

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 20 SOIL AND WATER CONSERVATION

Chapter 13 Food Processing Residuals Utilization Program

Authority: Agriculture Article, §§ 8-8A-01 et seq., Annotated Code of Maryland

.01 Purpose and Scope.

A. The purpose of this chapter is to establish requirements and control measures for the utilization of food processing residuals.

B. These regulations specifically apply to all persons engaged in the following utilization activities of food processing residuals, or any product containing this food processing residuals, which is utilized in the State of Maryland:

- (1) Transportation, Regulations .12—14. of this chapter;*
- (2) Storage facility, Regulations .15—19 of this chapter; and*
- (3) Agricultural land, Regulations .20—23 of this chapter;*

C. A person may not engage in food processing residuals utilization in a manner which will likely:

- (1) Cause an undue risk to the environment or public health, safety, or welfare as may be determined by the Department;*
- (2) Create a nuisance; or*
- (3) Cause a discharge of constituents to waters of this State.*

.02 Incorporation by Reference.

A. The performance and technical standards provided in this Chapter pertaining to the land application and storage of food processing residuals are found in the Maryland Nutrient Management Manual, which is incorporated by reference in COMAR 15.20.07.02.

B. A person utilizing food processing residuals in conjunction with an agricultural operation shall follow the performance and technical standards set forth in the following chapters of the Maryland Nutrient Management Manual:

(1) For utilization pertaining to the land application of food processing residuals, Section I (“Nutrient Recommendations”), Subsection D (“Nutrient Application Requirements”):

- (a) Chapter I: General Guidelines;*
- (b) Chapter II: Definitions;*
- (c) Chapter III: Setbacks for Nutrient Application;*
- (d) Chapter V: Temporary Field Stockpiling (Staging) for Stackable Organic Nutrient Sources Materials (Equal to or less than 75% Moisture Content); and*
- (e) Chapter VI: Food Processing Residuals; and*

(2) For utilization pertaining to the storage of food processing residuals, Section III (“Animal Manure and Waste Management”), Subsection G (USDA-NRCS Field Office Technical Guide - Maryland/D.C. Area - Waste Storage Facility - 313):

- (a) Chapter I: Conservation Practice Standard - Waste Storage Facility - Code 313 (2024);*
- (b) Chapter II: Operation & Maintenance Plan - Waste Storage Facility (313) (2021);*
- (c) Chapter III: Maryland Conservation Practice Construction Specification - Waste Storage Facility (2021); and*
- (d) Chapter IV: Statement of Work - Waste Storage Facility (313) - Maryland (2024).*

.03 Definitions.

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) Agricultural land.

(a) “Agricultural land” means more than 10 acres of land used to produce food, feed, fiber, sod, animals, plants, trees, or plants in containers (pots), or for out-of-ground production.

(b) “Agricultural land” includes smaller, noncontiguous land parcels that total more than 10 acres.

(2) “Agricultural operation” means each physical site where a person engages in a business that:

(a) Grows, raises, keeps, pastures, or otherwise produces a farm product, including:

- (i) Any agricultural, horticultural, vegetable, or fruit product of the soil; or*
- (ii) Livestock, poultry, eggs, dairy products, nuts, honey, and every product of the farm, a forest, or an orchard; and*

(b) Has:

- (i) A gross annual income of \$2,500 or more; or*
- (ii) Eight or more animal units.*

(3) “Animal unit” means 1,000 pounds of live animal weight.

(4) “Applicant” means:

- (a) A person who owns or operates an agricultural operation; or*
- (b) A commercial broker or commercial hauler who has contracted with the owner or operator of an agricultural operation to have food processing residuals utilized at that operation.*

(5) "Collection" means any action involved in the gathering or subsequent placement of food processing residuals, or any other product containing food processing residuals, into a vehicle, container, or any other vessel for transportation."

(6) "Commercial broker means a person who:

(a) For commercial purposes, assumes temporary control of food processing residuals from an agricultural operation or a food processing plant and transports or arranges the transport of this material to an importing agricultural operation; and

(b) Is not working for or under the control of an agricultural operation.

(7) "Commercial hauler" means a person engaged in the business of hauling, transporting, moving, or land-applying food processing residuals as a contract agent for a farm operator, commercial broker, or food processing plant under the direction of the operator, broker, or processing plant.

(8) "Constituent" means any component of food processing residuals that is an organic, inorganic, or combination of organic and inorganic substances.

(9) "Container" means either an open or closed receptacle with a load capacity of 1 metric ton or less that includes a bucket, box, carton, vehicle or trailer:

(10) "County" means as defined in the Agriculture Article, §1-101(c), Annotated Code of Maryland.

(11) "Cover crop" means a cereal grain or cereal grain mix that:

(a) Is planted:

(i) Following the harvest of summer crops for the purpose of the seasonal protection of soil, the assimilation of residual nitrogen left from a previous crop, and the continued mineralization of nitrogen; and

(ii) In accordance with the "Maryland Winter Cover Crop Program Requirement" for seeding rate, planting dates, and planting methods as published on the Department's website.; and

(b) Has germinated and attained at least 70 percent surface coverage on the field as measured by the standard line-transect method.

(12) "Department" means the Maryland Department of Agriculture.

(13) "Field ditch" means a channelized waterway that, as provided in the USDA-NRCS National Cooperative Soil Survey, is not within:

(a) Floodplain soil-mapping unit;

(b) Hydric soil that is mapped as a narrow, elongated feature in a fluvial or floodplain position; and

(c) Soil-mapping unit that has a slope class of "B" or steeper.

(14) "Food processing residuals" or "FPRs" means an organic material that is:

(a) Generated by processing agricultural commodities for human or animal consumption and includes:

(i) Food residuals;

(ii) Food coproducts;

(iii) Food processing wastes;

(iv) Food processing sludges;

(v) Organic material that is mixed or otherwise comingled with food residuals, food coproducts, food processing wastes, food processing sludges; or

(vi) Any other incidental material whose characteristics are derived from processing agricultural products for human consumption or animal consumption; and

(b) Registered with the State Chemist as a soil conditioner.

(15) "Food processing residuals generator" means a person who owns or operates a facility that processes food processing residuals to be utilized in this State.

(16) "Groundwater" means water below the land surface in a saturated zone.

(17) "Holding tank" means a watertight receptacle that has a capacity up to 20,000 gallons, which is used, or intended to be used, for the temporary storage of food processing residuals for land application.

(18) "Land application" means the placement of food processing residuals, or any other product containing food processing residuals on or mixed with or injected into land used to support an agricultural crop.

(19) "Nuisance" means unreasonable interference with the quality of life of the public because of the characteristics of noise, odor, vectors, solids, vapors, liquids, or gases that:

(a) Causes distress or potential health impacts to members of the public or residents or users of properties adjacent to a site where food processing residuals is being utilized or has been utilized; and

(b) Falls outside the protection afforded an agricultural operation under §5-403 of the Courts and Judicial Proceedings Article.

