

COUNTY COMMISSIONERS OF CAROLINE COUNTY, MARYLAND
(EMERGENCY) LEGISLATIVE BILL #2024-005

INTRODUCED BY: COMMISSIONERS BREEDING, PORTER, AND BARTZ

INTRODUCED ON: JULY 9, 2024

ATTEST: _____
J. TRAVIS BREEDING, PRESIDENT

PUBLIC HEARING: AUGUST 6, 2024, BEGINNING AT 9:00 A.M.
HEALTH AND PUBLIC SERVICES BLDG
403 S 7TH STREET, DENTON, MARYLAND 21629

THIRD READING: SEPTEMBER 17, 2024

ENACTED: SEPTEMBER 17, 2024

EFFECTIVE: SEPTEMBER 17, 2024

AN EMERGENCY BILL ENTITLED

New Chapter 128 – Food Processing Residuals Storage Permit

AN Act for the purpose of establishing a Food Processing Residuals Storage Permit; prohibiting a person from storing Food Processing Residuals in Caroline County unless the person obtains a permit; creating standards for storage of Food Processing Residuals; requiring the Department of Planning and Codes to provide certain notices and information to certain persons; establishing the Food Processing Residuals Administration Fund as a special non-lapsing fund; applying certain provisions of law regarding public notice and participation to Food Processing Residuals Storage Permits; requiring an applicant to authorize a representative of the Department to enter and inspect any site where Food Processing Residuals are stored; providing for civil and criminal penalties for violations of this Chapter; generally relating to Food Processing Residuals Storage Permits; and making this Act an Emergency Bill.

BY adding to the Code of Public Local Laws of Caroline County new Chapter 128,

Food Processing Residuals Storage Permit.

WHEREAS, the County Commissioners of Caroline County, Maryland (the "County Commissioners") are authorized under Article XI-F of the Maryland Constitution and §9-308 of the Local Government Article of the Annotated Code of Maryland (the "Local Government Article") to adopt public local laws in general;

WHEREAS, the County Commissioners are authorized under the Land Use Article, Title 4, of the Annotated Code of Maryland to enact and administer zoning and land use Bills and a Comprehensive Plan;

WHEREAS, the County Commissioners, pursuant to Local Government Article §§10-324 and 10-328 of the Annotated Code of Maryland, have the power to enact local laws relating to zoning and planning to protect and promote public safety and health, and to provide for the prevention, abatement, and removal of nuisances;

WHEREAS, the County Commissioners find and declare that the unregulated storage of Food Processing Residuals has resulted in foul odors, insect infestation and adverse health effects on residents of Caroline County, and has created nuisance conditions;

WHEREAS, the County Commissioners, pursuant to Local Government Article §13-401 of the Annotated Code of Maryland, have the power to prevent and remove nuisances and to prevent the introduction of contagious diseases into the County;

WHEREAS, pursuant to Health-General Article §§3-201 and 3-302, the County Commissioners are *ex officio* the Board of Health for Caroline County and, as such, have the power to adopt and enforce rules and regulations on any nuisance or cause of disease in the County;

WHEREAS, pursuant to §197.B of Chapter 128 of the Code of Public Local Laws of Caroline County, the County Commissioners have received the positive recommendation of the Planning Commission and the staff of the Caroline County Department of Planning and Codes regarding the provisions proposed in this Bill, which will have the effect of regulating the storage of Food Processing Residuals in all Zoning Districts; and

WHEREAS, this Bill may also be known by its short title "Chapter 128 – Food Processing Residuals Storage Permit".

NOW, THEREFORE, in an exercise of the County’s police power as a Code Home Rule County, be it enacted by the County Commissioners of Caroline County, Maryland that:

SECTION 1. A NEW CHAPTER 128, FOOD PROCESSING RESIDUALS STORAGE PERMIT, OF THE CODE OF PUBLIC LOCAL LAWS OF CAROLINE COUNTY, MARYLAND be, and it is hereby enacted, to read as follows:

CHAPTER 128

FOOD PROCESSING RESIDUALS STORAGE PERMIT.

§128–1. Definitions.

- (a) In this Chapter the following words have the meanings indicated.
- (b) “Agricultural operation” means each physical site where a person engages in a business that:
 - (1) 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 a farm, a forest, or an orchard; and
 - (2) has:
 - (i) a gross annual income of \$2,500 or more; or
 - (ii) eight or more animal units.
- (c) “Applicant” means the owner or operator of an agricultural operation.
- (d) “Department” means the Caroline County Department of Planning and Codes.
- (e) “Food Processing Residuals” (FPRs) 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.

