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Sent: Thursday, March 16, 2023 3:43 PM
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Subject: Comments on Draft Policy for Source Separation of Food Residuals & Heavily Packaged Food Residuals
Attachments: Group Comments on Vermont ANR Draft Policy for Source Separation of Food Residuals (Mar. 16, 2023).pdf

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Dear Mr. Gauthier,

Thank you for the opportunity to provide comments on the Agency of Natural Resources' Draft Policy for Source Separation of Food Residuals & Heavily Packaged Food Residuals ("Draft Policy").

Attached are comments submitted on behalf of Black Dirt Farm, the Composting Association of Vermont, Conservation Law Foundation, Hanover Co-op Food Stores & Auto Service Centers of NH & VT, Just Zero, Northeast Organic Farming Association of Vermont, Perfect Circle Farm, Rural Vermont, Vermonters for a Clean Environment, and the Vermont Public Interest Research Group.

Thank you for your time and consideration of these comments. We greatly appreciate the efforts the Agency is taking to create a flexible and dynamic food residual management system that empowers the robust and diverse network of stakeholders to properly manage food residuals.

Best,
Peter

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March 16, 2023

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RE: Draft Policy for Source Separation of Food Residuals & Heavily Packaged Food Residuals.

Dear Mr. Gauthier:

Thank you for the opportunity to provide comments on the Agency of Natural Resources' ("ANR" or "Agency") Draft Policy for Source Separation of Food Residuals & Heavily Packaged Food Residuals ("Draft Policy"). These comments are submitted on behalf of Black Dirt Farm, the Composting Association of Vermont, Conservation Law Foundation, Hanover Co-op Food Stores & Auto Service Centers of NH & VT, Just Zero, Northeast Organic Farming Association of Vermont, Perfect Circle Farm, Rural Vermont, Vermonters for a Clean Environment, and the Vermont Public Interest Research Group.

At the outset, we would like to thank the Agency for facilitating the Depackager Stakeholder Group. Vermont's food residual management system is made up of a diverse network, all of which are necessary for the success of the program. The discussions and recommendations that came out of the stakeholder group can strengthen and improve Vermont's food residual management system. A core recommendation from the Stakeholder group was that the Agency should provide clear guidance, resources, and educational programs to generators, haulers, and facilities regarding the management of packaged organics. The Draft Policy shows the Agency has taken that recommendation seriously.

We appreciate the Agency's commitment to revising the existing policy to better reflect the values and requirements of the Universal Recycling Law. The Draft Policy correctly balances the need for flexibility in the food residual management system while still setting clearly defined requirements that control how generators, haulers, and certified facilities must manage food residuals in order to comply with the requirements of the Universal Recycling Law. With some additional revisions, we feel that the policy the Agency has developed can and should be a model for the rest of the country.

Our groups strongly support the following aspects of the Draft Policy:

1. The emphasis on source separation at the point of generation as the primary food residual management method;
2. The focus on ensuring that all stakeholders - generators, haulers, and facility operators - are required to screen for contamination in the food residuals;
3. The prohibition on commingling source separated food residuals with non-compostable materials throughout the management process; and
4. The limited and clearly defined instances where generators are allowed to send food residuals to depackaging facilities.

However, we do request that the Agency revise the Draft Policy to provide:

1. Additional clarity regarding what constitutes heavily packaged food residuals;

2. Clarity regarding how facilities are required to manage source separated organics and heavily packaged residuals; and
3. Determine the appropriate uses of the organic output from depackaging facilities which cannot include the land application on agricultural fields or use as gardening soil.

Additionally, given the importance of establishing clear and enforceable standards for how food residuals and heavily packaged food residuals are managed, we urge the Agency to incorporate several components of the Draft Policy into rule. This will give these requirements greater legal effect and empower the Agency to take enforcement action if needed.

