

S.102. An Act Relating to the Use of Food Residuals for Farming

Overview and Section by Section Summary

Overview of Food Residuals for Farming

- The traditional income streams of the agricultural economy are currently unstable and, as a result, many farmers have been struggling to make a living.
- The Agency of Agriculture, Food and Markets (AAFM) recommends that farms diversify their activities in order to address the instability in traditional income streams.
- Several farms have diversified by importing food residuals onto their farms for production of compost as a soil amendment but also as a part of the raising and management of poultry.
- Some farms have engaged in these practices for years, but last year, AAFM concluded that importation of food residuals onto a farm for compost production is not farming.
- ANR then informed these farms that they needed a solid waste certification as a compost facility.
- This startled these farms, and made them fear they would be subject to permitting requirements and additional tax liability. Some even claimed the change would put them out of business.
- This bill clarifies that the importation of food residuals onto a farm is farming provided that no more than 2,000 cubic yards of food residuals per year are imported and the compost is principally used on the farm or the farm is a small farm raising or managing poultry.

Overview of Animal Health Products, Feed Supplements, Biostimulants, and Plant and Soil Amendments

- AAFM registers and regulates commercial feed, fertilizer and lime products in the State in order to ensure the quality, efficacy, and claims made by the products.
- However, there are categories of products sold in the State or proposed for sale in the State that are similar to feed, fertilizer, and lime that generally do not fall under the definition of commercial feed, fertilizer, and lime.
- The products similar to commercial feed are animal health products and feed supplements, such as salmon oil for your pets.
- The products similar to commercial fertilizer or lime are Miracle Grow Plant amendments or Frosty Nugs Base Nutrients or Grow More Bio-Cozyme.
- AAFM has registered some of these products and product manufacturers have requested registration as evidence of quality and accountability for products.
- AAFM requested that the General Assembly clarify its regulatory authority over these products and provide specific authority to register and regulate them in the same or significantly similar way that the Agency regulates commercial feed, fertilizer, and lime products.
- The registration fees would be deposited into existing special funds that AAFM has authority to use to regulate commercial feed and fertilizer requirements, which would now include the requirements for food residuals for farming authority added in Sec. 1 through 8 of the bill.

Section by Section Summary: Food Residuals for Farming

Section 1. 10 V.S.A. § 6001. Definition of Farming under Act 250

- This section amends the definition of “farming” under Act 250.
 - The definition of “farming” under Act 250 is the principle definition of farming used in statute, including under the Required Agricultural Practices (RAPs).
- Section 1 provides that “farming” includes: importation of up to 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for production of compost, provided that:
 - the compost is principally used on the farm where it is produced; or
 - the compost is produced on a small farm that raises or manages poultry.
- The section also adds definitions of “farm,” “food processing residuals,” “food residuals,” “principally used,” and “small farm” to provide clarity on the terms used in the addition to the definition of farming. All of these definitions are drawn from current law.
 - A farm is a parcel that meets the threshold for regulation under the RAPs.
 - The food processing residuals definition is the same as the definition under the RAPs
 - The definition of “food residuals” is the same as under the universal recycling law.
 - The definition of “principally used” is the same definition of that term from the Natural Resources Board’s Act 250 rules. S.102 simply imports the definition into statute.
 - The definition of small farm is the same as under Title 6 and the RAP

Small farm means: a parcel or parcels of land: (1) on which 10 or more acres are used for farming; (2) that house no more than the number of animals specified under 6 V.S.A. § 4857; and (3)(A) that house at least the number of mature animals that the Secretary of Agriculture designates by rule under the RAPs; or (B) that are used for the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops for sale.

Section 2. Amendment to the Required Agricultural Practices Rule

- This section amends the definition of “farming” in the RAP rules in the same way that Section 1 amends the definition of “farming” under Act 250.
- As previously stated, the Act 250 definition of farming is the same definition used under the RAPs.
- Instead of requiring AAFM to amend the RAPs to be consistent with the Act 250 definition. S.102 directly amends the rule.
- This provides immediate consistency between statute and rule and does not require the AAFM to go through the time and expense of formal rulemaking.
- Section 2 does not add all of the same supporting definitions added under Section 1, because some of these terms are already defined under the RAPs—i.e. food processing residual, farm, small farm.