(f) “Land application” means the spreading or spraying of Food Processing Residuals onto the surface of land, the direct injection of Food Processing Residuals below the soil surface, or the incorporation into the surface layer of soil.

(g) “Liquid FPRs” means Food Processing Residuals with a moisture content of more than 25% as certified by the Maryland Department of Agriculture.

(h) “NRCS” means the Natural Resources Conservation Service.

(i) “Nutrient management plan” means a plan prepared under Subtitle 8, Title 8 of the Agriculture Article of the Annotated Code of Maryland, by a certified nutrient management consultant 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.

(j) “Open top storage structure” means an open or partially open structure, whether above ground, partially above or below ground level, or a lagoon type structure, used for the storage of FPRs.

(k) “Permit” means a Food Processing Residuals Storage Permit.

(l) “Semi-Solid FPRs” means Food Processing Residuals with a 25% or less moisture content as certified by the Maryland Department of Agriculture.

(m) “Storage facility” means a constructed facility committed to hold Food Processing Residuals until the material can be land applied at on- or off-site locations.

(n) “Structure” has the same meaning as set forth in Chapter 175-Zoning.

(o) “Vector” means an agent such as an insect, bird, animal, that is capable of transporting pathogens (disease-causing organisms, including certain bacteria, fungi, helminths, protozoans, or viruses).

§ 128–2. Scope

(a) Except as provided in this Chapter and in conjunction with an agricultural operation in the R, Rural District, a person may not store FPRs in Caroline County.

- (b) A person shall obtain a permit before storing FPRs in the County.
- (c) A permit authorizes the permit holder to store FPRs in conjunction with an agricultural operation in accordance with this Chapter, regulations adopted under this Chapter, and the terms of the permit.
- (d) Permits issued by the Department under the following Sections to store FPRs shall be issued in accordance with this Chapter.
- (e) A person must have a permit for each site where the person stores FPRs.
- (f) A person may not store FPRs in conjunction with an agricultural operation unless:
 - (1) the person has a permit;
 - (2) the owner or operator of the agricultural operation:
 - (i) has filed and updated with the Department of Agriculture a summary of the nutrient management plan; and
 - (ii) is in compliance with the plan;
 - (3) the FPRs being stored are registered with the State Chemist; and
 - (4) if the person is not the owner or the operator of the agricultural operation, the person has obtained the owner or operator's written consent to store the FPRs in conjunction with the agricultural operation.
- (g) A person that stores FPRs shall comply with §§128-3 (relating to general).
- (h) In addition to the requirements of subsection (a), a person that stores FPRs in the manner identified in §§128-9 and 128-10 shall store the FPRs in compliance with the applicable provisions of those Sections.

§ 128-3. General requirements.

- (a) Prior to storage of FPRs in a holding tank or other structure affixed to the land (FPRs Storage Tank”), or construction of an FPRs Storage Tank, an applicant must provide the Department with a sketch plan and narrative plan (“FPRs Storage Plan”), signed and sealed by an engineer, architect, or other design professional acceptable to the Department and licensed in the State of Maryland, showing and certifying that the FPRs Storage Plan and the design of the FPRs Storage Tank both comply with

all applicable local, State, and Federal rules, regulations and statutes, including this Chapter and the Agriculture and Environment Articles of the Annotated Code of Maryland, as applicable; and certifying that the size (volume) of the proposed FPRs Storage Tank is a suitable size (and not oversized) for land application on the acreage of the tract of land on which the FPRs Storage Tank is located and any other land comprising the agricultural operation. FPRs stored in an FPRs Storage Tank must only be applied to the parcel or contiguous tract of land upon which the FPRs Storage Tank is affixed, or to other land in Caroline County which is part of the same agricultural operation.

(b) The FPRs Storage Plan must include a narrative describing proposed notification, response, and clean-up measures to be implemented in the event of a leak or spill of FPRs from the FPRs Storage Tank. The FPRs Storage Plan must also include a narrative describing proposed maintenance and inspection schedule for the FPRs Storage Tank to ensure proper working order of the FPRs Storage Tank and related improvements, and the structural integrity of the FPRs Storage Tank.

(c) The FPRs Storage Plan must be submitted to the Department prior to use or construction of an FPRs Storage Tank. The FPRs Storage Plan may be updated or amended from time to time, with Department verification of compliance.

(d) A person that stores FPRs may not do the following:

(1) Store the FPRs in an open top container.

(2) Mix the FPRs with hazardous waste that is regulated under § 7-208 (e) of the Environment Article of the Annotated Code of Maryland (relating to hazardous waste management), except for purposes of treatment at permitted hazardous waste management facilities.

(3) Mix the FPRs with or store the FPRs in proximity to other solid waste to create a risk of fire or explosion, or a risk of the accumulation of poisonous or otherwise harmful vapors or gases.