I. The Draft Policy Correctly Establishes Source Separation as the Overarching Food Residuals Management Method.

The plain language of the Universal Recycling law is clear that food residuals, by definition, must be source separated from non-compostable materials at the point of generation and managed in a manner consistent with the priorities set in the Vermont Food Recovery Hierarchy. These requirements were embedded in the Universal Recycling Law to ensure that Vermont's food residual management system did more than keep organics out of the landfill. Their inclusion shows a clear intent to create a system where resources are directed to their highest and best uses and that Vermont's composting and anaerobic digestion programs could produce valuable contaminant-free soil amendments. The Draft Policy correctly emphasizes this by clearly explaining how generators, haulers, and management facilities are required to manage food residuals.

We strongly support the decision to affirm through this policy that source separation is the primary management method for food residuals. For the majority of food residuals, source separation is the most practical and effective way to ensure a clean uncontaminated organic stream. Moreover, it helps ensure that food residuals can be directed toward the highest available use according to the Vermont Food Recovery Hierarchy. However, we understand that some food residuals are not technically capable of being easily source separated at the point of generation. Therefore, we appreciate that the Agency has defined heavily packaged food residuals and identified that generators may outsource the separation of these materials from non-compostable packaging to a depackaging facility or other second party.

We also commend the Agency for empowering haulers to play a more active role in monitoring the quality of food residual loads. Haulers play a critical role in Vermont's system. Not only do haulers help transport food residuals to responsible end markets, but they also can act as a check on generators to ensure that food residuals are being properly managed. Allowing haulers to both reject contaminated loads and report chronic non-compliant generators to the Agency will act as an important check on generators and help incentivize compliance. Moreover, it will create an intermediary that screens for contamination before the material is sent to an end-user, who would then be burdened with trying to clean the load or finding a disposal option if the load is not salvageable.

II. The Agency Should Provide More Clarity on What Constitutes a Heavily Packaged Food Residual

As explained above, we support the Agency's decision to identify heavily packaged food residuals as a discrete segment of food residuals that presents challenges when it comes to source separation at the point of generation. We appreciate that this approach fairly balances the requirements of the law

with the understanding of the issues that certain types of heavily packaged types of food residuals present.

However, as currently drafted the definition of heavily packaged food residual is too vague. We urge the Agency to more robustly define the term to provide greater clarity to generators, haulers, and operators. The definition of heavily packaged food residuals should focus not only on the complexity of the packaging but also the volume of the packaging that is expected to be generated. For instance, small generators should look to source separate de minimis amounts of heavily packaged food residuals prior to contacting a third party. The additional clarification should also include a list of the most common examples of heavily packaged food residuals.

Moreover, we disagree with classifying all palletted food residuals as heavily packaged. Simply because an otherwise lightly packaged food residual is palletted does not make source separation especially burdensome. By way of example, palletted 25 lb. sacks of discarded coffee bean rejects should not be allowed for processing by mechanical depackaging, but seen as appropriate for source separation from packaging. Additionally, we do not agree that glass packaging should be categorically defined as heavily packaged. In fact, glass appears to be a material which is not effectively handled by depackagers and mechanical separation methods.

We also urge the Agency to revise the Draft Policy to include requirements that generators, haulers, and certified facilities develop programs to educate staff and personnel on the difference between food residuals and heavily packaged food residuals. This should include employee training and clear signage in areas where source separation generally occurs. To facilitate this, the Agency should offer materials to generators, haulers, and facilities, such as guidance documents, suggested signage, and training outlines or training video presentations in addition to load screening and auditing guidance.

III. The Agency Must Provide Clearer Guidance for How Food Residuals Are Managed at Certified Facilities

Our groups support the Agency's decision to prohibit generators and haulers from commingling source separated food residuals with non-compostable materials. However, the Agency must also extend this prohibition to post-generator food residual handling facilities. Currently, the Draft Policy only indicates that certified facilities accepting food residuals shall manage these materials in accordance with their certifications and facility management plans. This is insufficient as these documents may or may not specify practices for handling packaged food residuals.

Post-generator food residuals handling and management facilities, like generators and haulers should be required to keep source separated food residuals, non-compostable materials, and heavily packaged food residuals separate from one another at all times. Allowing facilities to commingle these loads would effectively negate all of the work both generators and haulers undertook to keep these distinct waste streams separate from one another.