(20) "Nutrient Management Plan" has the meaning stated in COMAR 15.20.08.

(21) "Pasture land" means land on which animals feed directly on forage and grain crops, such as legumes, grasses, or grain stubble.

(22) "Permittee" means a person who holds a Food Processing Residuals Utilization Permit.

(23) "Person" means an individual, or any partnership, firm, association, public or private corporation, or any other entity.

(24) "State" means the State of Maryland unless otherwise specified.

(25) "Storage facility" means a waste storage facility that meets USDA-NRCS Waste Storage Facility No. 313 Conservation Practice Standards or an equivalent standard determined by a professional engineer for the containment of wastes generated by agricultural production or processing.

(26) "Surface water" means all waters of the State that are not groundwater.

(27) "Tidal wetland" has the meaning stated in COMAR 26.04.02.02.

(28) "Transportation" means the movement or conveyance of food processing residuals or any other product containing food processing residuals by road.

(29) "Treatment" means a process, which alters, modifies, or changes the biological, physical, or chemical characteristics of food processing residuals.

(30) "USDA-NRCS" means the United States Department of Agriculture-Natural Resources Conservation Service.

(31) "NRCS Waste Storage Facility No. 313 Conservation Practice Standard" means the technical standards for waste storage facilities set forth in USDA-NRCS Field Office Technical Guide which is incorporated by reference.

(32) "Utilize food processing residuals" means:

(a) Handling or storing food processing residuals;

(b) Using food processing residuals for land application; and

(c) Transporting food processing residuals to or from a generator of food processing residuals or to or from an agricultural operation.

.04 Right of Entry.

The person applying for a Food Processing Residuals Utilization Permit shall agree, as a condition for the issuance of the permit or any other authorization or approval issued by the Department, to allow the Secretary of the Department of Agriculture or the Secretary's authorized representatives, at reasonable times and upon presentation of credentials, to:

A. Enter upon the premises or a location where any records are required to be maintained under the terms and conditions of the Food Processing Residuals Utilization Permit, authorization, or approval issued by the Department;

B. Have access to and copy any records required to be maintained under the terms and conditions of the Food Processing Residuals Utilization Permit, authorization, or approval issued by the Department;

C. Enter upon a food processing residuals utilization site and inspect any area covered by the permit including any field where food processing residuals have been land-applied or storage facility holding food processing residuals;

D. Sample any soils, vegetation, food processing residuals, or other materials on the site;

E. Perform any activities to determine compliance status with the terms and conditions of the Food Processing Residuals Utilization Permit, authorization, or approvals issued by the Department or the applicable regulations; and

F. Obtain any photographic documentation or evidence.

.05 Requirements for Utilizing Food Processing Residuals.

A person may not utilize food processing residuals in this State unless the material is:

A. Registered as a soil conditioner;

B. Analyzed by an accredited laboratory, using methods that are:

(1) Acceptable to the Department; and

(2) Part of the laboratory's scope of accreditation; and

C. At a minimum, analyzed:

(1) For moisture, nutrients (total nitrogen, total phosphate, and total potash), heavy metal contaminants (arsenic, cadmium, chromium, copper, lead, molybdenum, nickel, selenium, and zinc), and polynuclear aromatic hydrocarbons (PAHs, as determined by Method 8270E Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry); and

(2) As otherwise required by the Department.

.06 Sampling and Testing Requirements for Food Processing Residuals.

A. A person utilizing food processing residuals in this State shall submit to the Department:

(1) An acceptable methodology that shall be used to obtain a representative composite food processing residuals sample of the material; and

(2) On an annual basis, the results of laboratory analysis of the representative composite food processing residuals sample in accordance with the following requirements:

(a) All sample analyses shall be performed by an accredited laboratory, using methods that are acceptable to the Department and part of the laboratory's scope of accreditation; and

(b) The analysis shall, at a minimum, test for moisture, nutrients (total nitrogen, total phosphate, and total potash), heavy metal contaminants (arsenic, cadmium, chromium, copper, lead, molybdenum, nickel, selenium, and zinc), and polynuclear aromatic hydrocarbons (PAHs, as determined by Method 8270E Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry) and as otherwise required by the Department.

B. Unless otherwise agreed upon by persons utilizing food processing residuals in conjunction with an agricultural operation, the requirement set forth in §A of this regulation shall be performed by a commercial broker, commercial hauler, or other person who is permitted to transport the material to an agricultural operation. This person shall be identified in the permit application to utilize food processing residuals in conjunction with an agricultural operation.

C. The Department may:

(1) Require analyses for food processing residuals constituents other than those identified in §A(2) of this regulation to adequately assess the quality of food processing residuals;

(2) Require additional analyses to adequately assess the quality of food processing residuals;

(3) Approve a request to reduce the testing frequency for analyzing any of the constituents identified in §A(2) of this regulation if the Department determines that a sufficient number of food processing residuals samples have been analyzed to characterize food processing residuals quality on an annual as well as seasonal basis; and

(4) Reject an analysis for good cause.

D. The Department may consider the failure to submit the analysis required in §A of this regulation to be grounds for:

(1) Revocation or modification of any Food Processing Residuals Utilization Permit, authorization, or approval previously issued by the Department for the utilization of that generator's food processing residuals; and

(2) Denial of any new, material alteration or extension, modification, or renewal application for a Food Processing Residuals Utilization Permit, authorization, or approval issued by the Department for the utilization of that generator's food processing residuals.

.07 Record-Keeping and Reporting Requirements for Food Processing Residuals.

A. A person utilizing food processing residuals in the State shall submit to the Department the following information on a form provided by the Department:

(1) The date the food processing residuals leaves that food processing residuals generator's plant;

(2) The amount of food processing residuals leaving that generator's plant;

(3) The county and site where the food processing residuals are being utilized; and

(4) Other information required by the Department including information relating to the registration of the material with the Department.

B. The information required to be submitted under §A of this regulation shall be:

(1) Collected each year on a quarterly basis as follows:

(a) January 1 through March 31;

(b) April 1 through June 30;

(c) July 1 through September 30; and

(d) October 1 through December 31; and

(2) Submitted to the Department within 30 days from the close of each quarter.

C. Failure to submit the reports required under this regulation may constitute grounds for revocation or modification of any Food Processing Residuals Utilization Permit issued by the Department.

D. Unless otherwise agreed upon by persons utilizing food processing residuals in conjunction with an agricultural operation, the requirement set forth in §A of this regulation shall be performed by a commercial broker, commercial hauler, or other person who is permitted to transport the material to an agricultural operation. This person shall be identified in the permit application to utilize food processing residuals in conjunction with an agricultural operation.

