excess food, hopefully making compliance more manageable for newly covered businesses. Phasing out the distance exemptions gradually would also provide time to make alterations to the state's permitting requirements for composting facilities, as described in more detail below.

Encourage the Development and Growth of New Composting Facilities through Changes to Permitting Requirements

Connecticut should encourage the growth of new and existing small-scale composting facilities by providing an additional permitting option for facilities that began as small-scale operations but grow to reach the 5000 cubic yard per year threshold. This will become particularly important when more generators become covered in 2020³⁸, because there will be more demand for composting facilities, and these small composting facilities may be unable to meet that demand without going

³⁵ American Farmland Trust, Conservation Law Foundation, and Northeast Sustainable Agriculture Working Group, *Waste Streams, New England Food Policy: Building a Sustainable Food System 120* (Mar. 2014), <http://www.clf.org/wp-content/uploads/2014/03/H.Chapter5.pdf>.

³⁶ See *Food Residual Recycling*, Connecticut Dep't of Energy & Env'tl. Protection, <http://www.depdata.ct.gov/maps/recycling/foodresidualmap.htm> (last visited Mar. 12, 2016).

³⁷ *Food Residual Composting Facilities*, Connecticut Dep't of Energy & Env'tl. Protection, http://www.ct.gov/deep/cwp/view.asp?a=2718&q=325376&deepNav_GID=1645 (last visited Mar. 23, 2016).

³⁸ Conn. Gen. Stat. § 22a-226e(a)(2) (2016).

over the cap. Encouraging the development of new and existing small-scale facilities will also help ensure that phasing out exemptions based on distance from a facility is less burdensome for businesses, because there will be more facilities available to receive the additional food scraps produced by these newly covered businesses.

Connecticut should allow for the gradual expansion of these facilities by creating a permit for mid-sized facilities, with a fee and threshold processing capacity that falls between the existing general and individual permits.

Incentivize Diversion at Higher Levels

The Connecticut Department of Energy and Environmental Protection (DEEP) should provide education and resources to encourage food waste diversion through methods other than composting, such as source reduction and food donation. This supports the ultimate goal of keeping food waste out of landfills and can also take the pressure off of the limited composting facilities in the state.

DEEP highlights the EPA food recovery hierarchy and the importance of food rescue programs on its website,³⁹ and the website also lists donation and reduction as ways to comply with the organics recycling law.⁴⁰ However, DEEP could go further in encouraging businesses to take these additional steps as part of their efforts to comply with the organics recycling mandate.

For example, the state could facilitate connections between businesses covered under the law and organizations in need of food donations, the way it already facilitates connections between these businesses and available composting facilities. DEEP could add organizations like food banks and food recovery organizations to its existing food residual recycling map, in order to highlight these organizations that can receive excess food that is still wholesome and safe to consume. For an example of a map that includes both composting facilities and hunger relief organizations seeking donations, Connecticut can look at the Materials Management Map created by Vermont's Agency of Natural Resources.⁴¹ Connecticut could also provide a list of organizations that accept food donations on the website where it lists composting and anaerobic digestion facilities in the state.

Additionally, Connecticut could work to amend its organics recycling law to incorporate language prioritizing diversion higher up the food recovery hierarchy. As an example, Vermont's Universal Recycling Act includes aspirational language stating that excess food should be managed in a particular order of preference, with

³⁹ *Food Waste Reduction and Recovery*, Connecticut Dep't of Energy & Env'tl. Protection, http://www.ct.gov/deep/cwp/view.asp?a=2714&q=531602&deepNav_GID=1645 (last visited Mar. 23, 2016).

⁴⁰ *Commercial Organics Recycling Law Information & Guidance for Food Residual Generators*, Connecticut Dep't of Energy & Env'tl. Protection, http://www.ct.gov/deep/cwp/view.asp?a=2718&q=552676&deepNav_GID=1645 (last visited Mar. 23, 2016).

⁴¹ *Universal Recycling Materials Management Map*, Vermont Agency of Natural Resources, <http://anrmaps.vermont.gov/websites/Organics/default.html> (last visited June 21, 2016).

reduction at the source and diversion for human consumption being most preferred, and composting and energy recovery at the bottom of the hierarchy.⁴² Such language makes it clear to businesses that there are other steps they can and should take to reduce and divert their waste, even though many of the law's specific provisions focus on composting.

Finally, Connecticut could also incentivize businesses to donate excess wholesome food through a state tax incentive. Connecticut businesses that donate food to nonprofits are currently eligible for federal tax incentives in the form of general and enhanced tax deductions.⁴³ Six states have created state tax credits for food donation in addition to the federal tax incentives.⁴⁴ California, for example, provides a tax credit worth 10% of inventory costs to taxpayers who donate fresh fruits and vegetables to food banks in the state.⁴⁵ California also provides a 50% tax credit for taxpayers who transport these agricultural donations.⁴⁶ Unlike the federal tax deduction, which reduces a business' taxable income, a tax credit is a direct subtraction from the amount of taxes a business owes.⁴⁷ Therefore, tax credits are more helpful to small farmers and businesses that do not pay much or any income taxes. State tax credits may benefit businesses not eligible for the federal deduction, and can add an extra incentive even for businesses that are already covered.

By working to pass a state tax credit for food donation, Connecticut could supplement its organics recycling mandate and increase diversion from landfills by encouraging food donation in addition to composting. Connecticut should work to pass a tax incentive that is broad in terms of eligible businesses and the types of food donations that qualify for the tax deduction.

CONCLUSION

As the first state to pass an organics recycling mandate, Connecticut is a leader in encouraging food waste diversion. However, due to the narrow scope of this mandate and the limited composting infrastructure throughout the state, Connecticut's law has had a limited impact. By expanding the reach of its organics recycling mandate, and by encouraging food donation and the development of additional composting infrastructure, Connecticut can increase the efficacy of its law and strengthen its efforts to divert food waste from landfills.

⁴² 10 Vt. Stat. Ann. tit. 10, § 6605k(a) (2015).

⁴³ Harvard Food Law and Policy Clinic and the Food Recovery Project at the Univ. of Arkansas, *Federal Enhanced Tax Deduction for Food Donation: A Legal Guide* (April 2016), <http://www.chlpi.org/wp-content/uploads/2013/12/Food-Donation-Fed-Tax-Guide-for-Pub-2.pdf>.

⁴⁴ CAL. REV. & TAX. CODE §§ 17053.12, 17053.88 (2015); COLO. REV. STAT. §§ 39-22-301, 39-22-536 (2015); IOWA CODE § 190B.101-.106 (2015); KY. REV. STAT. ANN. § 141.392 (West 2015); MO. REV. STAT. § 135.647 (2015); OR. REV. STAT. §§ 315.154, 315.156 (2015). The state of Arizona also offers a state level tax deduction for food donation. ARIZ. REV. STAT. ANN. §§ 42-5074, 43-1025 (2015).

⁴⁵ CAL. REV. & TAX. CODE §§ 17053.88 (2016).

⁴⁶ CAL. REV. & TAX. CODE §§ 17053.12 (2016).

⁴⁷ Elizabeth Rosen, *Tax Credits vs. Tax Deductions*, U.S. TAX CTR., (Aug. 28, 2013), <http://www.irs.com/articles/tax-credits-vs-tax-deductions>.