

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 991

(Delegate Love, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Agriculture - Food Processing Residuals Utilization Permit - Establishment

This bill establishes a regulatory program in the Maryland Department of Agriculture (MDA) related to the “utilization” of “food processing residuals.” Specifically, the bill requires a person to obtain a permit from MDA before the person may utilize food processing residuals in the State and establishes related requirements and enforcement provisions. MDA must set reasonable fees to cover the department’s costs of administering the program, which are held in a newly established Food Processing Residuals Administration Fund. The bill also authorizes MDA to administer a certification program for individuals who haul food processing residuals. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Special fund revenues and expenditures increase correspondingly by \$481,700 in FY 2025. Future years reflect ongoing costs and inflation as well as ongoing fee revenues to cover costs. General fund revenues increase beginning in FY 2025 due to interest earnings and any penalty revenues, as discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
SF Revenue	\$481,700	\$333,000	\$347,300	\$362,600	\$378,000
SF Expenditure	\$481,700	\$333,000	\$347,300	\$362,600	\$378,000
Net Effect	-	-	-	-	-

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Food Processing Residuals

The bill establishes a new subtitle, Subtitle 8A (“Food Processing Residuals”), under Title 8 of the Agriculture Article, governing utilization of food processing residuals.

“Food processing residuals” means an organic material that is (1) generated by processing agricultural commodities for human or animal consumption and includes food residuals, food coproducts, food processing wastes, food processing sludges, or any other incidental material whose characteristics are derived from processing agricultural products for human consumption or animal consumption and (2) registered with the State Chemist as a soil conditioner.

“Utilize” means (1) handling or storing food processing residuals or using food processing residuals for land application and (2) transporting food processing residuals to or from a generator of food processing residuals to or from an agricultural operation.

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

- grows, raises, keeps, pastures, or otherwise produces a farm product; and
- has (1) a gross annual income of \$2,500 or more or (2) eight or more animal units.

Permit

Under the new subtitle, a person must obtain a permit from MDA before the person may utilize food processing residuals in the State. A permit is required for each site where the person utilizes food processing residuals. A permit authorizes the permit holder to utilize food processing residuals in conjunction with an agricultural operation in accordance with the subtitle, regulations adopted under the subtitle, and the terms of the permit.

The bill defines an “applicant” for a permit as (1) the owner or operator of an agricultural operation or (2) 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 location.

“Commercial broker” means a person who (1) 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 (2) is not working for or under the control of an agricultural operation.

“Commercial hauler” means a person that is 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.

Requirements That Must Be Met to Utilize Food Processing Residuals

A person may not utilize food processing residuals in conjunction with an agricultural operation unless:

- the person has a permit;
- the owner or operator of the agricultural operation (1) has a nutrient management plan that meets State law requirements and (2) is in compliance with the plan;
- the food processing residuals being utilized are (1) registered with the State Chemist and (2) applied in accordance with the nutrient management plan;
- if the person is not the owner or operator of the agricultural operation, the person has obtained the owner or operator’s consent to utilize food processing residuals in conjunction with the agricultural operation;
- if the agricultural operation is subject to a Maryland Department of the Environment (MDE) permit to discharge pollutants into waters of the State, the owner or operator of the agricultural operation is in compliance with all laws, regulations, and permits governing those permitted activities; and
- for storage of food processing residuals, the person has obtained any necessary county approval or permits to store material at the agricultural operation.

Permit Applications

A permit applicant must, among other things:

- at least 45 days before utilizing the food processing residuals, submit an application to MDA on the form that the department requires;
- pay any associated application fees;
- provide the name and address of any source of food processing residuals that will be utilized and specified information about any storage structure at the site where the food processing residuals will be stored;
- obtain written consent of the owner or operator of the land where the food processing residuals will be utilized, as specified;

- agree to allow or secure access to any utilization site for inspections, as specified; and
- provide MDA with acceptable evidence of a performance bond or other security, as specified, to guarantee the fulfillment of any permit requirement.

Notice to Local Officials

Within 10 days after receiving a permit application that includes storing food processing residuals in conjunction with an agricultural operation, MDA must provide notice by mail to the chair of the legislative body and any elected executive in the county where the food processing residuals will be stored.