(4) Mix the FPRs with special handling waste or animal manure.

(5) Allow FPRs or constituents of FPRs to be blown or otherwise deposited outside of the storage area.

§ 128-4. Design and operation.

(a) A person storing FPRs shall employ the best engineering design and construction practices for all phases of construction and operation.

(b) A person may not store FPRs in a manner that exceeds the design capacity of the storage facility.

(c) A person storing FPRs shall routinely inspect the facility, its equipment, and the surrounding area for evidence of failure and shall immediately take necessary corrective actions. The person shall maintain records of the inspections and corrective actions that were taken and shall make the records available to the Department upon request.

(d) A person may not store FPRs in piles, except as provided for in Section 128-9(b).

§ 128-5. Duration of storage.

(a) A person may not store FPRs for more than 1 year unless, for FPRs that are reusable or reclaimable, the Department has approved in writing a longer period prior to the end of 1 year of storage based on a rate of use or reclamation of stored FPRs that is reasonably proportional to the rate of accumulation for storage.

(b) It shall be presumed that a person storing FPRs contrary to subsection (a) is operating a FPRs storage facility and is subject to the applicable requirements of this ordinance and the regulations thereunder for FPRs storage.

(c) A person that stores FPRs shall maintain accurate operational records that are sufficiently detailed to clearly and convincingly demonstrate to the Department that FPRs are being stored in accordance with subsection (a). The records shall be made available to the Department upon request. The presumption in subsection (b) may be overcome by the operational records required by this subsection.

(d) Nothing in this Section supersedes a regulation, permit condition or other requirement providing for a storage period of less than 1 year.

§ 128-6. Equipment.

(a) A person that stores FPRs shall maintain at the storage facility equipment necessary for the storage of FPRs in accordance with this Chapter. The equipment shall be maintained in an operable condition.

(b) Equipment shall be operated and maintained to prevent FPRs from being unintentionally conveyed out of the storage area.

(c) Equipment used to handle FPRs with which operations personnel are in direct contact shall be cleaned at the end of each working day or every 24 hours. Other equipment shall be cleaned based on scheduled or emergency maintenance periods.

§ 128-7. Nuisance minimization and control.

(a) A person that stores FPRs shall:

(1) Control and minimize the harborage, breeding, or attraction of vectors.

(2) Take other measures necessary to control and minimize the presence of vectors.

(3) Immediately take measures necessary to exterminate vectors.

(b) A person storing FPRs shall also minimize, and control conditions not otherwise prohibited by this Chapter that are harmful to the public health, public safety, or the environment, or which create safety hazards, odors, dust, unsightliness, or other public nuisances.

§ 128-8. Surface and groundwater protection.

(a) Surface water runoff from storage areas shall be minimized. Collection of surface runoff shall be managed in accordance with Chapter 158 – Stormwater Management of the Code of Public Local Laws of Caroline County and the regulations promulgated thereunder.

(b) Surface water run-on to storage areas shall be minimized.

(c) FPRs may not be stored to cause groundwater degradation.

§ 128-9. Containers.

(a)(1) An individual container or bulk container used for the storage of FPRs with a moisture content greater than 25% as certified by the Maryland Department of Agriculture shall have the following characteristics:

(i) The container shall be constructed to be easily handled for collection.

(ii) The container shall be constructed of rust resistant and corrosion resistant materials.

(iii) The container shall be designed to prevent leaks.

(2) Putrescible waste shall be stored in an individual container or bulk container that has the following characteristics:

(i) The container shall be equipped with a tight-fitting lid or cover, or otherwise sealed.

(ii) The container shall be watertight, leak-proof, insect-proof and rodentproof.

(3) All containers shall be clearly labeled as “Food Processing Residuals”.

(4) The total container height of a group of containers may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which ensures access for purposes of inspection, containment and remedial action with emergency vehicles and equipment.

(b) A structure used for the storage of FPRs with a 25% or less moisture content as certified by the Maryland Department of Agriculture shall have the following characteristics:

(i) The structure shall be clearly labeled as “Semi-solid Food Processing Residuals”.

(ii) The structure must be fully enclosed and weather-tight to contain odors, dust and runoff.

(iii) The structure shall have a stable impervious foundation, capable of supporting the total weight of the Semi-solid FPRs without movement, rolling or unacceptable settling. The foundation design and construction shall be based on sound engineering practices.

§ 128-10. Storage tanks.

(a) FPRs Storage Tanks shall meet the design and performance standards established by this Section. A Storage Tank shall be clearly labeled as “Food Processing Residuals”.

