

4/06/2022 - VCE, RV, CAV, VPIRG

1 TO THE HOUSE OF REPRESENTATIVES:

2 An act relating to the regulation of food depackaging facilities

3 It is hereby enacted by the General Assembly of the State of Vermont:

4 Sec. 1. MORATORIUM ON ISSUANCE OF SOLID WASTE FACILITY

5 CERTIFICATIONS FOR FOOD DEPACKAGING FACILITIES

6 Beginning on ~~June~~March 1, 2022, the Secretary of Natural Resources shall not  
7 issue a new or amended solid waste facility certification under 10 V.S.A.  
8 chapter 159 for the operation of a mechanical food depackaging equipment until the rules  
9 required under Sec. 3 of this act are adopted and in effect, provided that the  
10 Secretary of Natural Resources may issue an amended certification to a facility  
11 certified to conduct food depackaging on or before ~~June~~March 1, 2022 if the  
12 amendment authorized by the Secretary is intended to result in fewer  
13 contaminants in material produced from food depackaging and shall not allow  
14 for increased production of food depackaging materials at the facility.

15 Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON FOOD

16 DEPACKAGING FACILITIES

17 (a) On or before January 15, 2023, the Secretary of Natural Resources shall  
18 submit to the Senate Committee on Natural Resources and Energy and the  
19 House Committee on Natural Resources, Fish, and Wildlife a report regarding  
20 the management of materials produced by food depackaging ~~and source separated food~~  
21 residuals processing facilities certified for operation in the State. The report shall be developed  
22 through a collaborative stakeholder process that shall include the Chair of the House  
23 Committee on Natural Resources, Fish, and Wildlife or designee; the Chair of  
24 the Senate Committee on Natural Resources, and Energy or designee; a  
25 representative of the Agency of Agriculture, Food, and Markets; and a  
26 representative from each of the following: a soil ecologist, an agronomist, a non-governmental  
27 toxicologist, a representative from Vermont's depackaging facility, a manager of a

4/06/2022 - VCE, RV, CAV, VPIRG

1 composters operation, an operator of an anaerobic digester, a producer of food  
2 residuals, a representative of a municipality, a solid waste hauler, a representative from the  
3 Composting Association of Vermont; and a representative from an environmental organization.

4 (b) The report shall include:

5 (1) a list of the food depackaging and source separated food residuals facilities certified  
6 in the State under 10 V.S.A. chapter 159;

7 (2) a summary of the chain of custody of materials processed by food  
8 depackaging facilities, including the original supplier of food residuals and  
9 transporters of food residuals; the summary should also outline the communication strategies  
10 used with haulers and organic processors to relay that organics need to be source separated;

11 (3) the sites or facilities of final disposition of the materials processed  
12 by food depackaging facilities, including whether the materials were disposed  
13 of in landfills or otherwise utilized in off-farm applications; transferred to composting facilities,  
14 farms, or farm fields; or introduced into foods for animal or human consumption;

15 (4) a summary of how the materials produced from food depackaging  
16 facilities or equipment may be used in the State, including any existing  
17 standards in statute or rule for the management of the materials;

18 (5) the amount of microplastics, plastics, or other contamination present  
19 in the material produced from food depackaging facilities in the State,  
20 including whether the materials have detectable levels of perfluoroalkyl and  
21 polyfluoroalkyl substances;

22 (6) a memorandum of understanding between the Agency of Natural  
23 Resources and the Agency of Agriculture, Food and Markets to coordinate and  
24 cooperate on the adoption of standards or rules for the materials produced from  
25 food depackaging facilities in order to provide for consistency in regulation by  
26 the two agencies;

4/06/2022 - VCE, RV, CAV, VPIRG

1           ~~(7) an evaluation of the practicability~~ strategic plan to promote and of  
2           implementing the food residuals hierarchy and the source separation requirement in the  
3           strict order set forth in 10 V.S.A. § 6605k ~~in a more stringent manner by also~~  
4           providing rewards to practitioners who achieve high standards; and

5           ~~(8)~~ the methods used domestically and internationally by jurisdictions  
6           with physical contamination standards to evaluate and regulate or limit the percentage by  
7           weight of physical contamination present in the material produced by depackaging  
8           facilities, residual waste, digestate, compost, and soil amendments.

