

April 28, 2023

Ben Gauthier
Environmental Analyst
Vermont Agency of Natural Resources
1 National Life Drive
Montpelier, VT 05620-3704

RE: Draft Food Recovery Hierarchy Guidance

Dear Mr. Gauthier:

Thank you for the opportunity to provide comments on the Agency of Natural Resources' ("ANR" or "Agency") Draft Food Recovery Hierarchy Guidance. These comments are submitted on behalf of Black Dirt Farm, Clouds Path 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, Poultry Farmers for Compost Foraging, Vermont Compost Company, and Vermonters for a Clean Environment.¹

We appreciate the Agency's work to provide guidance on the role of the Food Recovery Hierarchy in Vermont's food residual management system. The Vermont Depackager Stakeholder Group was tasked with making recommendations as to whether the organics management hierarchy (10 V.S.A. § 6605k) should apply to each generator of organic waste.² There was majority consensus that the hierarchy should apply to each generator.³ Moreover, the stakeholders unanimously agreed that the hierarchy promoted Vermont's resource management goals and priorities.⁴

We are concerned that, as currently drafted, the Food Recovery Hierarchy Guidance only explains the different tiers of the hierarchy. It does not provide the information necessary to guide all classes of generators to comply with the requirements of the hierarchy. Nor does it affirm that the hierarchy is applicable to all generators. It was our understanding that the Food Recovery Hierarchy Guidance would include the same level of detail and specificity as the Draft Policy for Source Separation of Food Residuals & Heavily Packaged Food Residuals. We seek a document with clear terms and that is explicitly directional in its approach to assist generators with understanding and shaping their practices to comply with the hierarchy.

Given the importance of the hierarchy and the ongoing confusion about its applicability, we urge the Agency to revise the draft guidance document. The revised guidance document must:

1. Establish that the hierarchy applies to all generators;

¹ These respective groups will hereinafter be referred to as "we" or "our groups."

² Act 170, Section 25(a)(1).

³ [Vermont Stakeholder Group on the Role of Depackagers in Managing Food Waste - Report of Recommendations](#), p. 6. (Jan. 15, 2023).

⁴ *Id.*

2. Provide examples of how different types of generators (industrial, commercial, residential) can work directly with industry resources to implement management methods that comply with the hierarchy. Compliant practices will vary based on the amount, type, and size of the generator;
3. Include clear examples of situations where generators are exempt from compliant practices of the hierarchy and where not;
4. Explain that a generator's requirement to fulfill any one level of the hierarchy is based on the generator having an entity or service provider that is willing and able to transport and manage the material according to the hierarchy; and
5. Prohibit all classes of generators from exclusively using a management method that precludes the ability for food residuals to be managed through methods higher up on the hierarchy.

Additionally, the Agency should consider developing additional resources that will further explain how generators should direct resources to comply with the requirements of the hierarchy. This should include a food waste decision tree and a list of frequently asked questions about how to manage certain food waste streams.

I. The Hierarchy Should Apply to All Generators

We strongly believe that the hierarchy should apply to all generators. This was the legislature's intent when drafting the food residual management sections of the Universal Recycling Law. The hierarchy is designed to be a binding framework that controls how food residuals are managed in the state. However, we understand that the hierarchy cannot be followed perfectly in every instance. Therefore, we urge the Agency to establish clearly defined exceptions to ensure the practical application of the law and the hierarchy. These exemptions should allow generators to use management methods lower on the hierarchy only when responding to an emergency situation, such as a refrigeration failure. Service providers such as transfer stations, food waste haulers and waste management facilities need to do their part to uphold the policy of the state and should be held accountable to clearly communicate when interfacing with generators about services that could circumvent the goals of the hierarchy.

II. The Agency Must Develop Guidance That Is Specific to Different Generators and Stakeholders.

Compliance with the requirements of the Food Recovery Hierarchy will look different for different types of generators. For instance, the ability to donate food for human consumption will be significantly different for a grocery store versus a residential home. Therefore, the Agency should provide guidance that is tailored to specific categories of generators and answer frequently asked questions about the different ways they can direct food residuals toward the best and highest uses according to the hierarchy. The Agency should also develop guidance for how other stakeholders can help generators comply with the Food Recovery Hierarchy. As well as help the Agency with education, outreach, and enforcement. For instance, New York has developed guidance documents for [food scrap transporters](#), [transfer facilities](#), [landfills](#), [incinerators](#), and [generators](#). While these documents lack the detail our organizations feel is

sufficient to meaningfully assist all stakeholders, it provides an example of the approach Vermont should adopt.

III. The Food Recovery Hierarchy Guidance Should Clarify that Generators Are Only Required to Comply with the Hierarchy when Services Are Available.

The Food Recovery Hierarchy is designed to direct food residuals to the uses that maximize environmental and economic benefits. However, generators do not always have access to services that will manage food residuals in accordance to these best and highest uses. Therefore, the guidance document should clarify that generators are required to direct organic resources to their highest and best use where services are available. The requirement to fulfill any one level of the hierarchy is based on the generator having an entity or service provider that is willing and able to transport and manage the material according to the hierarchy. In other words, where a provider is willing and able to provide services that direct organic resources to their highest use according to the hierarchy, the generator shall not reject that offer in favor of a management method lower on the hierarchy.

IV. The Agency Should Not Allow Generators to Utilize Management Methods That Invariably Preclude Higher and Better Uses According to the Hierarchy.

Additionally, the Agency should not allow generators to utilize management methods that invariably preclude the ability to manage food residuals through methods that are preferential according to the hierarchy. For instance, depackagers should not be used to manage entire loads from a generator that could otherwise utilize other management methods such as donation, agricultural uses, or composting. Depackagers should be restricted to food residual streams for which they are best suited - heavily packaged food residuals - and only be made available for processing source separated organics as a last resort once all other options have been determined to be unavailable or there is insufficient capacity within a reasonable distance. In addition, food waste haulers and depackagers should not be allowed to promote the management of depackaging through zero-sort collection bins, which indicate to residents that it's acceptable to leave food scraps and other organic wastes mixed with food packaging and other plastics, at any collection site in the State of Vermont. All collection sites should be required to provide clearly visible and readable signage about source separation, the hierarchy, and what materials may and may not be included in their food waste.

V. The Agency Should Empower Other Stakeholders to Assist with Education and Outreach Regarding the Role and Importance of the Hierarchy.

In addition, service providers that manage residential food waste should also be held accountable to the hierarchy and should not be allowed to create misleading images. For example, transfer stations and food waste haulers should not use collection bins with labeling that says: "zero-sort, that's how recycling gets done," and post-consumer food waste should not be managed with depackaging technology as a pathway to strategically sidestep education and enforcement efforts in support of greater source separation. The image below shows a bin that doesn't look like most food scrap collection bins, and while we're not sure how or why this one was used for organics collection, this kind of messaging can cause significant confusion among residents.



Photo: Tunbridge Transfer Station, April 1, 2023 photo credit Rural Vermont

To better ensure that all stakeholders are assisting the Department with implementing the Food Recovery Hierarchy, the Agency should require solid waste management entities to update their solid waste implementation plans to further the Agency’s education and outreach related to proper food residual management methods. The solid waste management entities should also assist the Agency with enforcement.

VI. Conclusion

Thank you for the opportunity to provide feedback on the Draft Food Recovery Hierarchy Guidance. We appreciate the efforts the Agency is taking to provide generators - and other stakeholders - with the information necessary to direct the food residual they produce to management methods that are consistent with the requirements of the Universal Recycling Law.

We look forward to continuing to work with the Agency on issues related to food residual management.

Respectfully Submitted,

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