.08 Food Processing Residuals Utilization Permits.

A. A person may not utilize food processing residuals, or any product containing this material, without first obtaining a Food Processing Residuals Utilization Permit from the Department.

B. A person who is engaged in the utilization of food processing residuals is subject to the following conditions:

(1) Food processing residuals may not be stored, staged, or land applied in a manner that will cause an undue risk to the environment or public health, safety, or welfare, or in a manner that causes or is likely to cause a discharge of constituents to the waters of the State;

(2) Food processing residuals may only be land applied on agricultural land in accordance with a nutrient management plan prepared by a certified and licensed nutrient management consultant in accordance with the requirements specified in COMAR 15.20.04 and in compliance with COMAR 15.20.07 and 15.20.08;

(3) Food processing residuals transported to a person's agricultural operation may not be transported from that site to:

(a) Another agricultural operation not within the person's control; or

(b) Any other agricultural operation that is not permitted by the Department to receive it.

C. In the event of an odor complaint pertaining to the utilization of food processing residuals, the Department shall investigate the complaint and, after investigating the complaint, notify the person who is utilizing food processing residuals what corrective measures, if any, shall be implemented, such as the temporary cessation of food processing residuals application, additional incorporation measures, or the application of odor control agents, such as lime, potassium permanganate, or other odor control agents.

D. A person may mix food processing residuals with other organic material if:

(1) The person demonstrates to the Department that the final utilization of the mixture will not cause an undue risk to the environment or public health, safety, or welfare as may be determined by the Department; and

(2) The person secures a new N/P/K analysis of the material before land application.

E. A person who mixes or otherwise comingles food processing residuals mixed with other organic materials shall manage this material in accordance with this chapter.

.09 Performance Bonds, Liability Insurance, or Other Form of Security.

A. A person applying for a Food Processing Residuals Utilization Permit shall file with the Department a performance bond on a form prescribed or approved by the Department, liability insurance, or other form of security. The performance bond, liability insurance, or other form of security shall be payable to the Department and the obligation of the performance bond, liability

insurance, or other form of security shall be conditioned upon the compliance with the terms and conditions of the Food Processing Residuals Utilization Permit.

B. The amount of the performance bond, liability insurance, or other form of security shall be:

(1) \$10,000 for a Food Processing Residuals Utilization Permit for the transportation of food processing residuals to and from an agricultural operation;

(2) \$30,000 for a Food Processing Residuals Permit to apply food processing residuals on agricultural land; and

(3) \$100,000 for a Food Processing Residual Utilization Permit for an in-State storage facility.

C. The amount of the performance bond, liability insurance, or other form of security for combined activities is the highest amount of all utilization activities listed in the Food Processing Residuals Utilization Permit Application.

D. The Department may allow a permittee obtaining several Food Processing Residuals Utilization Permits to apply food processing residuals on agricultural land to file one performance bond, liability insurance, or other form of security to satisfy the security requirements for more than one utilization site. The amount of the performance bond, liability insurance, or other form of security shall be the amount required in §B of this regulation for the first permit plus 40 percent of the amount required in §B of this regulation for each additional permit up to a maximum amount of \$200,000.

E. Liability under the performance bond, liability insurance, or other form of security shall remain in effect until all terms and conditions of the Food Processing Residuals Utilization Permit have been met. The Department may release the performance bond, liability insurance, or other form of security after the Department has determined that all terms and conditions of the Food Processing Residuals Utilization Permits covered by the performance bond, liability insurance, or other form of security have been complied with.

F. The performance bond, liability insurance, or other form of security shall be executed by the person applying for a Food Processing Residuals Utilization Permit and obtained from a corporate surety licensed to do business in this State. Instead of a performance bond, liability insurance, or other form of security executed by a corporate surety, the person may elect to deposit with the Department cash or negotiable bonds of the federal government or of this State or any other securities acceptable to the Department. The amount of the cash deposit or the market value of any securities shall be at least equal to the required sum of the performance bond, liability insurance, or other form of security. The Department shall receive and hold the cash or securities in trust, for the purposes for which the deposit is posted.

G. The obligation of the person applying for a Food Processing Residuals Utilization Permit and of any corporate surety under the performance bond, liability insurance, or other form of security shall become due and payable, and all or any part of any cash or securities due and payable, and all or any part of any cash or securities shall be applied to payment of the costs of complying with any requirement of the Food Processing Residuals Utilization Permit if the Department has:

(1) Notified the permittee and any corporate surety that the terms and conditions of the Food Processing Residuals Utilization Permit have not been complied with, and has specified in the notice the particular noncompliance with the Food Processing Residuals Utilization Permit terms or conditions;

(2) Given the permittee a reasonable opportunity to correct the deficiencies and to comply with all of the terms and conditions of the Food Processing Residuals Utilization Permit; and

(3) Determined that, at the end of a reasonable length of time, some or all of the noncompliance specified under §G(1) of this regulation remain uncorrected.

.10 Denial of Food Processing Residuals Utilization Permit Application.

A. The Department shall deny an application for a Food Processing Residuals Utilization Permit if the Department finds that:

(1) The applicant cannot utilize food processing residuals without causing an undue risk to the environment or the public health, safety, or welfare as may be determined by the Department;

(2) The applicant is violating Agriculture Article, Title 8, Subtitles 8 and 8A, Annotated Code of Maryland, and Environment Article, Title 9, Subtitle 3, Part IV, Annotated Code of Maryland; or

(3) If the application is for storing food processing residuals at an agricultural operation, the applicant has not obtained any necessary approval or permits from the county to store this material at this site.

B. The Department shall deny an application for a Food Processing Residuals Utilization Permit if the Department finds that:

(1) The applicant is not in compliance with the sampling and testing requirements specified in Regulation .06 of this chapter;

(2) The applicant is not in compliance with the record-keeping and reporting requirements specified in Regulation .07 of this chapter;

C. The Department may deny an application for a Food Processing Residuals Utilization Permit if the Department finds that:

(1) The applicant has insufficient resources to meet the performance bond or other financial securities requirements of the Food Processing Residuals Utilization Permit;

(2) The applicant has failed to submit the applicable Food Processing Residuals Utilization Permit Application fee;

(3) The applicant has failed to submit information requested by the Department; or

(4) For any other good cause as determined by the Department including past violations of:

(a) Title 8, Subtitle 8 of the Agriculture Article and regulations adopted thereunder;

(b) Title 8, Subtitle 8A of the Agriculture Article and regulations adopted thereunder; and

(c) Title 9, Subtitle 3, Part IV of the Environment Article and regulations adopted thereunder.

.11 Transportation.