(b) Aboveground FPRs Storage Tanks shall be designed and operated as follows, unless an alternative design is demonstrated to perform at a level equivalent to the requirements of this Section and is otherwise approved by the Department:

(1) Tanks shall be designed and constructed in accordance with an appropriate current code of practice developed by Nationally recognized associations such as UL, ACI, API, ASME, ASTM or NACE.

(2) Tanks shall have a stable foundation, capable of supporting the total weight of the tank when full of FPRs without movement, rolling or unacceptable settling. The foundation shall minimize corrosion of the tank bottom and meet or exceed the specifications of the tank manufacturer. The foundation design and construction shall be based on sound engineering practices.

(3) Newly installed or repaired tanks shall be tested for tightness in accordance with current codes of practice developed by Nationally recognized associations and manufacturer's specifications. If a pneumatic test is used for manufactured (shop built) tanks, the fittings, welds, joints, and connections shall be coated with a soap solution and checked for leaks. Deficiencies shall be remedied prior to tanks being placed into service. Hydrostatic test fluids shall be discharged or disposed of in accordance with State and Federal requirements.

(4) Tank connections through which waste can flow shall be equipped with an operating valve adjacent to the tank to control flow of FPRs. Appropriate valves shall be installed to meet or exceed current codes of practice and jurisdictional requirements. Valves shall be designed, installed, and maintained according to current codes of practice.

(5) The exterior surfaces of aboveground tanks and piping shall be protected by a suitable coating, which prevents corrosion and deterioration. The coating system shall be maintained throughout the entire operational life of the tank.

(6) Owners and operators shall ensure that releases from overfills do not occur. Transfer of FPRs may not exceed the volume available in the receiving tank and the transfer shall be adequately monitored. Immediate action shall be taken to stop the flow of FPRs prior to exceeding tank capacity or if an equipment failure occurs.

(7) Tanks shall be installed with the following:

(i) A gauge or monitoring device which accurately indicates the level or volume in the tank and is visible to the individual responsible for the transfer of FPRs. The monitoring device shall be installed, calibrated, and maintained in accordance with manufacturer's specifications.

(ii) A high-level alarm and an automatic high-level cut-off device or a high-level alarm and a manned operator shutdown procedure in operation.

(8) Containment structures shall be compatible with the FPRs stored and minimize deterioration to the Storage Tank System.

(9) Containment areas shall be designed, maintained, and constructed in accordance with sound engineering practices adhering to Nationally recognized codes of practice, such as NFPS, NACE, ACI or API and in compliance with State and Federal requirements.

(10) Aboveground tank systems shall provide method of leak detection capable of detecting a release. The leak detection method shall be monitored at least monthly and shall be installed, calibrated, operated, and maintained in accordance with industry practices and manufacturer's specifications.

(i) The area beneath the tank bottom shall be monitored for leakage by visual, mechanical, or electronic leak detection methods.

(ii) Observation wells outside of the secondary containment structure do not satisfy the leak detection requirements.

(c) Underground FPRs Storage Tanks shall be designed and operated as follows, unless an alternative design is demonstrated to perform at a level equivalent to the requirements of this Section and is otherwise approved by the Department:

(1) *Corrosion protection.*

(i) Parts of the system that routinely contain FPRs shall be protected from deterioration. Parts that are in contact with the ground shall be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory.

(ii) System components constructed of metal do not need additional corrosion protection measures if:

(A) The site is determined by a corrosion expert to not be corrosive enough to cause a release due to corrosion during the system's operating life.

(B) Owners and operators maintain records that demonstrate

compliance with clause (A) for the remaining life of the tank system including removal and closure.

(2) *Spill and overflow prevention equipment.*

(i) Except as provided in subparagraph (ii), to prevent spilling and overflowing associated with transfer of FPRs to the Underground Storage Tank System, owners and operators shall ensure that their systems have the following spill and overflow prevention equipment:

(A) Spill prevention equipment that will prevent release of FPRs to the environment when the transfer hose is detached from the fill pipe.

(B) Overflow prevention equipment that will do one or more of the following:

(I) Automatically shut off flow into the tank before the fittings on the top of the tank are touched by FPRs.

(II) Restrict the flow into the tank before it is 90% full or 30 minutes before it would be full.

(III) Activate an audible and visible high-level alarm before the tank is 90% full or 30 minutes before it is full.

(ii) Owners and operators are not required to use overflow prevention equipment if the Underground Storage Tank system is filled by transfers of no more than 25 gallons at one time.

(3) *Installation.* Tanks and piping shall be properly installed, and system integrity tested in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory such as API 1615 and PEI RP 100, and in accordance with the manufacturer's instructions.

