

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

Model State Law Supporting Sustainable Management of Food Waste

Section 1. Definitions¹

For the purposes of this Act:

(a) “Donate” means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(b) (1) “Donor” means any person that donates food or harvests food for donation.

(2) (i) “Donor” includes any non-profit “food bank” that collects, stores, and distributes food without charge or at a charge sufficient only to cover the cost of handling and administering such food and the distribution thereof.

(ii) “Donor” includes the employees, agents, officers or volunteers working for or with any donor in connection with the donation or distribution of food.

(c) (1) “Food residual” means source-separated material that is derived from processing or discarding of food.

(2) “Food residual” may include preconsumer and postconsumer food.

(3) Food residual does not mean meat and meat-related products when the food residuals are composted by a resident on site.

(d) “Green disposal” means disposal of food residuals that results in net zero or negative greenhouse gas emissions.

(e) “Person” means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, local jurisdiction, the state or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

¹ Definitions are a combination of Vermont definitions, Bill Emerson Good Samaritan Food Donation Act, and created by authors.

Section 2. Food Residual Management²

(a) It is the policy of the state that food residuals produced or generated in the state shall be managed according to the following order of priority uses:

- (1) reduction of the amount of food residuals generated at the source;
- (2) diversion for consumption by humans of food residuals that are uncontaminated and fit for human consumption; and
- (3) composting and green disposal of food residuals, including but not limited to aerobic and anaerobic digestion and biochar.³

(b) A person who produces more than an amount identified under subsection (c) of this section in food residuals shall:

- (1) separate all food residuals from other solid waste, so that no more than a de minimis amount of food residuals shall be disposed of in solid waste; and
- (2) (i) ensure the transfer of food residuals to a location that manages food residuals in a manner consistent with the priority uses established under subdivisions (a)(2)-(3) of this section; or
(ii) manage food residuals on site in a manner consistent with the priority uses established under subdivisions (a)(2)-(3) of this section.

(c) The following persons shall be subject to the requirements of subsection (b) of this section:⁴

- (1) beginning July 1, 2024, a person whose acts or processes produce more than X per year of food residuals; and
- (2) beginning July 1, 2025, any person who generates any amount of food residuals.

(d) The Department/Agency/Secretary shall develop, implement, and enforce accepted composting practices for the management of composting and other forms of green disposal in the state. These accepted practices shall address:

² Food Residual Management is a modification of Vermont's system. See 10 V.S.A. § 6605k.

³ States can add other means of composting or green disposal technology as they become available.

⁴ Each state should carry out a baseline analysis of their food residuals on a county-by-county basis to understand what threshold to set for paragraph (1) of this subsection.

(1) standards for the construction, alteration, or operation of a composting or green disposal facility;

(2) standards for facility operation, including acceptable quantities of product or inputs, vector management, odors, noise, traffic, litter control, contaminant management, operator training and qualifications, recordkeeping, and reporting;⁵

(3) standards for siting of facilities, including siting and operation of compost storage areas, compost bagging areas, and roads and parking areas;

(4) standards for the composting process, including rotation, management of compost piles, compost pile size, and monitoring of compost operations;

(5) standards for management of runoff from compost facilities, including liquids management from the feedstock area, active composting areas, curing area, and compost storage area; the use of swales or stormwater management around or within a compost facility; vegetative buffer requirements; and run-off management from tipping areas;

(6) standards for trapping methane generated onsite; and

(7) environmental justice concerns for the siting of commercial composting for food residuals, such as increased transport traffic, airborne particulates, odors, and vermin.

(e) The Department/Agency/Secretary shall establish civil penalties for a person who violates subsection (b) of this section.

Section 3. Powers and Duties⁶

(a) In addition to any other powers conferred on the Department/Agency/Secretary by law, the Department/Agency/Secretary shall have the power to:

(1) adopt, amend, and repeal rules implementing the provisions of this Act;

(2) issue compliance orders as may be necessary to effectuate the purposes of this Act and enforce the same by all appropriate administrative and judicial proceedings;

(3) encourage local units of government to manage solid waste minimization and disposal within their respective jurisdictions, or by contract on a cooperative regional or interstate basis;

⁵ The standards required under this section should mandate that composting facilities have methane traps.

⁶ Enforcement powers a modification of Vermont Statute. See 10 V.S.A. § 6603.

(4) provide technical assistance to municipalities to implement the provisions of this Act;

(5) contract in the name of the state for the service of independent contractors under bond, or with an agency or department of the state, or a local jurisdiction, to perform services or to provide facilities necessary for the implementation of this Act, including but not limited to the transportation and disposition of solid waste;

(6) accept, receive, and administer, including conveying to municipalities, or other instruments of state or local government, grants or other funds, or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this Act; and

(7) provide financial assistance to municipalities for implementation of this Act and related goals.

(b) In addition to any other duties conferred on the Department/Agency/Secretary by law, the Department/Agency/Secretary shall prepare a report [a year after this Act's effective date][annually] which summarizes accomplishments of the Act, assesses the implementation, and summarizes recommendations for additional legislative changes or implementation modifications to further effectuate its goal.

Section 4. Liability Limitation^{7,8}

(a) Notwithstanding any other provision of law, a good-faith donor of any canned, packaged, or perishable food or farm product, apparently fit for human consumption, who donates to a person for consumption, or to a bona fide charitable or nonprofit organization for distribution, shall not be subject to criminal penalty or civil liability, including damages, arising from the condition of the food, if the donor reasonably inspects the food at the time of donation and finds the food apparently fit for human consumption and has no reasonable basis to believe that the food is adulterated, tainted, contaminated, or harmful to the health or well-being of a person consuming the food.

⁷ Whatever decision a state makes with regards to liability should be harmonized with the state's code surrounding food safety and negligence.

⁸ Liability section a modification of Vermont's Good Samaritan Law for Donations of Food. See 12 V.S.A § 5762.