A. The Department may issue a Food Processing Residuals Utilization Permit to transport food processing residuals if the equipment to be used, the operation plan, and the destination of food processing residuals meet the requirements established by the Department. A person transporting food processing residuals to an agricultural operation in conjunction with storing or land-applying this material at this site:

- (1) Shall load and unload the material on the agricultural operation's premises; and
- (2) May not load and unload this material for these activities on a public road.

B. Liquid food processing residuals shall be transported in closed watertight vessels or containers.

C. Food processing residuals cake that is less than 75 percent moisture content may be transported in watertight containers, such as dump truck bodies or trailers that are sealed to prevent leakage or in closed body vehicles.

D. All State and federal commercial transportation laws must be followed.

.12 Transportation — Permit Application Requirements.

A. An applicant for a Food Processing Residuals Permit shall submit to the Department a permit application for each site where food processing residuals is to be transported. The applicant shall submit to the Department two completed copies of the Food Processing Residuals Utilization Permit Application on a form provided by the Department. The applicant shall also submit a performance bond, liability insurance, or other form of security required under the provisions of Regulation .09 of this chapter. The application shall include the following completed information:

(1) A description of the source, type, and quantity of food processing residuals to be transported, including any previous treatment the food processing residuals has received, such as anaerobic digestion, aerobic digestion, lime stabilization, composting, or dewatering;

(2) A detailed operation plan that includes, when applicable:

(a) A spill or leak clean-up plan describing the procedures for managing and reporting a food processing residuals spill or leak;

(b) Procedures for record keeping and reporting of the food processing residuals to be transported;

(c) Types of equipment to be used for collection, management, washdown, and other operations; and

(d) Contingency or emergency plans to manage equipment breakdown, spills, and other emergency events;

(e) The destination and a detailed description of the final utilization of the food processing residuals at the destination; and

(f) Other information that may be requested by the Department.

B. Permit Application Fees. The applicant shall pay the Department a nonrefundable Food Processing Residuals Utilization Permit Application fee in accordance with the following schedule:

(1) For a new permit application, \$50; and

(2) For a renewal permit application, \$50.

.13 Transportation — Record-Keeping and Reporting Requirements for a Food Processing Residuals Utilization Permit.

A. The permittee shall generate a report containing the following information and maintain all documents used to generate the report for a period of 5 years:

(1) The source, type, and quantity of food processing residuals transported;

(2) The dates of transportation of food processing residuals;

(4) The destinations of food processing residuals (i.e., the address of the agricultural operation);

(5) Other related information regarding the transportation of food processing residuals as required by the applicable Food Processing Residuals Utilization Permit; and

(6) Other information that may be requested by the Department.

B. The permittee shall submit semi-annually to the Department two completed copies of the report required by §A of this regulation for each year the Food Processing Residuals Utilization Permit is in effect. The permittee shall submit to the Department the report on a form provided by the Department.

.14 Transportation — Modifications of a Food Processing Residuals Utilization Permit.

A. The Department may modify a Food Processing Residuals Utilization Permit for transporting food processing residuals to include a new condition as may be required by a new law or regulation, to clarify permit conditions, or for other good cause.

B. The Department may modify a Food Processing Residuals Utilization Permit for transporting food processing residuals upon request by the permittee if the following conditions are met:

(1) The permittee submits to the Department a Food Processing Residuals Utilization Permit modification application on a form provided by the Department, and all other required information and forms as determined by the Department, with the application including a description of the proposed modification and an explanation as to why the modification is needed; and

(2) The Department determines that the proposed modification is in compliance with the applicable requirements of this chapter and will not cause an undue risk to the environment or public health, safety, or welfare.

C. The following constitute modifications to a Food Processing Residuals Utilization Permit for transportation of food processing residuals:

(1) Modification to the types of food processing residuals to be transported;

- (2) *The permittee's name change;*
- (3) *Modification to the sources of food processing residuals to be transported; or*
- (4) *Other modifications as determined by the Department.*

D. If the Department considers a modification application complete and acceptable, the Department may modify the Food Processing Residuals Utilization Permit.

E. The Department may deny a modification application if the permittee is not in compliance with the applicable requirements of this chapter or any of the terms and conditions of the Food Processing Residuals Utilization Permit or for other good cause as determined by the Department.

.15 Storage Facility.

A. The Department may not issue a Food Processing Residuals Utilization Permit to use, install, materially alter, or materially extend a food processing residuals storage facility until:

- (1) *The storage facility meets all zoning and local land use requirements of the county where the storage facility is to be located;*
- (2) *The person seeking the permit has obtained any necessary county approval or permits to store the material at the permitted site;*
- (3) *The person has provided evidence showing that the structure meets:*
 - (a) *The NRCS Waste Storage Facility No. 313 Conservation Practice Standard; or*
 - (b) *An equivalent standard as determined by a professional engineer;*

B. For an application to renew a permit for a waste storage facility, sufficient evidence showing that the requirements of §A(3) of this regulation continue to be met may include:

- (1) *A visual inspection of the storage facility by the Department; and*
- (2) *Other evidence determined by the Department.*

C. The Department may issue a Food Processing Residuals Utilization Permit to use, install, materially alter, or materially extend a food processing residuals storage facility if the applicant demonstrates that the following conditions and requirements will be met:

- (1) *The person seeking the permit has obtained any necessary county approval or permits to store the material at the permitted site;*
- (2) *The person has provided evidence showing that the structure meets:*
 - (a) *The NRCS Waste Storage Facility No. 313 Conservation Practice Standard; or*
 - (b) *An equivalent standard as determined by a professional engineer.*
- (3) *The storage facility is designed, constructed, and operated to safely store food processing residuals in a manner that will not cause an undue risk to the environment, public health, or welfare as may be determined by the Department;*
- (4) *Public access to the storage facility shall be controlled;*
- (5) *Any other conditions required by the Department to protect the public health and the environment.*

D. For an application to renew a permit for a waste storage facility, sufficient evidence showing that the requirements of §C(2) and (4) of this regulation continue to be met may include:

- (1) *A visual inspection of the storage facility by the Department; and*
- (2) *Other evidence determined by the Department.*

.16 Storage Facility — Permit Application Requirements.

