

Ms. Carolyn Hoskinson
Director, Office of Resource Conservation and Recovery
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via the Federal eRulemaking Portal: <https://www.regulations.gov/>

Re: Docket ID No. EPA–HQ–OLEM–2022–0415

Dear Director Hoskinson,

The Environmental Law Institute (ELI) respectfully submits the following comments in response to the Environmental Protection Agency’s (EPA) request for input on the *Draft National Strategy for Reducing Food Loss and Waste and Recycling Organics* (Strategy). We appreciate the opportunity to provide comments on the proposed and ongoing EPA, U.S. Department of Agriculture (USDA), and Food and Drug Administration (FDA) actions to reduce food loss and waste and recycle organics.

Since 1969, ELI has played a pivotal role in shaping the fields of environmental law, policy, and management, domestically and abroad. ELI is an internationally recognized non-partisan research, publishing, and education center working to strengthen environmental protection by improving law and governance worldwide.

ELI’s Food Waste Initiative strives to help stakeholders meet the U.S. food loss and waste goals by helping to design and implement public policies and public-private initiatives to prevent food waste, increase donations of surplus food, and expand food scrap recycling. For example, ELI collaborates with NRDC (Natural Resources Defense Council) and Urban Green Lab on the Nashville Food Waste Initiative (NFWI), which develops local strategies and tools to prevent food waste, rescue surplus food, and recycle food scraps on the ground in Nashville. In addition, ELI collaborates with NRDC on model food waste ordinances and policies for municipalities and other local governments with the goal of reducing the staff time and resources required to implement food waste solutions. ELI’s comments draw on these experiences.

ELI commends EPA, USDA, and FDA on their ongoing and planned multi-agency, collaborative efforts to address food waste. Given that ELI’s food waste reduction work centers on U.S. law and policy, ELI offers its comments in support of and to augment **Objective 4, Strategic Action B: Support Tribal, territory, state and local policymakers aiming to build more circular economies** (hereinafter referred to as 4.B.).

State and local governments are on the frontlines of efforts to reduce food waste, as they are tasked with managing municipal solid waste and addressing food insecurity in their communities. Reducing food waste also represents a key pathway for state and local governments to achieve their climate

mitigation goals,¹ as well as their climate adaptation and resilience goals.² Recognizing the significant local benefits of reducing food waste, some municipalities—as well as states—have even set stand-alone food waste reduction targets.³ Furthermore, diverting food waste from landfills can help reduce the need to site and construct new landfills, many of which end up in overburdened communities.⁴

As a general matter, the ongoing and planned actions set out in 4.B. are all positive steps towards supporting state and local government efforts to reduce food waste. Based on ELI’s experience, small and mid-sized cities, in particular, will benefit from these actions as their governments are often under-staffed and under-resourced.

4.B. Point 1: Providing subject matter expertise and technical assistance upon request is valuable—particularly if coupled with robust efforts to publicize these opportunities through EPA networks and those of its partner agencies, but also through non-governmental, municipal networks such as the Urban Sustainability Directors Network.⁵

In providing expertise and advice, ELI urges EPA to account for the wide range of local governments and their varied forms, sizes, and scopes of authority.⁶ As a general matter, tailored policy advice and technical assistance that account for these factors, as well as resource constraints, are likely to be most useful and lead to food waste reduction actions at the local level.

Specifically, ELI strongly encourages EPA to endorse and disseminate new and existing model laws, ordinances, executive orders, and policies to build the capacity of state and local governments to develop and implement food waste reduction actions. The value of models based on best practices in fostering the adoption of environmental policies is well-recognized. For example, Columbia University’s Sabin Center for Climate Change Law explains that its Model Municipal Ordinance project “aims to create best practices for municipal ordinances . . . which avoid the drafting problems and legal pitfalls that often plague other ordinances.”⁷

¹ Global Covenant of Mayors for Climate & Energy, Common Reporting Framework, at 11 (Apr. 2023), <https://www.globalcovenantofmayors.org/wp-content/uploads/2023/11/CRF7-0-2023-09-14-final.pdf>.