(4) *Releases due to corrosion.* To ensure that releases due to corrosion are prevented for as long as the Underground Storage Tank System is used to store FPRs, the owner and operator shall comply with the following requirements:

(i) Corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain FPRs and is in contact with the ground.

(ii) Underground Storage Tank systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(A) *Frequency.* Cathodic protection systems shall be tested within 6 months of installation and at least every 3 years thereafter.

(B) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this Section shall be in accordance with a code of practice developed by a Nationally recognized association.

(iii) Underground Storage Tank Systems with impressed current cathodic protection systems shall be checked every 60 days to ensure the equipment is operating properly.

(iv) For Underground Storage Tank Systems using cathodic protection, records of the operation of the cathodic protection shall be maintained. These records shall provide the following:

(A) The results of the last three system checks required in paragraph (4)(iii).

(B) The results of testing from the last two inspections required in paragraph (4)(ii).

(5) *Unauthorized or accidental access.* Monitoring and observation wells shall be clearly identified using industry codes and standards and caps shall be secured to prevent unauthorized or accidental access.

(6) *Maintenance.* Sumps, release detection equipment, corrosion protection, spill prevention, overflow prevention and other appurtenances whose failure could contribute to a release of FPRs, shall be maintained in a good state of repair and shall function as designed.

(7) *Tightness testing.* Systems shall be precision tightness tested after installation and major repairs.

(8) *Monitoring for releases.* Portions of the tank and underground piping that routinely contain FPRs shall be monitored at least monthly for releases.

(9) *Method evaluation.* The method or combination of methods used shall have been evaluated by an independent third party and shown to be effective in detecting releases.

(10) *Records.* Records documenting the operation of the release detection method shall be made each month and kept for at least 1 year.

§ 128-11. Areas where storage of FPRs is prohibited.

(a) A person may not store FPRs:

(1) In the 100-year floodplain of any waters of this County, unless the Department approves a method of protecting the facility from a 100-year flood consistent with the Flood Hazard Management Act of 1976 (Subtitle 8 of Title 5 of the Environment Article), Subtitle 2 of Title 4 of the Environment Article, and Chapter 158 - Stormwater Management of the Code of Public Local Laws of Caroline County.

(2) In or within 750 feet of an exceptional value wetland as defined by the Maryland Department of the Environment or the Environmental Protection Agency.

(3) In or within 500 feet of a wetland other than an exceptional value wetland.

(4) Within 2,000 feet measured horizontally from an occupied dwelling, unless the owner thereof has provided a written waiver consenting to the activities being closer than 2,000 feet.

(5) Within 500 feet of a sinkhole or area draining into a sinkhole.

(6) Within 500 feet of a perennial stream.

(7) Within 500 feet of a well.

(8) Within 500 feet of a property line unless the owner has provided a written waiver consenting to the facility being closer than 500 feet.

(9) Within 2500 feet of the boundary of an incorporated municipality, or priority funding area.

(b) The above isolation distances shall be depicted on a USGS Map with a scale not to exceed 1" = 200'.

§128-12. Permit required.

An applicant for a permit shall:

- (1) at least 45 days before storing the FPRs, submit an application to the Department on the form that the Department requires;
- (2) certify by signature the truth and accuracy of the completed application;
- (3) pay any associated application fees at the same time that the application is submitted;
- (4) provide the name and address of any source of FPRs that will be stored;
- (5) provide the location, capacity, and age of any storage structure at the site where the FPRs will be stored, and proof that the structure is designed to prevent odor from escaping from its contents beyond the boundaries of the property on which the structure is located;
- (6) provide any other information about the storage structure that the Department deems necessary in issuing a permit under this Chapter, including evidence showing that the structure meets the NRCS Waste Storage Facility No. 313 Conservation Practice Standard, or an equivalent standard determined by a professional engineer;
- (7) obtain the written consent of the owner or operator of the land where the FPRs will be stored, including a written agreement from the owner or operator that the owner or operator will not violate the permit;
- (8) agree to allow or secure access to the FPRs storage site for any inspection authorized under this Chapter;
- (9) provide the Department with acceptable evidence of a performance bond or other security in the amount that the Department considers sufficient to guarantee the fulfillment of any requirement related to the permit;
- (10) provide all hauling routes from the food processing generator to the storage site; if the routes include any portion of a road owned, operated and maintained by the County, enter into a Road Use and Maintenance Agreement with the County before issuance of the permit;
- (11) file and update with the Department an affidavit of the applicant or the applicant's representative made under the penalties of perjury and upon personal knowledge, disclosing: the number of acres, to the nearest tenth of an acre, to which the FPRs will be applied; the maximum rate of application, in gallons per acre, allowed by the State of Maryland; the maximum rate of

application, in gallons per acre, attainable in one application by the proposed equipment/means and methods; and

(12) satisfy every other requirement of this Chapter.