9           Sec. 3. RULEMAKING

10           (a) The Secretary of Natural Resources shall adopt by rule requirements for  
11           the operation of food depackaging facilities certified to operate in the State.

12           ~~Based on the recommendations of the collaborative stakeholder process, the~~ rules shall  
13           establish standards for materials that may be accepted for  
14           depackaging and standards for the identification and quantification amount of  
15           contaminantstion, including microplastics and perfluoroalkyl and polyfluoroalkyl substances,  
16           allowed to be present in material produced by food depackaging facilities. The rule shall not  
17           apply to materials to be spread on agricultural lands. The Secretary of Natural Resources shall  
18           not adopt rules under this section or authorize the issuance of permits under the rules adopted  
19           under this section that restrain agricultural activities without the consent of the Secretary of  
20           Agriculture, Food and Markets.

21           (b) The Secretary of Natural Resources shall not initiate rulemaking under this section until  
22           the report required by Sec. 2 of this act is submitted to the Vermont General Assembly.

23           ~~(c) The regulation of the application of materials upon agricultural lands is the sole~~  
24           ~~jurisdiction of the Agency of Agriculture, Food and Markets and such materials shall not~~  
25           ~~contain higher levels or exceed contamination levels of heavy metals, perfluoroalkyl and~~  
26           ~~polyfluoroalkyl substances, toxins or plastics than that allowed under policy or rule set by the~~  
27           ~~Agency of Natural Resources.~~

4/06/2022 - VCE, RV, CAV, VPIRG

1       (d) The rules initiated by the Secretary of Natural Resources shall include provisions  
2 regarding:

3           (i) a ban of all non-packaged materials, easily unpackaged materials, and post-consumer  
4 materials from being mixed with packaged materials at depackaging facilities to  
5 stringently ensure source separation of those organics.

6           (ii) a ban of all synthetic inorganic products from lists of acceptable materials for  
7 composting and digestion as well as guidance on what materials are acceptable;

8           (iii) best practices that recyclable materials are being recycled and not being landfilled or  
9 incinerated as a result of processing food residuals at depackaging facilities;

10          (iv) an enumerative list of permissible defined uses for end products derived from  
11 depackaging facilities in consultation with the Secretary of Agriculture, Food, and  
12 Markets;

13          (v) that packaging associated with packaged food residuals, whether processed in the  
14 state or transported out of state for processing, shall be subject to the solid waste  
15 franchise tax on a weight basis where the separated packaging materials are destined for  
16 incineration or disposal;

17       Sec. 4. LAND APPLICATION BAN; QUALITY ASSURANCE SOIL AMENDMENTS

18       (a) The rules adopted pursuant to Act 41 (2021) by the Secretary of Agriculture, Food, and  
19 Markets shall include the requirement that no food materials, composted food residuals or  
20 anaerobically digested organics originally derived from packaged food materials shall be  
21 permitted to be utilized on agricultural lands where packaging was separated through  
22 mechanical depackaging processes, notwithstanding, such materials may be utilized elsewhere  
23 in accordance with maximum contamination levels established in rule by the Secretary of  
24 Natural Resources.

4/06/2022 - VCE, RV, CAV, VPIRG

1        (b) This ban shall not apply to organic food materials which are free of packaging prior to  
2        mechanical processing or anaerobic digestion. Organic materials or compost originally derived  
3        from non-mechanical separation from all packaging prior to further processing without  
4        additives shall be presumed safe for utilization as soil amendment on agricultural lands.

5        (c) In consultation with the Secretary of Natural Resources, the Secretary of Agriculture,  
6        Food, and Markets shall also adopt a strategy to research and identify ways to ensure  
7        transparency for farmers, gardeners and other consumers utilizing compost, digestate or other  
8        end products that may contain pollutants; pathways by which contaminants get into soil,  
9        microorganisms, and plants; including ways to address contaminants like microplastics and  
10       perfluoroalkyl and polyfluoroalkyl substances and develop testing methods and regulatory  
11       standards by rule to avoid the contamination and adulteration of soil amendments that may be  
12       land applied, pursuant to Act 41(2021).

13       Sec. 45. REPEAL

14       Sec. 1 (moratorium on permitting of new food depackaging facilities) of this act shall be  
15       repealed on the date that the rules required under Sec. 3 of this act are adopted  
16       and in effect.

17       Sec. 56. EFFECTIVE DATE

18       This act shall take effect on passage.