Issuance of Permits

MDA may issue a permit to an applicant that satisfies the subtitle's requirements. MDA may not issue a permit to an applicant if it determines that an applicant cannot utilize food processing residuals without (1) causing undue risk to the environment or public health, safety, or welfare or (2) otherwise violating the subtitle.

Permit Terms and Renewals

A permit expires on the date MDA sets at the time the permit is issued or renewed, but the term of a permit may not be more than one year. MDA may renew a permit if the permit holder (1) is in compliance with the subtitle, regulations established by MDA, the conditions of the permit, and an applicable MDE permit to discharge pollutants into waters of the State; (2) submits a renewal application to MDA; and (3) pays a renewal application fee.

MDA may refuse to renew a permit if (1) the permit holder violates the subtitle, any regulation adopted under the subtitle, or any permit condition; (2) MDA determines that continued operation of any area covered by the permit would be injurious to the environment or public health, safety, or welfare; or (3) MDA determines that there is any other good cause.

Maintaining a Permit in Good Standing

To maintain a permit in good standing, a permit holder must meet several requirements. In addition to complying with any other requirement set by MDA, a permit holder must:

- maintain a performance bond or other security in the amount considered by MDA to be sufficient to guarantee the fulfillment of any requirement related to the permit;

- ensure that food processing residuals are utilized in accordance with (1) specified requirements of the subtitle (see “Requirements That Must Be Met to Utilize Food Processing Residuals,” above) and (2) good husbandry and sound agronomic practices;
- allow a representative of the department, seeking to inspect a site, entry to any area covered by the permit;
- keep records regarding the utilization of food processing residuals, including daily records of the source and amount of food processing residuals in each truckload delivered to a site;
- take samples as required by MDA; and
- provide to MDA or the relevant local health official any information MDA requires.

Inspections and Enforcement

To enforce the subtitle and to ensure compliance with a permit, an MDA representative may enter and inspect, at any reasonable time, any site where food processing residuals are utilized. A permit holder (or other person at a site) may not refuse access or interfere with any inspection. After an inspection, MDA must issue a stop work order or other order if necessary to obtain compliance.

MDA may suspend, revoke, or modify a permit in accordance with the Administrative Procedure Act (APA) if MDA finds that any of several specified conditions exist, including that there is or has been a violation of the subtitle, any regulation adopted under the subtitle, or any permit condition.

MDA may also bring an action to enjoin the violation of any law, regulation, or order concerning the utilization of food processing residuals under the subtitle. The right to bring such an action is in addition to and not instead of the right to bring any other action under the subtitle, and the department may not be required to furnish bond. The court must issue a preliminary injunction if it finds that the permit holder is (1) engaging in unlawful conduct in violation of the subtitle or (2) engaged in conduct which is causing immediate and irreparable harm to the public.

In addition to any other action authorized under the subtitle, MDA may impose administrative penalties of up to \$5,000 per day, not to exceed \$50,000 in total penalties, for a violation of the subtitle, regulations adopted under the subtitle, or any permit condition. Specified considerations, including the willfulness of the violation, must be taken into account in assessing the penalty.

Existing criminal (misdemeanor) penalties under the Agriculture Article also apply to violations of the subtitle or regulations adopted under it, as follows: (1) a fine of up to

\$500 and/or imprisonment for up to three months for a first offense; and (2) a fine of up to \$1,000 and/or imprisonment for up to one year for a second or subsequent offense.

Establishment of Fees and the Food Processing Residuals Administration Fund

Under the new subtitle, MDA must set reasonable fees necessary to carry out its responsibilities regulating the utilization of food processing residuals. The fees charged must be set to produce funds to approximate the cost of administering MDA's responsibilities regulating the utilization of food processing residuals.

The bill establishes a Food Processing Residuals Administration Fund under the new subtitle and requires the fees collected by MDA under the subtitle to be distributed to the fund. The fund must be used exclusively to cover the costs of fulfilling MDA's duties under Title 8 of the Agriculture Article (which is much broader than Subtitle 8A; however, the fund appears intended to be primarily used for the costs of regulating the utilization of food processing residuals under Subtitle 8A, since the fees must be set to produce funds to approximate those costs). The Secretary of Agriculture, or the secretary's designee, must administer the fund. The accounts and transactions of the fund are subject to audit as provided in specified State law governing the auditing of units of State government by the Office of Legislative Audits.