§128-13. Public notice of application.

(a) Within 10 days after receiving a permit application to store FPRs in conjunction with an agricultural operation, the Department shall:

(1) publish notice of the application in a local newspaper that is primarily in circulation in Caroline County;

(2) mail a copy of the notice to:

(i) the Health Officer of the Caroline County Health Department;

(ii) the County Commissioners of Caroline County and the County Administrator;

(iii) the chair of the legislative body and any elected executive of any municipal corporation within 2 miles of where the FPRs will be stored; and

(3) post the notice on the Department's website.

(b) Within 15 days after receiving a notice under subsection (a) of this Section, the County Commissioners or the elected executive or the legislative body of the municipal corporation may request that the Department hold a public hearing.

§ 128-14. Issuance or denial of permit.

(a) (1) The Department may issue a permit to an applicant that satisfies the requirements of this Chapter.

(2) The Department may not issue a permit to an applicant if the Department determines that an applicant cannot store FPRs without:

(i) causing undue risk to:

1. the environment; or

2. public health, safety, or welfare; or

(ii) otherwise violating this Chapter.

(3) The Department may not issue a permit to an applicant if:

(i) the applicant is subject to an enforcement action, consent order, or ongoing investigation by the Department, the Maryland Department of Health, the Department of Agriculture, or the Department of the Environment, including, but not limited to actions regarding the containment of surface water, groundwater, or soil contamination;

(ii) the enforcement action, consent order, or ongoing investigation has not been withdrawn or resolved; or

(iii) a notice of violation has been issued by the Department, the Maryland Department of Health, the Department of Agriculture, or the Department of the Environment.

(b) The Department shall provide the County Commissioners and each municipal corporation that receives a notice under §128-13 of this Chapter with an opportunity to consult with the Department about the Department's decision to issue, deny, or place conditions on a permit.

(c) The Department shall send the following information to the Caroline County Health Officer and the Caroline County Soil Conservation District:

(1) a copy of any permit issued in the County;

(2) a notice of the denial of a permit application that would have authorized the storage of FPRs in Caroline County;

(3) a notice of the suspension, revocation, modification, or termination of a permit issued in Caroline County;

(4) a copy of any notice, complaint, or order the Department issues under this Chapter; and

(5) a copy of any report filed with the Department in accordance with a condition of a permit.

(d) The Department shall maintain a permanent public record on the Department's website of all permits issued under this Chapter.

§128-15. Expiration or renewal of permit.

(a) (1) Subject to paragraph (2) of this subsection, a permit shall expire on the date the Department sets at the time the permit is issued or renewed.

(2) The term of a permit may not last for more than 1 year.

(b) (1) Except as provided in subsection (c) of this Section, the Department may renew a permit if the permit holder:

(i) is in compliance with:

1. the conditions of the permit; and
2. the requirements of this Chapter; and
3. all applicable regulations established by the Department;

(ii) submits to the Department in a timely manner a renewal application on the form that the Department requires; and

(iii) pays a renewal application fee.

(2) The Department may refuse to renew a permit if:

(i) the permit holder violates this Chapter, any regulation adopted by the Department under this Chapter, or any condition of the permit;

(ii) the Department determines that continued operation of any area covered by the permit would be injurious to the environment or public health, safety, or welfare;

(iii) the applicant is subject to an enforcement action, consent order, or ongoing investigation by the Department, the Maryland Department of Health, the Department of Agriculture, or the Department of the Environment, including, but not limited to actions regarding the containment of surface water, groundwater, or soil contamination;

(iv) the enforcement action, consent order, or ongoing investigation has not been withdrawn or resolved;

(v) a notice of violation has been issued by the Department, the Maryland Department of Health, the Department of Agriculture, or the Department of the Environment; or

(vi) the Department determines that there is any other good cause.

(c) Within 10 days after receiving an application for renewal of a permit to store FPRs in conjunction with an agricultural operation, the Department shall:

(1) publish notice of the application in a local newspaper that is primarily in circulation in Caroline County;

(2) mail a copy of the notice to:

(i) the Health Officer of the Caroline County Health Department;

(ii) the County Commissioners of Caroline County and the County Administrator;

(iii) the chair of the legislative body and any elected executive of any municipal corporation within 2 miles of where the FPRs will be stored; and

(3) post the notice on the Department's website.

(d) Within 15 days after receiving a notice under subsection (c) of this Section, the County Commissioners or the elected executive or the legislative body of the municipal corporation may request that the Department hold a public hearing.

§128-16. Requirements for permit holders; performance bond, recordkeeping, etc.