A. A person applying for a Food Processing Residuals Utilization Permit shall submit to the Department a separate permit application for each site where a food processing residuals storage facility is located or is to be installed, materially altered, or materially extended. A person shall submit to the Department two completed copies of the Food Processing Residuals Utilization Permit Application for a new Food Processing Residuals Utilization Permit, a modification to a Food Processing Residuals Utilization Permit, or a Food Processing Residuals Utilization Permit renewal on a form provided by the Department. A person shall also submit a performance bond, liability insurance, or other form of security required under the provisions of Regulation .09 of this chapter. The application shall include the following completed information:

- (1) *If the applicant is not the owner of the site where the storage facility is located or is to be installed, materially altered, or materially extended, the written consent of the owner;*
- (2) *A current site plan designating the property boundary lines, the exact acreage of the site, existing and proposed storage facility structures, the location of any wells on the site and within 1/2 mile of the site, any residences or buildings on site and within 1/2 mile of the site, the proximity of the site to major roads in the area and any roads on the site, and surrounding land uses;*
- (3) *Tax maps and liber and folio numbers for the parcels of land on which the storage facility exists or will be installed, materially altered, or materially extended and the names of the legal owners of the site;*
- (4) *A description of the source, type, and quantity of food processing residuals to be stored;*
- (5) *Engineering plans showing that the storage facility meets:*
 - (a) *NRCS Waste Storage Facility No. 313 Conservation Practice Standard;*
 - (b) *An equivalent standard determined by a registered professional engineer prepared, signed, and bearing the seal of the engineer;*
- (6) *The specifications for any liners or soil sealants used;*

- (7) A detailed operation plan that includes, when applicable:
 - (a) Procedures for sampling, on-site record keeping, and reporting of the food processing residuals to be stored;
 - (b) Methods and procedures to prevent or control odors and other potential nuisance conditions at the site;
 - (c) Contingency or emergency plans to manage fires, equipment breakdown, spills, and other emergency events; and
 - (d) Methods and procedures for restricting public access to the site;
- (8) Information on protection of water resources, including a description of the methods to be used for the protection of ground and surface waters of the State.
- (9) For a new storage facility, an assessment of the potential environmental impact of the storage facility;
- (10) For manufactured storage facilities, information showing that it meets:
 - (a) NRCS Waste Storage Facility No. 313 Conservation Practice Standard; or
 - (b) An equivalent standard determined by a registered professional engineer; and
- (11) Other information that may be requested by the Department.

B. Permit Application Fees.

(1) The applicant shall pay the Department a nonrefundable Food Processing Residuals Utilization Permit Application fee in accordance with the following schedule:

- (a) For a new permit application, \$100; and
- (b) For a renewal permit application, \$100.

(2) For activities, which involve transportation or storage of food processing residuals in combination with any other activities listed in the Food Processing Residuals Utilization Permit Application, the Department will issue a single Food Processing Residuals Utilization Permit to include all activities. For combined activities that include the land application of food processing residuals, the application fees listed for transportation and storage of food processing residuals in Regulations .12 and .16 of this chapter shall be waived.

.17 Notice to County of a Permit Application.

A. Within 10 days after receiving a permit application that includes storing food processing residuals in conjunction with an agricultural operation, the Department shall mail a copy of the application to the chairman of the legislative body and any elected executive of the county where the food processing residuals is to be stored.

B. The Department may not issue a permit to operate a storage facility for food processing residuals in conjunction with an agricultural operation or a renewal permit unless the applicant has obtained any necessary county approval or permits to store the material at the site.

C. In its notice to the County under this regulation, the Department shall request that the County respond to the notice specified in §A of this regulation within 30 days from its receipt.

.18 Storage Facility — Record-Keeping and Reporting Requirements for a Food Processing Residuals Utilization Permit.

A. The permittee shall generate a report containing the following information and maintain all documents used to generate the report for a period of five years:

- (1) The source, type, and quantity, including documentation of food processing residuals received and stored at the storage facility;
- (2) The quantity, including documentation of food processing residuals transported from the storage facility;
- (3) The dates of transportation of food processing residuals to and from the storage facility;
- (4) The destination and utilization of food processing residuals transported from the storage facility;
- (5) Other related information regarding the storage facility as required by the applicable Food Processing Residuals Utilization Permit; and
- (6) Other information that may be requested by the Department.

B. The permittee shall submit to the Department two completed copies of the report required by §A of this regulation for each year the Food Processing Residuals Utilization Permit is in effect. The permittee shall submit to the Department the report on a form provided by the Department and in accordance with a schedule established by the Department.

.19 Storage Facility — Modifications, Material Alterations or Extensions.

A. The Department may modify a Food Processing Residuals Utilization Permit to include a new condition as may be required by a new law or regulation, to clarify permit conditions, or for other good cause.

B. The Department may modify a Food Processing Residuals Utilization Permit or materially alter or extend a structure for storing food processing residuals upon request by the permittee if the following conditions are met:

(1) The permittee submits to the Department a completed Food Processing Residuals Utilization Permit application on a form provided by the Department, and all other required information and forms as determined by the Department, with the application including a description of the proposed modification, material alteration or extension, and an explanation as to why it is needed;

- (2) The permittee shall pay the Department a nonrefundable fee in the amount of \$50; and
- (3) The Department determines that the proposed modification, material alteration, or extension:

- (a) Is in compliance with the applicable requirements of this chapter;
 - (b) Meets the NRCS Waste Storage Facility No. 313 Conservation Practice Standard or an equivalent standard determined by a professional engineer; and

- (c) Will not cause an undue risk to the environment or public health, safety, or welfare; and
 - (4) The permittee has obtained any necessary county approval or permits for the proposed change.
- D. The Department may deny an application to modify a Food Processing Residuals Utilization Permit or materially alter or extend a storage facility if the permittee is not in compliance with the applicable requirements of this chapter or any of the terms or conditions of the Food Processing Residuals Utilization Permit or for other good cause as determined by the Department.

.20 Agricultural Land.

A. The Department may issue a Food Processing Residuals Utilization Permit to apply food processing residuals on agricultural land if the following requirements are met:

- (1) The food processing residuals have been registered by the Department as a soil conditioner and otherwise meets the requirements of the Department to be registered as a soil conditioner;
- (2) A nutrient management plan is prepared for the site by a certified and licensed nutrient management consultant in accordance with the requirements of COMAR 15.20.04, and is in compliance with COMAR 15.20.07 and 15.20.08; and
- (3) Expected crop yields submitted to the Department as part of the Food Processing Residuals Utilization Permit Application are determined to be in accordance with the requirements in COMAR 15.20.08.

B. The Department may restrict or apply special provisions for the land application of food processing residuals on fields that are adjacent to or bordering homes, schools, places of worship, hospitals, legal boundaries of incorporated municipalities, or other locations of concern as determined by the Department.

