

February 16, 2021

**RE: Legislative Hearing on ANR's Implementation of the Organics Management provisions of the Universal Recycling Law.**

Dear Representative Sheldon, Senator Bray, and members of the House and Senate Natural Resources Committees,

We, the undersigned, are writing to share our deep concerns about the rollout of the Universal Recycling Law ("URL") and, specifically, the Organics Management portion of the law. We are concerned that the Agency of Natural Resources ("ANR" or "the Agency") is implementing the law in a manner that is inconsistent with the intent of the Legislature. As a result, **we are requesting a formal Legislative Review of the Organics Management Hierarchy and the Source Separation provision of the URL, and the Agency's current implementation of these sections.**

ANR has chosen to ignore key legislative mandates that we believe are central to the successful implementation of the Organics Management portion of the URL. As a result, ANR is ultimately determining the outcomes of this ambitious legislation, in a manner that contradicts the requirements of the law. At question are the core values of the law, and the intent of the legislature in passing it. How we answer these questions will determine whether we develop an industrialized organics recycling system, or a community-based food system. Without public input or legislative review, ANR has pushed us toward an industrial model, when Vermont was - and is - poised to be a leader in a transformative approach that can correct many of the fundamental problems with the industrial framework, which comes at the expense of our ecology, local economy, public health, and social values.

The Organic Management sections of the URL rely primarily on two key provisions: the Source Separation requirement, and the Organics Management Hierarchy. The Source Separation requirement provides a clear mandate that compostable material must be separated from non-compostable material at the point of generation.<sup>1</sup> To emphasize the importance of source separation, the legislature specifically chose to include the term when defining food residuals. The URL defines food residuals as source separated and uncontaminated materials that are recyclable in a manner consistent with 10 V.S.A 6605k, the Organics Management Hierarchy.<sup>2</sup> Under the Organics Management Hierarchy, food residuals must be managed according to the following order of priority uses: (1) reduction of the amount generated at the source, (2) diversion for food consumption by humans, (3) diversion for agricultural use, including

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<sup>1</sup> 10 V.S.A. §6602 (32). Emphasis added

<sup>2</sup> 10 V.S.A. §6602 (32). Emphasis added

consumption by animals, (4) composting, land application, and digestion, and (5) energy recovery.<sup>3</sup>

These interconnected provisions were specifically designed and included in order to carry out the legislative intent of guiding Vermont toward the highest and best use of resources, while preventing market forces from creating a race-to-the-bottom that diminishes the value of organic waste. Together these provisions work to ensure that Vermont develops a food residuals recycling system that captures the most value possible from our organic waste stream by prioritizing uses that return this value to our communities and agricultural system.

Presently, ANR has signaled a departure from the requirements of the source separation requirement and organics management hierarchy in its unconditional support of, and investment in, “depackaging” through the issuance of grants and permitting. Depackaging is a technique that involves collecting and commingling both source separated food residuals and still-packaged food in order to mechanically separate these materials from packaging elsewhere. While convenient, depackaging technology involves the grinding together of organic food residuals with the (mostly) plastic and styrofoam packaging, resulting in an organic stream post processing that contains significant amounts of plastic packaging residues. Manufacturers list a contamination rate of at least 0.5%, and in some cases over 2-3%. In the name of convenience, depackaging systems downgrade previously high-quality organics materials, contaminating them with microplastics.

The acceptance of depackaging has essentially “green lighted” contamination of crop producing soils with microplastics, at a time when there is justified concern over the presence of microplastics in our oceans and environment, and the impact this may have on public health. Additionally, once separated from food residuals by a depackager, the packaging becomes too contaminated to be recycled, thereby entirely removing these materials from the recycling stream. Many of these materials are easy to remove, such as clamshell containers from a bakery product. These high quality, easily recyclable plastics were previously being recycled. Now they are unfit for recycling, and are thus either being incinerated or landfilled, outcomes the law is designed to prevent.

Depackaging technology also creates a market barrier for small- and medium-sized operators who would otherwise be recycling these materials back into the food system, but can no longer compete in the market. As a result, many of the practitioners who helped build Vermont’s organic recycling systems and infrastructure, as well as other small operators, are now losing material and facing economic harm not just through the a shift in implementation of the Law, but also through cash investments by the State that have enabled this new market.

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<sup>3</sup> 10 V.S.A. §6605k(a).

The source separation requirement and the definition of food residuals were purposefully selected and included in the law in order to prevent the system ANR is currently advancing. This system directly undermines the resource value and inverts the priority uses of food residuals established under the Organics Management Hierarchy. These provisions do not leave room for ambiguity regarding the legislature's intent. However, despite the clear requirements of the law, ANR has argued that the first item on the Hierarchy list – “reduction of the amount generated at the source” – is unenforceable, and therefore the entire Hierarchy is best used as a “menu of options” and not a clear legislative mandate of priority uses. This argument was the basis for the actions ANR has already taken to invest an estimated \$500,000 to \$1 million to support depackaging systems. This drastic shift away from the language of the law was done without any public or legislative oversight or engagement. Given that the law is so explicit, we believe legislative and public review is necessary and further State support for this activity should be halted.

Vermont’s Organics Management Law has in many ways been a guiding light nationally. However, instead of now leading the way, we have succumbed to trends that perpetuate the industrialization of the market with little regard for the outcomes - including the numerous negative implications of this approach on our environment, State economy and public health. There have been many opportunities to correct this migration away from the clear intent and requirements of the law, but ANR’s implementation of the law is driving the State further from the legislative intent. **We believe the shocking disparity between the Agency’s implementation of the law and the actual content of the law deserve swift reaction from the Legislature, including Legislative Review and a stay on further state investments and permitting associated with depackaging.**

Thank you for your consideration,

Vermont Public Research Interest Group

Conservation Law Foundation

Vermonters for a Clean Environment

Rural Vermont

NOFA-VT

Salvation Farms

Poultry Farmers for Compost Foraging

Tom Gilbert, Owner and Operator, Black Dirt Farm

Perfect Circle Farm

Dog River Farm

Vermont Compost

Center for an Agricultural Economy

Vermont Healthy Soils Coalition

Vermont Conservation Voters

Green Mountain Farm to School

Institute for Local Self Reliance

Deborah Neher, Ph.D; Professor of Soil Ecology at University of Vermont; Member, Board of Directors of The Land Institute; Member, Soil Ecology Society

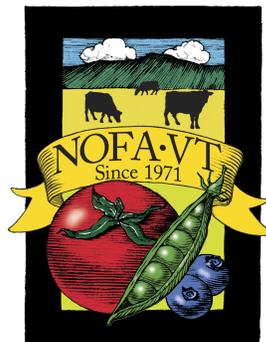
Heather Darby, Ph.D; Professor of Agronomy and Soils University of Vermont; Member, Board of Directors Organic Farming Research Foundation; Member, Soil Science Society of America.

William Brinton, Ph.D; Pres. Woods End Laboratories; Faculty member, Maine Compost School

Brian Jerosé, Founder of Agrilab Technologies, Board member of the Compost Association

Cat Buxton, Grow More, Waste Less

Daniel Keeney, Farm & Food Business Specialist, at Center for an Agricultural Economy



Center for an  
Agricultural  
Economy



Vermonters for a Clean Environment