To maintain a permit in good standing, a permit holder shall:

(1) maintain a performance bond or other security in the amount that the Department considers sufficient to guarantee the fulfillment of any requirement related to the permit;

(2) ensure that FPRs are not stored in an open top storage structure;

(4) ensure that if FPRs are temporarily stored by a farmer or a farming business, that the material may be stored in a closed container on a wheeled vehicle for a period of not more than 45 consecutive days during the application

process, provided that the land on which it is stored is in the R, Rural District, and that the stored FPRs are applied only to the tract of land on which the FPRs are stored or other land in Caroline County which is part of the same agricultural operation;

(4) allow a representative of the Department seeking to inspect a site, entry to any area covered by the permit;

(5) keep daily records regarding the utilization of FPRs, including daily records of the source and amount of FPRs in each truckload delivered to a site;

(6) make reports, including FPRs analysis reports, as often as necessary to ensure the FPRs meet the requirements of the permit;

(7) have a copy of the reports required under item (6) of this Section available at the site;

(8) install, calibrate, use, and maintain monitoring equipment or methods, including biological monitoring methods, if appropriate;

(9) take samples in accordance with the method, location, frequency, and manner requirements set by the Department;

(10) provide to the Department or the Caroline County Health Officer any information that the Department or Health Officer requires; and

(11) comply with any other requirement set by the Department.

§128-17. Suspension, revocation, or modification of permit.

The Department may suspend, revoke, or modify a permit issued under this Chapter if the Department finds that:

(1) the permit application contained false or inaccurate information;

(2) there has been a substantial deviation from:

(i) the plans, specifications, or other documents approved by the Department; or

(ii) any requirement established by the Department;

(3) a representative of the Department seeking to inspect a site in accordance with § 128-16 of this Chapter has been refused entry to any area covered by the permit;

(4) there is or has been a violation of this Chapter, any regulation adopted under this Chapter, or any condition of the permit; or

(5) there is any other good cause as determined by the Department.

§ 128-18. Department to have access for inspections; stop work orders.

(a) To enforce this Chapter and to ensure compliance with a permit, a representative of the Department may enter and inspect, at any reasonable time, any site where FPRs are stored.

(b) A permit holder or other person at a site where FPRs are stored may not:

(1) refuse access to the site to any representative of the Department that requests access under this Section; or

(2) interfere with any inspection under this Chapter.

(c) After completing an inspection under this Chapter, the Department shall issue a stop work order or other order if necessary to obtain compliance with State or County law, regulations, or a permit.

§ 128-19. Judicial enforcement.

(a) In addition to any other remedy authorized under this Chapter, the Department or any adversely affected person may bring an action to enjoin the violation of any law, regulation, permit, or order concerning the storage of FPRs under this Chapter.

(b) (1) The Department or Caroline County may:

(i) sue the applicant, the permit holder, or the landowner to require compliance with this Chapter and any permit issued under this Chapter and/or seek to enjoin temporarily or permanently the storage of FPRs.

(ii) with respect to the FPRs site, seek leave to intervene in any:

1. civil court proceeding; and

2. contested administrative case.

(c) The right to bring an action under subsection (a) of this Section is in addition to and not instead of the right to bring any other action under this Chapter.

§128-20. Violations and Penalties.

(a) *Civil fine enforced by citation or complaint; no preclusion of criminal prosecution.* Any person who violates any of the provisions of this Chapter, any regulation adopted under this Chapter, or any condition of a permit, or who being the owner of the land on which the violation occurred, shall permit such violation to occur thereon, shall have committed a civil infraction punishable by a civil fine not exceeding \$500 for the first commission and \$1,000 for a second or subsequent commission. The civil fine shall be enforced by the issuance of a civil citation or as a form of relief requested in a civil complaint filed in District or Circuit Court. Each day such violation occurs or continues constitutes a separate violation. Imposition of a civil fine does not preclude criminal prosecution for the same violation.

(b) *Criminal fine and penalty.* In addition to the civil penalty under subsection (a), any person who violates the provisions of this Chapter, regulations adopted under this Chapter, or any condition of the permit, or who being the owner of the land on which the violation occurred, shall permit such violation to occur thereon, shall be guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding \$500 or imprisonment not exceeding 30 days, or both. Each day such violation occurs or continues constitutes a separate offense. The sentence shall be imposed with consideration given to appropriate factors, including, but not limited 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 to which 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.

§128-21. Food Processing Residuals Administration Fund.

(a) There is a Food Processing Residuals Administration Fund.

(b) (1) The Department shall set reasonable fees necessary to carry out its responsibilities regulating the storage of FPRs under this Chapter.