C. Food processing residuals may be applied on agricultural land only if the following requirements are met:

- (1) The requirements of §A(1)—(3) of this regulation;
- (2) Requirements concerning minimum buffer distances, as follows:
 - (a) Food processing residuals may not be applied closer than the minimum buffer distance to a feature of concern identified in Table 1 of §C(2)(b) of this regulation, unless the Department establishes an alternate minimum buffer distance in accordance with §C(2)(d) of this regulation.
 - (b) Table 1 — Minimum Buffer Distances

Feature of Concern	Minimum Buffer Distance
	<i>Injection of FPRs or Surface Application of FPRs with Incorporation</i>
<i>Bedrock outcrops</i>	<i>25 feet</i>
<i>Field ditches</i>	<i>10 feet</i>
<i>Incorporated municipality boundary lines</i>	<i>400 feet</i>
<i>Occupied off-site dwelling</i>	<i>100 feet</i>
<i>Occupied on-site dwelling</i>	<i>100 feet</i>
<i>Property lines</i>	<i>25 feet</i>

<i>Public roads</i>	<i>15 feet from the edge of the road</i>
<i>Surface waters unless Equivalent Best Management Practices are installed</i>	<i>100 feet</i>
<i>Wells, nonpotable</i>	<i>25 feet</i>
<i>Wells, potable</i>	<i>100 feet</i>

(c) For agricultural land located within a critical area as identified by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, food processing residuals:

(i) May not be land applied within 100 feet of the Mean High-Water Line of tidal waters or the landward edge of tidal wetlands; and

(ii) May only be subsurface injected or incorporated between 101 and 1,000 feet of the Mean High-Water Line of tidal waters or the landward edge of tidal wetlands;

(d) Except as otherwise prohibited by law, the Department may modify the minimum buffer distances established in §C(2)(b) of this regulation as follows:

(i) The Department may increase or decrease the minimum buffer distance associated with any feature of concern identified in Table 1 of §C(2)(b) of this regulation;

(ii) The Department may establish minimum buffer distances for features of concern not identified in Table 1 of §C(2)(b) of this regulation, such as particular categories of land use; and

(iii) In modifying the minimum buffer distances, the Department may consider the food processing residuals application method, the application rate, adjacent land use, land slopes, vegetated filter strip, the type and condition of any surrounding bodies of water, and any other factor considered relevant by the Department;

(3) Requirements concerning slope, as follows:

(a) Unless modified by the Department in accordance with §C(4)(b) of this regulation, the following requirements concerning slope shall be met:

(i) Food processing residuals may not be applied on a slope that is greater than 15 percent;

(ii) Liquid food processing residuals which are surface applied on a slope that is greater than 6 percent shall be applied in accordance with COMAR 15.20.08; and

(iii) Food processing residuals may be subsurface injected on a slope that is up to 15 percent; and

(b) The limits of §C(3)(a) of this regulation may be modified by the Department, but only if the Department determines that sediment and erosion controls or other features at a site, or both, are sufficient to protect the public health and the environment;

(4) Food processing residuals may not be applied when:

(a) The soil is saturated;

(b) The ground is flooded, ponded, frozen or covered with snow; or

(c) Weather conditions prevent compliance with the requirement to incorporate the food processing residuals into the soil;

(5) The timing of food processing residuals land application shall be in accordance with the requirements of COMAR 15.20.08;

(6) Food processing residuals shall be applied in a manner approved by the Department using conventional agricultural equipment, such as manure spreaders, spray equipment, or other applicators, or by commercial equipment specifically designed for food processing residuals application on agricultural land, with all conventional agricultural and commercial equipment used for agricultural land application required to be calibrated in accordance with the manufacturer's recommendations before land application of the food processing residuals begins;

(7) Food crops harvested off food processing residuals land application sites shall meet applicable produce safety requirements; and

(8) Trucks, tractors and equipment shall be cleaned or otherwise addressed on the site to prevent drag-out of soil or food processing residuals onto public roads.

.21 Agricultural Land — Permit Application Requirements.

A. A person applying for a Food Processing Residuals Permit shall submit to the Department a separate permit application for each agricultural operation where food processing residuals is to be applied on agricultural land (e.g., the USDA Farm Service Agency farm and tract number for each operation).

B. The applicant shall submit to the Department two completed copies of the Food Processing Residuals Utilization Permit Application on a form provided by the Department. A person shall also submit a performance bond, liability insurance, or other form of security required under the provisions of Regulation .10 of this chapter.

C. The Food Processing Residuals Utilization Permit Application to apply food processing residuals on agricultural land shall include two completed copies of the following forms provided by the Department and signed and dated not more than 6 months before the receipt of the Food Processing Residuals Utilization Permit Application by the Department:

(1) If the applicant is not the owner of the site where food processing residuals is to be applied, the written consent of the owner (which consent, if the owner agrees, may be valid for a two-year period);

(2) A site information form completed and signed by the applicant and the farmer or operator of the site where food processing residuals is to be applied; and

D. The Food Processing Residuals Utilization Permit Application to apply food processing residuals on agricultural land shall include two completed copies of the following information:

(1) The sources and types of food processing residuals to be applied, including any treatment the food processing residuals has received, such as anaerobic digestion, aerobic digestion, dissolved air flotation, composting, or dewatering;

(3) A current site plan that includes:

(a) The location of property boundary lines and field boundaries;

(b) The exact acreage where food processing residual is to be applied;

(c) The location of all buffer distances;

(d) The location of any residences or buildings on site or within 1/2 mile of the site;

(e) An inventory of any domestic, commercial, or municipal wells on site and within 1/2 mile of the property boundary lines, including water level for the wells if available;

(f) The location of any on-site stream, spring, seep, pond, drainage ditch or other body of water;

(g) The location of any on-site area with a slope of 15 percent or greater;

(h) The location of any on-site bedrock outcropping;

(i) The location of any on-site depression area;

(j) The surrounding land uses;

(k) Other features as determined by the Department; and

(l) A legend identifying the key features on the site plan;

(4) If required by the Department, the results of a laboratory analysis of a representative soil sample, which was obtained from each field not more than 6 months before the receipt of the Food Processing Residuals Utilization Permit Application by the Department subject to the following:

(a) All soil samples shall be collected from within the field that would receive food processing residuals in accordance with the requirements in COMAR 15.20.08;

(b) Soil samples may not be collected from buffer distances, restricted areas, or other areas that are not subject to the land application of food processing residuals;

(c) The analysis of the sample was performed by an independent laboratory or other laboratory acceptable to the Department, using standards, procedures, and methods that are acceptable to the Department;

(d) If requested by the Department, the results shall be accompanied by a description of the method or methods of analysis; and

(e) The analytical results include, at a minimum:

(i) pH, cation exchange capacity, and soil texture;

(ii) If metal analysis has not been previously performed on the field, total cadmium, total copper, total lead, total nickel, total zinc, and total phosphorus; and

(iii) Any other constituents in the soil that the Department determines necessary to adequately assess the potential impact of the project on public health, safety, and the environment;

(5) A tax map showing the property line, owner, acreage, and liber and folio numbers;

(6) A detailed operation plan that includes, when applicable:

(a) Procedures for sampling, record keeping, and reporting of the food processing residuals to be utilized;

(b) Identification of equipment to be used for land-application of food processing residuals

(c) Methods and procedures to prevent or control odors and other potential nuisance conditions at the site; and

(d) Contingency or emergency plans to manage equipment breakdown, spills, and other emergency events; and

(7) A list of type of crops or cover species to be grown, which indicate the crop yields as specified in the nutrient management plan;

(8) A nutrient management plan that:

(a) Has been prepared by a certified and licensed nutrient management consultant in accordance with the requirements of COMAR 15.20.04; and

(b) Is in compliance with COMAR 15.20.07 and 15.20.08; and

(9) Other information that may be requested by the Department.

