

To: Cathy Jamieson, Solid Waste Program Manager, DEC  
From: Diane Bothfeld, Director of Administrative Services, IV  
Re: Regulation of Food Residuals (Revised)  
Date: 3/15/2018

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AAFM is committed to working with DEC to provide education to farm operators and the general public regarding the handling of food residuals. Given the implementation of universal recycling in Vermont, AAFM has prepared this memo to outline its role in the subject area of diverting food residuals to farms and individuals with poultry.

### *Composting and digesting of food residuals*

AAFM supports farm operators importing food residuals for the purposes of composting and digesting as outlined in ANR's current Solid Waste Rules.

AAFM's Required Agricultural Practices Rule (RAPs) definition of "food processing residual" matches that of DEC's in its Solid Waste Management Rules. Section 6.09 of the RAPs allows for on-farm composting of imported "food processing residual[s]"<sup>1</sup> of less than 1,000 cubic yards per year and sets site-specific standards for doing so. This allowance is consistent with the exemption in Section 6-1103 (6) of the Solid Waste Management Rules. AAFM also acknowledges that food residuals may be placed in on-farm digesters, and notes in the RAPs' section entitled In Roles of Other State Agencies: Information that "[o]n-farm composting or anaerobic digestion of food residuals and food processing residuals may require registration or permitting by the Vermont Waste Management & Prevention Division."

It is important to note that importing "food residual[s]"<sup>2</sup> is not "farming" as defined in Section 2.16 of the RAPs and therefore AAFM does not have authority to regulate nuisance (e.g. nuisance wildlife, odors, traffic, noise, vectors, flies, rats, birds) associated with their importation to a farm.

### *Feeding food residuals to livestock*

Prohibitions on feeding food residuals to livestock exist under state and federal law. 6 V.S.A. Chapter 113 addresses the feeding of prohibited food waste to swine.<sup>3</sup> Section 1672 states:

No person shall feed prohibited food waste to swine or supply prohibited food waste to others for the purpose of feeding it to swine.

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<sup>1</sup> "Food processing residual" means the remaining organic material from a food processing plant and may include whey and other dairy, cheese making, and ice cream residuals or residuals from any food manufacturing process excluding slaughtering and rendering operations. It does not include materials from markets, groceries, or restaurants. VSWMR § 6-1102 (15)

<sup>2</sup> "Food residual" means compostable material derived from processing or disposal of food, excluding residuals derived from the processing of meat and meat products such as animal slaughtering and rendering operations. Food residuals may include pre- and post-consumer food scraps. VSWMR § 6-1102 (16)

<sup>3</sup> AAFM has recently revised its Guidance on Feeding Food Scraps to Pigs. The revised guidance can be found here:

<http://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/VAAFM-Policy-on-Feeding-Food-Scraps-to-Pigs.pdf>

Section 1671 of Chapter 113 defines “prohibited food waste.” Section 1671(a) states that “prohibited food waste” means the following:

- (a)(1) pre- and postconsumer waste material derived in whole or in part from the meat of any animal, including fish and poultry, or from other animal material; or
- (2) material that, as a result of the handling, preparation, cooking, disposal, or consumption of food, has come into contact with pre- or postconsumer waste material derived in whole or in part from the meat of any animal, including fish or poultry, or from other animal material.

Section 1671(b) states that the term “prohibited food waste” does not include:

- (1) waste from ordinary household operations that is fed directly to swine raised exclusively for the use in the household of the owner of the swine by members of the household and nonpaying guests and employees; and
- (2) processed dairy products.

The purpose of Chapter 113 is to prevent the introduction into Vermont of economically devastating animal diseases, such as Foot and Mouth Disease, that are transmitted through this practice. Section 1676 of the chapter authorizes AAFM to cooperate with the United States Department of Agriculture (USDA), which has compliance and enforcement responsibilities for this practice due to the Swine Health Protection Act.

In order to protect livestock from disease and to ensure nutritional content and protect livestock, AAFM also carries out the provisions of the Vermont Commercial Feed Law of 1986 (6 V.S.A. §§ 321-336) and the federal Bovine Spongiform Encephalopathy (BSE) Rule (21 CFR § 589.2000).

Under Vermont’s Commercial Feed Law commercial animal feed products<sup>4</sup> must be registered, labeled, inspected, and analyzed to meet nutritional guarantees. Food residuals that must be registered prior to distribution as an animal feed are pre-consumer food residuals of consistent and anticipated quality that do not contain or come in contact with any prohibited material. These are items such as bakery waste, brewer’s yeast, and spent grains. AAFM staff are available to assist food residual producers to identify if they meet these guidelines and how to register the feed products.

Under the federal BSE Rule, protein derived from mammalian tissues for use in ruminant feed is a food additive subject to the Federal Food, Drug, and Cosmetic Act, except in specific

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<sup>4</sup> “Commercial feed” means “all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of section 327(a), which are distributed for use as feed or for mixing in feed. The Secretary by regulation may exempt from this definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 327(a), of this title.”

circumstances when exempted.<sup>5</sup> Ruminants, such as cows, sheep, goats, must not be fed feed containing protein derived from mammalian tissues unless exempted. Consequently, post-consumer food residuals (e.g., plate waste) may not be fed to ruminants as a supplement to the animal's diet as the residuals have most likely contacted animal protein (mammalian tissues) that has not received additional required treatment.

AAFM is aware that feeding post-consumer food residuals with these proteins to non-ruminants, such as poultry, occurs in Vermont. AAFM has concerns regarding this activity as it may result in zoonotic vector transmission. Any person engaging in this activity should do so with extreme caution and comply with FSMA Final Rule for Preventive Controls for Animal Food which can be found here, <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm366510.htm>

AAFM recognizes that FSMA has a graduated implementation schedule and only applies to establishments producing food for commercial markets. Poultry raised for personal consumption falls outside of the FSMA regulation and while the management and processing of food by-products does not specifically apply, if followed would be protective of both human and animal health.

### *Conclusion*

AAFM supports ANR's regulation of food residuals as outlined in ANR's current Solid Waste Management Rules. Overall, AAFM does not consider the importation of food residuals as farming. The relevant law, discussed above, does allow for:

- the importation of 1,000 cubic yards annually of food processing residuals as a supplement to on-farm composting activities (RAP Section 6.09), and
- the registration as a commercial animal feed in compliance with the Vermont Commercial Feed Law or the BSE Rule of pre-consumer food residuals of consistent and anticipated quality that do not contain or come in contact with any prohibited material.

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<sup>5</sup> See 21 CFR 589.2000 (b).