Section 3. 6 V.S.A. chapter 218. Agricultural Residuals Management

- Section 3 establishes an agricultural residuals management program at AAFM to manage residual wastes, such as food residuals, generated, imported, or managed on farms.
- The main directive under this new program is the requirement under 6 V.S.A. § 5133 that AAFM regulate the importation of food residuals or food processing residuals onto a farm.
- Under 6 V.S.A. § 5133, AAFM shall adopt rules for the management of food residuals and food processing residuals on a farm. The rules may include requirements regarding:
 - the proper composting of food residuals or food processing residuals;
 - destruction of pathogens in food residuals, food processing residuals, or compost;
 - prevention of public health threats from food residuals, food processing residuals, or compost;
 - protection of natural resources or the environment; and
 - prevention of objectionable odors, noise, vectors, or other nuisance conditions.
- AAFM may adopt the food residual rules as part of the RAPs or as independent rules.
- Section 3 also clearly states that a farm producing compost under the change in Section 1 of the bill shall be regulated by AAFM and not ANR's solid waste management program.

Sections. 4-6. Conforming Amendments; ANR Solid Waste Authority

- Sections 4-6 of the bill make conforming amendments to ANR's solid waste management authority to clarify that farms producing compost under the provision in Section 1 of this bill are not subject to ANR's solid waste management authority.

Section 7. Interim Application of Solid Waste Management Rule

- Section 7 provides that prior to AAFM adopting rules for the import of food residuals by farms for composting, AAFM shall require a person producing compost on a farm with food residuals to comply with ANR's accepted composting practices.

Section 8. Update on Implementation of Import of Food Residuals onto Farm for Composting

- Section 8 requires the Secretary of Agriculture and the Secretary of Natural Resources to submit testimony to the General Assembly on or before January 15, 2023 regarding the import of food residuals onto farms for the purpose of compost production.

Section by Section Summary: Commercial Feeds and Fertilizer

Section 9. 6 V.S.A. chapter 26. Commercial Feed; Animal Health Products; Feed Supplements

- Sec. 9 amends the commercial feed chapter in Title 6 to add animal health products and feed supplements to the products that must be registered with AAFM in order to be sold in the State.
- 6 V.S.A. § 323 adds definitions of animal health products and feed supplement:
 - “Animal health product” means a product marketed to prevent or cure a health condition or enhance or protect the health or well-being of livestock, poultry, or other domestic animals that does not provide nutrition, does not require a prescription from a licensed veterinarian, is not intended for cosmetic purposes, or is exempted by the Secretary by rule.
 - “Feed supplement” means a material used with another to improve the nutritive balance or performance of the total and intended to be fed undiluted as a supplement to other feeds or offered free choice with other parts of the ration separately available or further diluted and mixed to produce a complete feed.
- 6 V.S.A. § 324 requires registration of feed supplements and animal health products to be sold.
 - The registration fee for feed supplements and animal health products will be \$105 per product.
 - Fees are deposited in an AAFM special fund for administering the commercial feed law and other law relating to fertilizer or seeds. This allows use of fees for food residuals for farming.
- 6 V.S.A. § 325 sets labelling requirements for feed supplements and animal health products:
 - Feed supplements must meet the labelling requirements for commercial feed.
 - Animal health products must meet specific labeling requirements, such as net weight, product name, ingredients, mailing address, adequate directions for use, and precautionary statements.
- 6 V.S.A. § 326 would prohibit misbranding of feed supplements and animal health products.
- 6 V.S.A. § 327 prohibits adulteration of feed supplements and animal health products. Clarifies that adulteration is when the product or substance in a product is injurious to human or animal health.
- 6 V.S.A. § 328 repeals an obsolete and out of date requirement for persons registering commercial feed to report the tonnage of feed distributed in the State for calendar years 2016 and 2017.
- 6 V.S.A. § 329 amends AAFM’s rulemaking authority to provide that the Agency may adopt rules for the regulation of feed supplements and animal health products.
- 6 V.S.A. § 330 amends AAFM’s inspection authority over commercial feed to provide that the Agency will have the same inspection authority for feed supplements and animal health products.
- 6 V.S.A. § 331 amends the prohibition on the sale of commercial feeds that are short of weight or deficient in a guarantee analysis to add animal health products and feed supplements.
- 6 V.S.A. § 332 adds animal health products and feed supplements to the products that AAFM may detain when it has a reasonable belief a product is being distributed in violation of the chapter.
- 6 V.S.A. § 336 amends the administrative penalty for the chapter by adding feed supplements or animal health products to the list of actions for which an administrative penalty may be assessed.