A majority of the Vermont Depackager Stakeholder Group agreed that the Agency should prohibit the commingling for source separated food residuals with non-compostable materials at every step of the management process. Allowing the commingling of source separated organics with non-compostable materials not only violated the requirements of the Universal Recycling Law but also automatically precluded the use of materials by higher priority options as defined by the Vermont Food Residuals Hierarchy. As such the final policy should make clear that everyone in the food

residuals management chain, including certified facilities, cannot commingle these materials. This change to the Draft Policy will create a cleaner food residual management system.

Additionally, in order for the provisions of the policy to have regulatory effect, the Agency must incorporate operational conditions containing the core requirements of the policy into all hauler permits and certifications for facilities which manage food residuals. This includes prohibitions on commingling source separated organics and non-compostable materials into all applicable solid waste management certifications for depackaging facilities, food waste collection and management, storage and transfer facilities.

IV. We Urge the Agency to Adopt the Policy into Regulation

Given the importance of the policy, we urge the Agency to adopt the policy as regulation. Incorporating the requirements established in the Draft Policy into regulation will not only empower the Agency to take enforcement action if needed, but will also consistently and firmly establish how generators, haulers, and facility operators are required to manage food residuals in order to comply with the requirements of the Universal Recycling Law.

Act 170, passed by the Legislature in 2022, requires that the Agency adopt rules governing the operation of food waste management facilities. This includes establishing rules regarding which containers and packaging may be managed at food waste management facilities and standards for source separation and mechanical depackaging. The requirements established in the Draft Policy squarely fit within the scope of the rulemaking the Agency will be initiating in the near future. We strongly urge the agency to adopt these requirements through that rulemaking process.

V. The Agency Must Establish Standards for Depackaging Technology.

Lastly, the Agency must: (1) define depackaging technology in law, (2) prohibit the use of organic materials derived from mechanical depackaging facilities on agricultural fields and use as garden soil amendments, and (3) define appropriate uses for the organic material derived from mechanical depackaging facilities.

Depackaging technology is currently undefined in either law or regulation. Therefore, it is unclear how this technology fits into Vermont's food residual management system and how the organic outputs from this technology can and should be used. The Vermont Depackager Stakeholder Group agreed that more clarity is needed in this regard.

We suggest that the Agency define depackaging through rule. Alternatively, the Agency could request a legislative amendment to the Universal Recycling Law. Either way, a definition is needed to anchor the practice in law. Our groups strongly believe that depackaging should be defined as a niche method that is permitted for the management of homogenous loads of heavily packaged food residuals. The definition should make clear that mechanical depackaging resides at the bottom of the food residuals management hierarchy as an alternative for loads that otherwise are unable to be separated at the point of generation. This definition would provide for regulatory clarity and consistency in application of this state policy.

Additionally, the Agency must define the appropriate uses for the organic material that is derived from mechanical depackaging facilities. This should include a prohibition on the use of the material on both agricultural fields or as a garden soil amendment. Our groups see the source separation

requirements of the Universal Recycling Law as exemplary of the precautionary principle. Requiring separation by the generators helps create a clean stream of food residuals that can be easily and efficiently turned into healthy soil amendments. We have significant concerns about the potential for contamination in organic outputs from depackaging facilities.

The current state of the science regarding contamination risks through different food residual management systems in Vermont is not yet sufficient to guide policy decisions on risk mitigation. Still, we urge the Agency to include a ban on the use of organic materials derived from mechanical depackaging facilities on agricultural fields and use as garden soil amendments. Therefore, there needs to be a different standard for the use of mechanical depackaging outputs and their end products that should not include their use as agricultural or garden soil amendments. The Agency should enumerate permissible uses for this material based on scientific evaluations of contamination levels, as this data becomes available.

VI. Conclusion

Thank you for the opportunity to provide comments on this important policy. We greatly appreciate the efforts the Agency is taking to create a flexible and dynamic food residual management system that empowers the robust and diverse network of stakeholders to properly manage food residuals. We strongly support several aspects of the Draft Policy. We feel with our suggested additions and implementation approaches that the policy will be key to the appropriate continued implementation of one of Vermont's most important solid waste management laws.

Respectfully Submitted,

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