The bill establishes that any unspent portion of the fund may not be transferred or revert to the general fund but must remain in the fund. This analysis assumes, however, that (1) the State Treasurer, as the constitutional officer responsible for the deposit and disbursement of State funds, holds and invests money in the fund and (2) interest earnings of the fund are deposited in the general fund pursuant to § 6-226 of the State Finance and Procurement Article, which requires net interest on all State money allocated by the Treasurer to special funds or accounts to accrue to the general fund unless the special fund or account is specifically exempted from that requirement.

Tonnage – Semiannual Statement and Records

Each person issued a permit must submit to MDA (1) a semiannual written statement of the tonnage of food processing residuals utilized in conjunction with an agricultural operation in the State and (2) any other information MDA deems necessary in administering the regulatory program. The permit holder must keep records necessary or required by MDA to indicate accurately the tonnage of food processing residuals utilized, and MDA has the right to examine the records to verify any statement of tonnage.

Required Regulations

MDA, in consultation with MDE, must adopt regulations to carry out the subtitle. The regulations may include, in addition to any other standards deemed necessary by MDA:

- adequate standards (1) for hauling food processing residuals and (2) governing the application and suitability of soil conditioners for land application;
- the crops that are to be grown on land on which food processing residuals may be applied;
- the character of nearby existing land uses;
- acceptable nutrient application rates, including rates for nitrogen, phosphorus, and heavy metals, consistent with recommendations published or accepted by MDA for nutrient management;
- reasonable buffer areas to separate any home or other property on which food processing residuals may be applied; and
- methods for calculating nutrient application rates that are limited by the nutrient requirements of the harvestable crop or cover crop.

Commercial Hauler Certification Program

The bill creates a second new subtitle, Subtitle 11 (“Commercial Hauler Certification Program”), under Title 8 of the Agriculture Article.

Under the new subtitle, MDA may administer a commercial hauler certification program to certify individuals who haul food processing residuals. MDA may develop training and educational requirements, testing, and other criteria it deems necessary for certification. The training may address (1) applicable laws and regulations; (2) information necessary for understanding and following a nutrient management plan; and (3) specified best management practices. MDA, in consultation with MDE, may adopt regulations to carry out this subtitle.

Current Law: MDA regulates the land application of all soil amendments/conditioners (including food processing residuals) on agricultural land through its Nutrient Management Program. State law does not require MDA or MDE to issue permits related to the utilization of food processing residuals; however, statutory provisions similar to the bill exist with respect to sewage sludge utilization (SSU) permits issued by MDE, as discussed below.

Maryland Department of Agriculture’s Nutrient Management Program

Pursuant to the Water Quality Improvement Act of 1998, agricultural operations with \$2,500 or more in gross annual income and livestock operations with 8,000 pounds or more

of live animal weight must have and comply with a nutrient management plan for nitrogen and phosphorus. A nutrient management plan is prepared to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity. Farmers are required to submit copies of their initial nutrient management plans to MDA, update plans before they expire, take new soil samples at least once every three years, obtain manure analyses (as appropriate) at least every other year, and submit annual implementation reports documenting how they implement their plans.

In general, MDA's Nutrient Management Program regulates the land application of all soil amendments/conditioners, responds to complaints related to land application and storage, and records sources of all imported and exported materials through farmer reporting on annual implementation reports. [Guidelines](#) for the application of soil conditioners, soil amendments, waste materials, or effluent on agricultural land (including State Chemist product registration) are included in the program's [Maryland Nutrient Management Manual](#).

Maryland Department of the Environment's Sewage Sludge Utilization Permit

MDE is the primary agency that regulates the utilization of sewage sludge (biosolids). An SSU permit is required for any person who treats, composts, transports, stores, distributes, applies to land, incinerates, conducts innovative or research projects on, or disposes of sewage sludge in the State. A sewage sludge utilizer submits an application for an SSU permit to MDE. The application includes the results of soil and sewage sludge tests and other information used to ensure that all regulatory requirements are met. The utilization site is also inspected to ensure that the permit application is accurate. If the permit application meets the minimum requirements established under regulations ([COMAR 26.04.06](#)), MDE must issue the permit with the applicable control measures. To support the administration of the SSU regulatory program, wastewater treatment plants are charged fees based on the amount of sewage sludge they generate and how it is utilized.