Section 10. 6 V.S.A. chapter 28. Fertilizer; Biostimulants; Plant Amendments; Soil Amendments

- Sec. 10 amends the fertilizer and lime chapter in Title 6 to add biostimulants, plant amendments, and soil amendments as products that must be registered with AAFM in order to be sold in State.
- 6 V.S.A. § 363 adds definitions of biostimulants, plant amendments, and soil amendments:
 - “Biostimulant” means a substance or micro-organism that, when applied to seeds, plants, or the rhizosphere, stimulates natural processes to enhance or benefit nutrient uptake, nutrient efficiency, tolerance to abiotic stress, or crop quality and yield except for fertilizers, soil amendments, plant amendments or pesticides.
 - “Plant amendment” means a substance applied to plants or seeds that is intended to improve growth, yield, product quality, reproduction, flavor or other favorable characteristics of plants, except for fertilizer, soil amendments, agricultural liming materials, animal and vegetable manures, pesticides, plant regulators, and other materials exempted by rule.
 - “Soil amendment” means a substance or mixture of substance that is intended to improve the physical, chemical, biological, or other characteristics of the soil, except fertilizers, agricultural liming materials, unprocessed animal manures, unprocessed vegetable manures, pesticides, biostimulants, and other materials exempted by rule. A compost product from a facility under the jurisdiction of the Agency of Natural Resources’ Solid Waste Management Rules or exceptional quality biosolids shall not be regulated as a soil amendment under this chapter, unless marketed and distributed for the use in the production of an agricultural commodity.

[Note: The underlined language is language ANR wanted. ANR wanted to be clear that it will continue to regulate exceptional quality biosolids that are not marketed and distributed for agricultural use. There is a definition of exceptional quality biosolids in the section at §363(6)]

- 6 V.S.A. § 364 adds biostimulants, plant amendments, and soil amendments to the section requiring products be registered with AAFM in order to be sold in the State.
 - The registration fee will be \$85 per grade or formulation registered.
 - Fees are deposited in an AAFM special fund for use in administering the chapter and any other feed or seed law. This will allow AAFM to use funds for food residuals in farming.
- 6 V.S.A. § 365 sets labeling requirements for biostimulants and plant and soil amendments:
 - Feed supplements will need to meet the labelling requirements for commercial feed.
 - Biostimulants, plant amendments, and soil amendments will need to meet specific labeling requirements, such as providing the net weight, brand name, purpose, guaranteed analysis when any property is guaranteed, and contact information.
 - For bulk shipments, the required information must be provided in written form at delivery.
- 6 V.S.A. § 366 provides that persons distributing commercial fertilizer in the State need to pay a tonnage fee and report amounts distributed annually. S.102 would require distributors of biostimulants, plant amendments, and soil amendments to annually report amounts of each formulation distributed, but they would be exempt from tonnage fees.
- 6 V.S.A. § 367 adds biostimulants, plant amendments, and soil amendments to AAFM’s authority to inspect premises where products are distributed and to inspect, sample, and monitor products.

- 6 V.S.A. § 368 would include biostimulants, plant amendments, and soil amendments under the prohibitions on misbranding products.
- 6 V.S.A. § 369 adds biostimulants, plant amendments, and soil amendments to the prohibition on adulteration of products and clarifies that adulteration includes when the product may result in contamination or condemnation of a raw agricultural product.
- 6 V.S.A. § 370 adds biostimulants, plant amendments, and soil amendments to the requirement that AAFM annually publish information concerning the distribution of fertilizer products, including results of samples. The section also strikes an obsolete report to the General Assembly.
- 6 V.S.A. § 374 amends the prohibition on the sale of fertilizer that is short of weight or deficient in a guarantee analysis to biostimulants, plant amendments, and soil amendments.
- 6 V.S.A. § 375 adds biostimulants, plant amendments, and soil amendments to the AAFM authority to cancel or suspend the registration of a product.
- 6 V.S.A. § 376 adds biostimulants, plant amendments, and soil amendments as products that AAFM may detain, condemn, or confiscate when it has a reasonable belief that a product is being distributed in the State in violation of the chapter.
- 6 V.S.A. § 379 adds biostimulants, plant amendments, and soil amendments to the section allowing manufacturers of fertilizers to sell or exchange products for manufacturing or mixing of products.
- 6 V.S.A. § 380 amends the chapter's administrative penalty section to add biostimulants, plant amendments, and soil amendments to the list of products a penalty may be assessed for a violation.
- 6 V.S.A. § 381 strikes an old date from a section requiring golf course nutrient management plans.

Section. 11. Effective Dates.

- The compost foraging; farming changes in Section 1-8 take effect on passage. All other sections take effect July 1, 2021.