

# DRAFT

What Can Vermont Do To Support the Food Recovery Hierarchy Outside of Enforcement?  
Prepared by the ANR Solid Waste Program for the Act 170 Depackager Stakeholder Group  
10/10/22

## *Potential strategies for strengthening voluntary (non-enforcement driven) conformance with Vermont's food recovery hierarchy [10 V.S.A. § 6605k](#)*

### Federal Policy:

- A. Support national date labeling standards & education – to require manufacturers to accurately label a food's use by date. Explain the difference between “best if used by” and “use by” to consumers, food retailers, etc.
- B. Strengthening the Bill Emerson Good Samaritan Food Donation Act – 1) allow the sale of food at a discounted price (and protect donors), 2) modify language to encourage restaurants to directly donate to individuals.
- C. Increase Markets for lower-grade or imperfect produce
- D. Improve federal tax incentives.

### State policy:

- A. Modifying VT's Good Samaritan Law for Donations of Food [12 V.S.A. § 5762](#) to allow for sale of food/products/meals made from donated food.
- B. Improve regulatory certainty for organics facility operations
- C. Explore potential tax and financial incentives for food donation programs
- D. Work with generators, haulers and facilities to strengthen their food waste reduction, food donation, source separation/food waste contamination screening protocols to direct food waste in accordance with the hierarchy and the SS requirement.
- E. Consider creating a large generator tier and require large generators to keep documentation of conformance with the hierarchy priorities, specifically that they are working with or unable to work with “willing and able” recipients for quality edible food for people to consume (food donation/food rescue organizations) and recipients for quality and legal animal feed before composting or anaerobically digesting food scraps/spoiled food. ([NYDEC Webpage](#), [Generator Annual Report Form](#), [Generator Inspection Sheet](#)). This could be a requirement for larger generators to submit an annual report form to DEC similar to these sheets that NY DEC uses.
  - a. NOTE Cost: This approach may result in costs to the generator that are more or less than an alternative option on the hierarchy. Some states have addressed similar cost issues between recycling activities versus disposal activities by allowing for generator waivers if costs exceed 10% more than disposal.
  - b. CA Model (excerpts from [RecycleSmart Info Sheet](#)): Generators of size:
    - i. “Must maintain a written agreement with all Food Recovery Organizations and/or services that pick up or receive edible food.
    - ii. Must maintain monthly records of type, frequency, and pounds of food recovered.
    - iii. Shall not intentionally dispose of or compost edible food that can be donated.
    - iv. Starting January 1, 2024, penalties may be issued for non-compliance.”
- F. Implement controls for exported food residuals and packaged food that require food residual/package food managed out-of-state meet Vermont's minimum Solid Waste & Environmental Justice requirements.

# DRAFT

## Funding:

- A. Create grant funding for food waste reduction projects
- B. Strengthen partnerships and possibly provide funding for local government/community food waste reduction work.
- C. Foster more farm to school partnerships

## Public Education:

- A. Develop statewide hierarchy education tools to inform residents and businesses of the value of diverting organics from the waste stream for prioritized uses.
- B. Develop food waste reduction campaign
- C. Develop food waste source separation campaign and materials

## Infrastructure:

- A. Improve food donation transportation and logistics
- B. Support small-scale value added food processing and manufacturing for small farms and generators with donatable food. Use lower grade food, or nearing use by date food to make meals or products for sale or distribution.
- C. Support diversified food waste management systems – using food waste to grow insects, vermicomposting, food waste for animal feed, small AD projects, etc.
- D. Make source separated food waste management options as accessible, convenient and affordable as possible to Vermonters.

**At the October 5, 2022 meeting of the Stakeholder Group on the Role of Depackagers in Managing Food Waste, some participants requested ANR come up with ideas of actions that can support the hierarchy. In the interest of time and scope of the charge of this group, ANR drafted these following potential policy changes that could further prioritize the hierarchy and source separation.**

### **1: HIERARCHY SUPPORT – FOOD DONATION** – California Model

Generators that produce more than 1 ton of food residuals per week that includes edible, unserved, quality food consumable by people must:

- a. maintain a written agreement with a Food Recovery Organization and/or service that pick up or receive edible food,
- b. maintain monthly records of type, frequency, and pounds of food recovered, and
- c. not intentionally feed animals, compost, anaerobically digest, or dispose of, edible food that can be donated for people to consume, unless the material is not wanted by the food recovery organization or is unsuitable for human consumption.

Generators must maintain food donation records, which ANR could request when conducting compliance activities if complaints were received that the hierarchy for food for people, was not being upheld.

### **2: HIERARCHY SUPPORT – ANIMAL FEED** – Using NJ's 10% cost Organics Ban Model.

Generators that produce more than 1 ton of food residuals per week that includes food residuals that can be safely and legally be fed to animals must:

- a. maintain a written annual account of seeking bids for animal feed service providers, and generators must use one of these service providers, before sending food residuals for

# DRAFT

composting/anaerobic digestion so long as the cost per unit of comparable service is no greater than 10% over the cost of composting/anaerobic digestion.

- b. [NOTE if the Participants want to put composting above AD, they must recommend that this change be made to the current hierarchy in statute.]

Generators must maintain records, which ANR could request when conducting compliance activities if complaints were received that the hierarchy for animal feed, was not being upheld.

## **2: SOURCE SEPARATION**

- a) ANR-DEC's Policy document that permits comingling of packaging and unpackaged food waste is replaced.
- b) Statute is clarified that all Generators must source separate all food waste from packaging at the point of generation, unless those that produce large amounts (greater than X amount/week) of heavily packaged food residuals request and receive approval for an exemption from ANR to utilize depackaging rather than separate at the source.
- c) No generator would be eligible to use depackagers for lightly packaged food residuals and must manually remove that packaging prior to following the hierarchy of uses (in the case of donation of food for people, packaging would be left intact for quality edible food).
- d) Smaller generators of packaged foods, such as convenience stores/gas stations, must source separate food waste, but can dispose of small volumes of heavily packaged foods as de minimis so long as they have a food waste source separation program in place that staff are trained on and utilizing. [Note: this exists currently in the UR law.]
- e) Generators that receive the waiver would end up with two food residual streams; 1) unpackaged food residuals (produce, meats, baked goods etc) and 2) heavily packaged food residuals (canned goods, frozen foods, individually serving sized portions, etc). The question then is... what are they required to do with these two material streams:
  - a. OPTION A: [Comingling allowed after cost check. NOTE See Additional considerations below] After donating food for people (as outlined above and seeking bids for safe/legal animal feed), Generator must seek bids for composting or anaerobically digesting the unpackaged food residuals and utilize that service so long as it's cost is no more than 10% of depack service. If greater than 10% then unpackaged food residual could be comingled with packaged food waste and sent for depackaging.
  - b. OPTION B: [Comingling never allowed] After donating food for people (as outlined above and seeking bids for safe/legal animal feed), Generator must send any remaining unpackaged source separated food residual to a facility that will manage it separately from packaged food residuals throughout the entire treatment process. Meaning: to a composter that composts only unpackaged food residuals or to a digester that digests only unpackaged food residuals.
- f) ADDITIONAL CONSIDERATIONS:
  - a. Cost checks could be circumnavigated by artificial price lowering.
  - b. Priority could be applied to miles traveled for food waste and reward facilities that are closer to the Generator rather than encouraging transport, when a local facility is willing and able to accept it.
  - c. Priority could be applied for considerations such as: social/environmental justice goals like no child labor or women/minority owned businesses; life cycle assessments of the hierarchy uses and emphasis put on these uses that can outweigh simply the cost for the service.