² *Id.*; US Composting Council, Benefits of Compost (last visited Jan. 31, 2024), <https://www.compostingcouncil.org/page/CompostBenefits>; Maya K. Walther, Climate Change and Composting, University of Wisconsin-Madison Dane County Extension (July 2022), <https://dane.extension.wisc.edu/2022/07/19/climate-change-composting/>.

³ See, Environmental Law Institute, State and City Food Waste Reduction Goals: Context, Best Practices, and Precedents (Jan. 2024), <https://www.eli.org/research-report/state-and-city-food-waste-reduction-goals-context-best-practices-and-precedents>.

⁴ Yerina Mugica & Terra Rose, Tackling Food Waste in Cities: A Policy and Program Toolkit, NRDC (Feb. 2019), <https://www.nrdc.org/sites/default/files/food-waste-cities-policy-toolkit-report.pdf>.

⁵ Urban Sustainability Directors Network, Urban Sustainability Bulletin (last visited Jan. 31, 2024), <https://www.usdn.org/urban-sustainability-bulletin.html>; Southeastern Urban Sustainability Directors Network, Green Minds Podcast (last visited Jan. 31, 2024), <https://www.southeastsdn.org/programs/podcast/>.

⁶ See “Legal Framework” section in NRDC & Environmental Law Institute, Model Executive Order on Municipal Leadership on Food Waste Reduction, at 1–2 (May 2023), <https://www.nrdc.org/sites/default/files/2023-05/model-executive-order-municipal-leadership-food-waste-reduction-background.pdf>.

⁷ Columbia Law School Sabin Center for Climate Change Law, Model Municipal Ordinances (last visited Jan. 31, 2024), <https://climate.law.columbia.edu/content/model-municipal-ordinances>.

EPA has endorsed models in other contexts, including a suite of Model Ordinances to Prevent and Control Nonpoint Source Pollution⁸ and Principal Cleanup Enforcement Instruments Models for Superfund cleanups and Resource Conservation and Recovery Act corrective action work.⁹

ELI and NRDC have developed several food waste reduction model ordinances, executive orders, and policies that could be referenced in the Strategy and posted on the websites of EPA and partner agencies as resources for local governments. The models are based on extensive best practices research and include memoranda and/or commentaries that provide general background information and alternative approaches to enable localities to tailor the models to their specific contexts.

- *Model Compost Procurement Policy*: Requires the use of compost where appropriate to realize its myriad economic and environmental benefits and foster the development of robust food scrap recycling infrastructure.¹⁰
- *Model Ordinance Establishing a Pay-As-You-Throw (PAYT) Program for Residential Municipal Solid Waste*: Establishes a local PAYT program that incentivizes organics recycling by households.¹¹
- *Model Ordinance on Mandatory Reporting for Large Food Waste Generators*: Requires reporting by large generators to provide data on food waste generation, increase awareness about food waste, and ultimately reduce disposal of wasted food in favor of prevention, rescue, and recycling.¹²
- *Model Executive Order on Municipal Leadership on Food Waste Reduction*: Adopts a suite of actions to reduce the amount of food wasted throughout municipal operations, thereby highlighting the importance of food waste reduction and demonstrating measures that businesses and other entities may replicate.¹³

Other organizations, such as the Sabin Center and the U.S. Composting Council, have also developed models to encourage local food waste reduction actions.¹⁴

⁸ U.S. EPA, Urban Runoff: Model Ordinances to Prevent and Control Nonpoint Source Pollution (last visited Jan. 31, 2024), <https://www.epa.gov/nps/urban-runoff-model-ordinances-prevent-and-control-nonpoint-source-pollution>.

⁹ U.S. EPA, Cleanup Enforcement Model Language and Sample Documents (last visited Jan. 31, 2024), <https://cfpub.epa.gov/compliance/models/?groupID=1-09876543>.

¹⁰ NRDC & Environmental Law Institute, Model Compost Procurement Policy: With and Without Commentaries (July 2021), <https://www.nrdc.org/resources/model-compost-procurement-policy-and-without-commentaries>.

¹¹ NRDC & Environmental Law Institute, Model Ordinance Establishing a Pay-As-You-Throw Program for Residential Municipal Solid Waste: With and Without Commentaries (Nov. 2023), <https://www.nrdc.org/resources/model-ordinance-establishing-pay-you-throw-program-residential-municipal-solid-waste>.