E. The Department may reject an analysis of food processing or a soil sample submitted in accordance with §D(4) of this regulation and require retesting and resubmittal if the Department determines that the method of analysis is inaccurate, or for any other good cause.

F. Permit Application Fees.

(1) The applicant shall pay the Department a nonrefundable Food Processing Residuals Utilization Permit Application fee in accordance with the following schedule:

(a) For a new permit application, \$175; and

(b) For a renewal permit application, \$175.

G. For activities, which involve transportation or storage of food processing residuals in combination with any other activities listed in the Food Processing Residuals Utilization Permit Application, the Department will issue a single Food Processing Residuals Utilization Permit to include all activities. For combined activities that include the land application of food processing residuals, the application fees listed for transportation and storage of food processing residuals in Regulations .12 and .16 of this chapter shall be waived.

H. Holding Tanks. A person permitted to utilize food processing residuals for land application in conjunction with an agricultural operation may use a holding tank for this activity and under this chapter is not required to obtain a permit from the Department to use the holding tank.

.22 Agricultural Land — Record-Keeping and Reporting Requirements for a Food Processing Residuals Utilization Permit.

A. The permittee shall generate a report containing the following information and maintain all documents used to generate the report for a period of 5 years:

- (1) The source, type, and quantity, including documentation of food processing residuals received and applied on the agricultural land;
- (2) The dates of land application of food processing residuals;
- (3) The number and size of the fields where food processing residuals was applied on agricultural land;
- (4) Cumulative and annual constituent loading rates including plant-available nitrogen, P₂O₅, and K₂O;
- (5) Other related information regarding the land application of food processing residuals as required by the applicable Food Processing Residuals Utilization Permit; and

(6) Other information that may be requested by the Department

B. The permittee shall submit to the Department one completed copies of the report required by §A of this regulation for each year the Food Processing Residuals Utilization Permit is in effect. The permittee shall submit to the Department the report on a form provided by the Department and in accordance with a schedule established by the Department.

C. Within 60 days of land application of food processing residuals, the permittee shall provide the farmer or operator and the legal owner of the site where food processing residuals was applied with a copy of the report required by §B of this regulation.

.23 Agricultural Land — Modifications of a Food Processing Residuals Utilization Permit.

A. The Department may modify a Food Processing Residuals Utilization Permit for land-application of food processing residuals to include a new condition as may be required by a new law or regulation, to clarify permit conditions, or for other good cause.

B. The Department may modify a Food Processing Residuals Utilization Permit upon request by the permittee if the following conditions are met:

(1) The permittee submits to the Department two completed copies of the Food Processing Residuals Utilization Permit modification application on a form provided by the Department, and all other required information and forms as determined by the Department, with the application including a description of the proposed modification and an explanation as to why the modification is needed; and

(2) The Department determines that the proposed modification is in compliance with the applicable requirements of this chapter and will not cause an undue risk to the environment or public health, safety, or welfare.

C. The following constitutes modifications to a Food Processing Residuals Utilization Permit for agricultural land application of food processing residuals:

(1) Modification to the site's nutrient management plan;

(2) Addition of a crop or cover crop;

(3) Adjustment of approved maximum nitrogen per acre requirements for a different crop or cover crop;

(4) The permittee's name change;

(5) Addition of a new food processing residuals source or type to be applied;

(6) Increase in the size of the permitted acreage; or

(7) Other modifications as determined by the Department.

E. If the Department considers a modification application complete and acceptable, the Department may modify the Food Processing Residuals Utilization Permit.

F. The Department may deny a modification application if the permittee is not in compliance with the applicable requirements of this chapter or any of the terms or conditions of the Food Processing Residuals Utilization Permit or for other good cause as determined by the Department.

.24 Food Processing Residuals Utilization Permit Term and Renewal.

A. As a requirement for maintaining a Food Processing Residuals Utilization Permit, the permittee shall:

(1) Comply with the applicable State laws and regulations and with the terms and conditions of the Food Processing Residuals Utilization Permit;

(2) Maintain a performance bond, liability insurance, or other form of security as required in Regulation .10 of this chapter;

(3) Allow authorized State to conduct inspections as required in Regulation .04 of this chapter; and

(4) Provide any other information that may be requested by the Department.

B. The Department may issue a Food Processing Residuals Utilization Permit to utilize food processing residuals for a term not to exceed 1 year.

C. Except for Food Processing Residuals Utilization Permits for a storing food processing residuals, the Department may renew a Food Processing Residuals Utilization Permit if:

(1) The permittee is in compliance with the applicable State laws and regulations and all of the terms and conditions of the Food Processing Residuals Utilization Permit;

(2) The permittee is in compliance with any applicable discharge permit under § 9-301 of the Environment Article;

(3) The permittee submits to the Department six calendar weeks before the expiration date of the current Food Processing Residuals Utilization Permit or in accordance with the time specified in the current Food Processing Residuals Utilization Permit a completed Food Processing Residuals Utilization Permit renewal application on a form provided by the Department, and all other required information and forms as determined by the Department; and

(4) The permittee pays the Department the required renewal application fee.

D. For Food Processing Residuals Utilization Permits for storing food processing residuals, the Department may renew a Food Processing Residuals Utilization Permit if:

(1) The permittee is in compliance with the applicable State laws and regulations and all of the terms and conditions of the Food Processing Residuals Utilization Permit;

(2) The permittee meets the requirements specified in §C(1)-(4) of this Regulation;

(3) The permittee is in compliance with any county approval or permit to store food processing residuals at the agricultural operation; and

(4) The permittee pays the Department the required renewal application fee.

E. If the Department considers a renewal application complete and acceptable, the Department may renew the Food Processing Residuals Utilization Permit.

F. The Department may deny a renewal application to transport or land apply food processing residuals if the permittee is not in compliance with the applicable State laws and regulations or any of the terms or conditions of the Food Processing Residuals Utilization Permit that is subject to renewal.

G. The Department may deny a renewal application to store food processing residuals if the permittee is not in compliance with the applicable State laws and regulations, any of the terms or conditions of the Food Processing Residuals Utilization Permit, or any county approval or permit for storing this material that is subject to renewal.

.25 Transfer of a Food Processing Residuals Utilization Permit or Ownership.