(2) The fees charged shall be set to produce funds to approximate the cost of administering the Department's responsibilities regulating the storage of FPRs under this Chapter.

(c) (1) The Department shall pay all fees collected under the provisions of this Chapter to the Director of the Caroline County Department of Finance.

(2) The Director shall distribute the fees received from the Department to the Food Processing Residuals Administration Fund.

(d) (1) The Food Processing Residuals Administration Fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the regulatory duties of the Department as provided by this Chapter.

(2) (i) The Food Processing Residuals Administration Fund is a continuing non-lapsing fund.

(ii) Any unspent portion of the Food Processing Residuals Administration Fund may not be transferred to or revert to the General Fund of the County but shall remain in the Food Processing Residuals Administration Fund to be used for the purposes specified in this Chapter.

(e) (1) A designee of the Department shall administer the Fund.

(2) Money in the Fund may be expended only for any lawful purpose authorized under the provisions of this Chapter.

§128-22. Cessation of operations. Upon cessation of FPRs storage activities, the operator shall immediately remove all remaining material from the storage site and provide for the processing or disposal of the material in accordance with the laws of the State of Maryland.

§128-23. Adoption of regulations by the Department.

(a) The Department shall adopt regulations to carry out this Chapter.

(b) (1) The regulations adopted under this Chapter shall address:

(i) alternative storage methods;

(ii) control of pathogens and pollutants of concern identified by the Department;

(iii) advertising requirements for public hearings and public information hearings;

- (iv) performance bonds, liability insurance, or other forms of security;
- (v) procedures for notifying units of local government and other interested parties;
- (vi) adequate standards for storing FPRs;
- (vii) the nature of any nearby surface water or groundwater;
- (viii) the character of any affected area;
- (ix) the character of nearby existing or planned land uses and transport routes;
- (x) reasonable buffer areas to separate any home, agricultural land, or other property from land on which FPRs may be stored.

(c) (1) Subject to paragraph (2) of this subsection, the Department shall adopt regulations to establish and update permit application fees.

(2) (i) The Department shall provide an opportunity for public input on the development of a fee schedule under this Section.

(ii) A fee schedule developed under this Section shall include consideration of:

1. the anticipated costs of monitoring and regulating FPRs storage sites;
2. the anticipated costs of implementing this Chapter; and
3. the potential impact of the activities of an FPRs storage site on the environment and public health, safety, and welfare.

SECTION 2. The Recitals to this Bill are incorporated herein and deemed a substantive part of this Bill.

SECTION 3. The provisions of this Bill are declared to be severable. If any section, subsection, sentence, clause, phrase, or portion of this Bill is for any reason held invalid or unconstitutional by any court of competent jurisdiction, the same shall be deemed separate, distinct, and independent from, and such holding shall not affect the validity of, the remaining portions of this Bill, it being the intent of the County that this Bill shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 4. The Publishers of the Code of Public Local Laws of Caroline County, Maryland (the “Code”), the Caroline County Office of Law, or the Caroline County

Department of Planning and Codes, in consultation with and subject to the approval of the County Administrator, shall be authorized to make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, organization, and any internal or external reference or citations to the Code that is incorrect or obsolete, with no further action required by the County Commissioners. All such corrections shall be adequately referenced and described in the editor's note following the section affected.

SECTION 5. The title and summary of this Bill shall be published in at least one newspaper of general circulation in Caroline County three times, at weekly intervals, and within the 4-week period after passage of the Bill, in accordance with §9-311 (i) of the Local Government Article of the Annotated Code of Maryland. The title of this Bill, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Bill for publication and all other purposes. The title is not a substantive part of this Bill for publication and all other purposes. If the Bill is amended, the title may be administratively revised to conform to the content of the Bill as finally enacted.

SECTION 6. AND BE IT FURTHER ENACTED, that this Bill is hereby declared to be an emergency ordinance and a necessary measure to address an immediate public emergency affecting the peace, health, safety, welfare and property of the residents of Caroline County, and being passed by the affirmative vote of all three County Commissioners, shall become effective upon enactment. Upon enactment, this ordinance shall be retroactive and applicable, to the maximum extent permitted by law and subject to the severability clause above, to all storage of Food Processing Residuals in Caroline County, to all proceedings, and to all filed, pending, or future applications for building, use, special exception, or Food Processing Residuals Storage permits.

Enacted this 17th day of September, 2024.

ATTEST:

**COUNTY COMMISSIONERS OF
CAROLINE COUNTY, MARYLAND**

Jennifer Reibly
Public Information Officer

J. Travis Breeding, President

(SEAL)

Larry C. Porter, Vice-President

N. Franklin Bartz III, Member

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



Stewart Barroll
County Attorney