¹² NRDC & Environmental Law Institute, Model Ordinance on Mandatory Reporting for Large Food Waste Generators: With and Without Commentaries (July 2022), <https://www.nrdc.org/resources/model-ordinance-mandatory-reporting-large-food-waste-generators-and-without-commentaries>.

¹³ NRDC & Environmental Law Institute, Model Executive Order on Municipal Leadership on Food Waste Reduction: With and Without Commentaries (June 2023), <https://www.nrdc.org/resources/model-executive-order-municipal-leadership-food-waste-reduction-and-without-commentaries>.

¹⁴ See, e.g., Sabin Center for Climate Change Law: Legal Pathways to Deep Decarbonization, LPDD Model Law: State Legislation Supporting Sustainable Management of Food Waste (last visited Jan. 31, 2024), <https://lpdd.org/resources/lpdd-model-law-state-legislation-supporting-sustainable-management-of-food-waste>; and US Composting Council, Model Zoning Text Amendment for Composting Facilities (Jan. 2022), https://cdn.ymaws.com/www.compostingcouncil.org/resource/resmgr/documents/USCC_Model_Compost_Zoning_Or.pdf.

4.B. Point 2: ELI supports efforts to identify and share barriers to decentralized community composting and suggests that existing efforts on this front could be recognized in the Strategy and made available on the websites of EPA and partner agencies. For example, ELI and NRDC conducted a Landscape Analysis of Community Composting in Nashville,¹⁵ which identifies barriers and opportunities for community composting projects—many of which may be applicable to other cities. In addition, ELI and NRDC are currently drafting model ordinances for municipalities based on best practices to remove a range of barriers to community composting, including zoning restrictions and certain permitting requirements.

4.B. Point 3: Based on ELI’s first-hand experience (ELI has presented to the Food: Too Good to Waste Peer network about its model ordinances on two occasions in the last three years), EPA’s state and local government networks provide excellent opportunities to share information and collaborate. ELI fully supports expanding these networks and encourages EPA to coordinate with and leverage other networks in conjunction with its efforts, including USDA’s Cooperative Extension Service.¹⁶

4.B. Point 4: ELI strongly supports the sharing of state and local climate action plans (CAPs) on EPA’s website and suggests that the Strategy include a citation to ELI’s *A Toolkit for Incorporating Food Waste in Municipal Climate Action Plans*¹⁷ (currently listed as a resource on EPA’s Sustainable Management of Food/Composting website¹⁸) which is designed to provide municipalities with model food waste provisions that can be easily incorporated into municipal CAPs. The food waste actions in the Toolkit were compiled based on a review of municipal CAPs and food system and sustainability plans in 36 geographically diverse cities in the United States, including small, mid-size, and large cities. The actions in the ELI Toolkit can also inform State Priority CAPs developed under phase 1 of the Climate Pollution Reduction Grants program.¹⁹

In sum, ELI supports the actions outlined in 4.B. and suggests an additional emphasis on the value of best practices-based model laws, ordinances, policies and executive orders as resources and capacity-building tools for state and local governments in their efforts to reduce food waste.

Respectfully submitted,

Linda K. Breggin
Senior Attorney and Director, Center for State and Local Environmental Programs
Environmental Law Institute

¹⁵ Environmental Law Institute et al., Landscape Analysis of Community Composting in Nashville (Feb. 2020), https://www.eli.org/sites/default/files/docs/landscape_analysis_of_community_composting_in_nashville.pdf.

¹⁶ USDA: National Institute of Food and Agriculture, Extension (last visited Jan. 31, 2024), <https://www.nifa.usda.gov/about-nifa/how-we-work/extension>.

¹⁷ Environmental Law Institute, *A Toolkit for Incorporating Food Waste in Municipal Climate Action Plans* (July 2021), <https://www.eli.org/sites/default/files/eli-pubs/eli-toolkit-incorporating-food-waste.pdf>.

¹⁸ U.S. EPA, Composting (last visited Jan. 31, 2024), <https://www.epa.gov/sustainable-management-food/composting>.

¹⁹ U.S. EPA, About CPRG Planning Grant Information (last visited Jan. 31, 2024), <https://www.epa.gov/inflation-reduction-act/about-cprg-planning-grant-information>.