A. Thirty days before any change in control or ownership of the permitted property, site, or facility, the permittee shall:

(1) Provide the succeeding legal owners of the permitted property, site, or facility by certified mail, with a copy of:

(a) The "Owner's Consent Form" signed by the current owners of the permitted property, site, or facility; and

(b) A copy of the Food Processing Residuals Utilization Permit for the permitted site or facility; and

(2) Notify the succeeding legal owners of any outstanding permit noncompliance, and, at the same time, submit to the Department a copy of this notification.

B. Food Processing Residuals Utilization Permits for storing, transporting, or land-applying food processing residuals are not transferable and are only valid for the permittee named in the Food Processing Residuals Utilization Permit. In order for a different person to become the permittee for a Food Processing Residuals Utilization Permit for these food processing residuals utilization activities, the new person shall first obtain a new Food Processing Residuals Utilization Permit from the Department.

.26 Suspension, Revocation, or Modification by the Department.

A. After written notification and an opportunity to request a hearing by the Department, the Department may suspend, revoke, or modify a Food Processing Residuals Utilization Permit if the Department finds that:

(1) False or inaccurate information was contained in:

(a) The Food Processing Residuals Utilization Permit Application;

(b) The information and forms required as part of the Food Processing Residuals Utilization Permit Application; or

(c) Information required as part of the Food Processing Residuals Utilization Permit;

(2) As part of a regulated activity by a permittee, there is or has been a violation of:

(a) Title 8, Subtitle 8 of the Agriculture Article or regulations adopted under this subtitle;

(b) Title 8, Subtitle 8A of the Agriculture Article or regulations adopted under this subtitle;

(c) Title 9, Subtitle 3, Part IV of the Environment Article or regulations adopted under this subtitle;

(d) Applicable requirements of this chapter; or

(e) Any conditions in the Food Processing Residuals Utilization Permit;

(3) Substantial deviation from approved plans, specifications, or requirements has occurred as determined by the Department;

(4) The Department, an authorized representative of the Department, has been refused entry to the premises for the purpose of inspecting or sampling to ensure compliance with the terms and conditions of the Food Processing Residuals Utilization Permit;

(5) Conditions exist which are causing or may cause an undue risk to the environment or public health, safety, or welfare as may be determined by the Department;

(6) The permittee has been negligent or incompetent in the utilization of food processing residuals; or

(7) Any other good cause exists for suspending, revoking, or modifying the Food Processing Residuals Utilization Permit.

B. Immediate Suspension or Revocation.

(1) Notwithstanding other provisions of this chapter or the terms and conditions of the Food Processing Residuals Utilization Permit, the Department may immediately suspend or revoke a Food Processing Residuals Utilization Permit if the Department determines there is an immediate and substantial threat to the environment, public health, safety, or welfare.

(2) The Department shall deliver written notice of an immediate suspension or revocation of a Food Processing Residuals Utilization Permit to the permittee which does the following:

(a) Informs the permittee of the emergency suspension or revocation;

(b) Cites the statute, regulation, or condition of the permit with which the permittee has failed to comply that is the basis for the emergency suspension or revocation;

(c) Specifies the corrective action to be taken by the permittee and the time period within which the action shall be taken; and

(d) Notifies the permittee of the right to request a hearing.

(3) The filing of a hearing request does not stay the revocation or suspension.

C. An opportunity shall be provided for a hearing if the permittee files a written request with the Department within 10 calendar days of receipt of the notice of suspension, revocation, or modification of a Food Processing Residuals Utilization Permit.

D. A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

E. Actions taken in accordance with this regulation do not preclude the Department from taking other administrative, civil, or criminal action for violations of State law, regulations, or terms or conditions of a Food Processing Residuals Utilization Permit.

F. If the Department suspends or revokes a Food Processing Residuals Utilization Permit, the Department shall send notice of the suspension or revocation to the county in which the Food Processing Residuals Utilization Permit is issued by the Department.

.27 Administrative Penalties.

A. If the Department determines that a person has violated any provision of Title 8, Subtitle 8A of the Agriculture Article, any regulation adopted thereunder, or any condition the permit issued to the person, the Department may impose a civil penalty up to \$5,000 per day, not to exceed \$50,000 in total penalties for that violation.

B. In assessing a civil penalty imposed under §A, of this regulation, the Department shall give consideration to:

- (1) The willfulness of the violation;
- (2) The extent to which the existence of the violation was known to the violator but uncorrected by the violator;
- (3) The extent to which the violator exercised reasonable care;
- (4) The extent the violation resulted in actual harm to the environment or to human health or safety;
- (5) The nature and degree of injury to or interference with general welfare, health, and property;
- (6) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and
- (7) The extent to which the violation creates the potential for harm to the environment or to human health or safety.

C. Unless a stay has been granted, a person against whom a civil penalty has been imposed under this regulation shall pay the amount of the penalty promptly to the Department.

.28 Tonnage Report and Tonnage Fee.

A. A person who utilizing food processing residuals at an agricultural operation in the State shall:

(1) Mail to the Department on a quarterly basis as provided in §B of this regulation a statement showing the following information for each month within the quarter:

- (a) The total tons of food processing residuals;
- (b) The counties to which it was distributed; and
- (c) The form in which the material was shipped, such as bulk or liquid;

(2) Furnish the Department with a semiannual written statement of the tonnage of food processing residuals brought to the agricultural operation. This statement shall include every delivery of the material brought to the agricultural operation for the periods of January 1 through June 30 and July 1 through December 31 of each year; and

(3) Pay a tonnage fee of \$4 per wet ton to the Department that, after collection, is to be paid to the Comptroller for distribution into the Food Processing Residuals Administration Fund.

B. For each of the quarterly time periods listed below, the person shall mail to the Department the information specified in §A of this regulation within 30 days from the close of the applicable time period:

- (1) January 1 through March 31;
- (2) April 1 through June 30;
- (3) July 1 through September 30; and
- (4) October 1 through December 31.

C. If more than one person is involved in the transportation, storage, and land application of food processing residuals utilized at an agricultural operation, unless the persons otherwise agree, the person responsible for reporting the tonnage of material brought to the agricultural operation and paying the tonnage fee shall be the commercial broker, commercial hauler, or other person permitted to transport the material to an agricultural operation. Otherwise, this responsibility shall be performed by the person storing or land-applying this material at this site. The person responsible for reporting the tonnage of food processing residuals to the agricultural operation and paying the tonnage fee and shall be identified in the application or applications to utilize (e.g., transport, store, or land-apply) this material at the agricultural operation.

D. If the tonnage report is not filed and the tonnage fee is not paid within 31 days after the end of the semiannual period, a collection fee shall be assessed against the permittee. The amount of fees due constitute a debt and may become the basis of a judgment against this person.

E. A person who utilizes food processing residuals in the State shall keep records necessary or required by the Secretary to indicate accurately the tonnage of this material utilized in the State. The Secretary has the right to examine the records to verify any statement of tonnage.