State Expenditures: Special fund expenditures increase by \$481,733 in fiscal 2025, which accounts for the bill's July 1, 2024 effective date. This estimate reflects the costs for MDA to hire:

- two nutrient management specialists to (1) work with applicants to complete permit applications; (2) facilitate timely annual registration of food processing residuals with MDA's State Chemist; (3) make site visits prior to, during, and after land application of food processing residuals; (4) monitor field conditions; and (5) respond to complaints;
- one assistant Attorney General to assist with and review permits, assist with enforcement actions, and provide any other legal advice; and

- one part-time contractual administrative specialist to assist existing administrative staff with administrative work under the program, including collection and processing of fees.

The estimate is based on MDA’s indication of the level of staff needed, when accounting for the potential number of sites that will be permitted and the limited capacity of MDA’s existing staff to implement the permitting program. Based on the nutrient management annual implementation reports MDA receives, MDA indicates there are approximately 55 farm operators that report utilizing food processing residuals and those operators likely each have more than one site that will need to be permitted. The estimate includes salaries, fringe benefits, one-time start-up costs (including the purchase of two trucks, one for each nutrient management specialist), and ongoing operating expenses.

Regular Positions	3.0
Contractual Positions	0.5
Salaries and Fringe Benefits	\$328,637
Vehicles	116,000
Operating Expenses	<u>37,096</u>
Total FY 2025 State Expenditures	\$481,733

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

This estimate also does not account for any costs MDA may incur associated with administrative hearings under APA when suspending, revoking, or modifying a permit under the bill, which cannot be reliably estimated and have not been quantified.

MDA expects to administer the Commercial Hauler Certification Program with existing resources. In addition, MDE can coordinate and consult with MDA as needed using existing resources.

Any application of existing criminal penalty provisions to violations of the bill is not anticipated to materially affect State incarceration expenditures.

State Revenues: Special fund (Food Processing Residuals Administration Fund) revenues are assumed, for the purposes of this estimate, to increase correspondingly with special fund expenditures (shown above), beginning in fiscal 2025, reflecting the collection of fees, pursuant to the authority provided by the bill, to cover MDA’s costs of administering its

responsibilities regulating the utilization of food processing residuals. MDA expects to charge both permit fees and tonnage fees (using the tonnage reporting and recordkeeping required by the bill) in order to allocate the cost of the program among permit holders based on the amount of food processing residuals utilized. To the extent that, in practice, there are unspent revenues in any fiscal year, the revenues remain in the fund (and available to the program to cover costs in the next fiscal year) and do not revert to the general fund.

General fund revenues increase as a result of (1) interest earnings of the fund that are deposited in the general fund and (2) any administrative penalties or monetary criminal penalties imposed for violations under the bill. The extent of the increase cannot be reliably estimated but may be relatively minimal. As mentioned under the Bill Summary, this analysis assumes that the State Treasurer holds and invests money in the Food Processing Residuals Administration Fund and interest earnings of the fund are deposited in the general fund pursuant to § 6-226 of the State Finance and Procurement Article. In addition, since the bill does not specify where the administrative penalties established by the bill are deposited, this analysis assumes they are deposited in the general fund.

Small Business Effect: The bill may have a meaningful negative impact on small businesses that currently benefit from utilization of food processing residuals, such as farmers (farm operators) that generate revenue from utilization of food processing residuals on their land. Conversely, there may also be small businesses that are negatively affected by utilization of food processing residuals that may benefit from the limitations established by the bill, the regulations adopted pursuant to the bill, and any permit conditions imposed on permittees under the bill.

MDA indicates that it expects that the commercial brokers/haulers will manage the permit applications and fee payments on behalf of the farm operators in most cases. The commercial brokers/haulers and/or farm operators are responsible for payment of fees approximately equal to the estimated cost of the permit program (*e.g.*, \$481,733 in fiscal 2025) and for maintaining a performance bond or other security to guarantee fulfillment of the permit requirements.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 1074 (Senator Ready, *et al.*) - Education, Energy, and the Environment.

Information Source(s): Maryland Association of County Health Officers; Maryland Environmental Service; Prince George's County; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510