

CLIENT ADVISORY:

MASSACHUSETTS IS AMONG THE FIRST STATES TO BAN COMMERCIAL ORGANIC MATERIALS FROM LANDFILLS

Beginning on October 1, 2014, a ban on the disposal of all commercial organic materials through the normal solid waste channels will go into effect in Massachusetts, which makes the Commonwealth one of the first states to implement new laws and regulations that ban food waste in landfills. The goal of the ban is to reduce the amount of organic material that is deposited in landfills.

The ban applies to all entities that generate more than one ton of food and vegetative materials for solid waste disposal per week. The proposed changes to the regulations specifically exempt residences from the ban. The Massachusetts Department of Environmental Protection (DEP) has prepared the following calculations to help businesses determine if they dispose of one ton or more of food waste per week. Entities at or above the following sizes are likely subject to the ban:

- Colleges and Universities
- Residential – 730 students
- Non-residential – 2,750 students
- Secondary School – 1,600 students
- Hospitals with a minimum of 80 beds
- Nursing Home with a minimum of 160 beds
- Restaurants with 35 or more full time employees
- Resort and Conference Properties with a minimum of 475-seat capacities
- Supermarkets with 35 or more full time employees

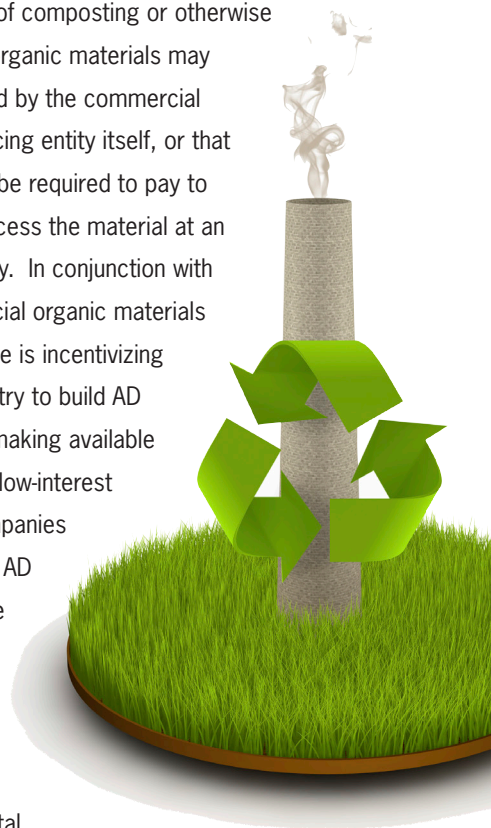
Although commercial entities will be prohibited from disposing of organic material with the rest of their solid waste, there are several alternate means of disposal that exist, which are being encouraged by the DEP.

First, DEP hopes that these commercial entities will attempt to reduce the amount of organic waste that they produce, thereby eliminating the need to dispose of that waste altogether. For the organic materials that remain, commercial entities may donate or repurpose any food items that are edible. Donations to food banks, soup kitchens or shelters are all encouraged. The remaining

organic material must be composted, converted into animal feed, or processed by anaerobic digestion (AD). AD is a process by which bacteria breaks down organic materials in an oxygen-free environment. Some of the natural products of AD are certain gasses, such as methane, which can be harnessed and used as a renewable source of energy. Additionally, the nutrient-rich digestate that remains after AD can be used as fertilizer.

The options of composting or otherwise processing organic materials may be conducted by the commercial waste-producing entity itself, or that entity would be required to pay to haul and process the material at an off-site facility. In conjunction with the commercial organic materials ban, the State is incentivizing private industry to build AD facilities by making available \$3 million in low-interest loans to companies that conduct AD services. The low-interest

loans will be administered by BCD Capital through DEP's Recycling Loan Fund, with monies provided by the Department of Energy Resources (DOER). Additionally, DOER is making \$1 million available in grants for AD to public entities through DEP's Sustainable Materials Recovery Grant Program. These loans and grants are in addition to several other incentives that exist in the Commonwealth that fund organics-to-energy projects, education, and technical studies.



As organics technologies advance, so do the complex technical, legal, regulatory, contracting, and permitting issues associated with project development in this area. The attorneys at PLDW remain on the leading edge of these emerging solid waste issues and have the knowledge and experience to deal with the complexities of this changing landscape.



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Attorney West is a Principal and Partner with the law firm, and leads the Municipal Infrastructure Team. He has over 25 years of experience in his practice area, which focuses primarily on representing municipal governments in the areas of public contracts, water law, solid waste management, municipal law, public finance, procurement law, administrative law and construction law. He is a nationally recognized expert in the areas of his practice

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