

## **Guidelines for Review of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)**

Nutrient Management Practices are an essential component of any farm operation and are protected under AML §305-a from unreasonable local restrictions. Nutrient Management Practices generally include: (1) land application (i.e. materials are applied to the soil surface or injected into the upper layer of the soil) and/or composting of animal waste, recognizable and non-recognizable food waste, sewage sludge and septage; and (2) storage of animal waste. Animal waste, recognizable and non-recognizable food waste, sewage sludge, septage, and composted sludge have beneficial uses as fertilizer and soil amendments for crop production.

The Department recognizes a local government's right to regulate certain aspects of the storage and disposal of solid wastes within its geographic boundaries.<sup>1</sup> However, AML §305-a prohibits local governments from enacting and administering laws that would unreasonably restrict farm operations within a county adopted, State certified agricultural district unless the locality can show a threat to the public health or safety. Districts are established to encourage the development and improvement of agricultural land. In general, the Department believes that local waste management laws should provide exemptions to allow the land application, storage, and/or composting of animal waste, recognizable and non-recognizable food waste, septage, sludge, and composted sludge, or products derived therefrom, for agricultural purposes on farm operations within a county adopted State certified agricultural district. Certain local permit requirements are reasonable, however, including, for example, submission of copies of Department of Environmental Conservation (DEC) applications, materials and approvals to the local government; provisions for access to permitted sites and information on the activity (e.g., copies of information submitted to DEC to maintain a permit); and a reasonable permit fee.

The following is an outline of the common ways that local laws can restrict the Nutrient Management Practices of farms, and the position of the Department with regard to these restrictions.

### *DEC Standards*

- Local laws that regulate solid wastes should include an exemption for (1) the land application of animal manure and recognizable and non-recognizable food wastes as provided in 6 NYCRR §360-4.1(c)(1); and (2) the disposal

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<sup>1</sup> Environmental Conservation Law §27-0711, for example, allows localities to adopt local laws, ordinances or regulations which comply with at least the minimum applicable requirements set forth in the DEC's solid waste disposal regulations. See also, *Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia*, 51 N.Y.2d 679, 683-684 (1980).

and/or storage of farm generated waste as provided in 6 NYCRR §360-1.7(b)(1), (2) and (3). Local laws that only provide exemptions for solid waste disposed of or stored on the property where it is produced are generally unreasonably restrictive. Local laws should exempt the on-farm disposal or storage of solid waste for agricultural purposes, no matter where it is produced, consistent with the DEC's regulations. Such laws should also include a separate definition for recognizable and non-recognizable food processing waste consistent with the definitions used by the DEC in 6 NYCRR Part 360, §360-1.2(b)(70).

- The DEC regulates and permits land application of solid wastes. The State Environmental Conservation Law (ECL), solid waste management regulations (6 NYCRR Part 360) and waste transporter regulations (6 NYCRR Part 364) address disposal and land application of food processing waste, septage, sludge and composted sludge. For permitted activities, DEC requires detailed information concerning the activity. DEC review includes a technical analysis of the proposed activity; review of environmental impacts through the SEQRA process; notice and public comment for major projects; and, in some cases, a public hearing.
- The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML §305-a. In many instances, the Department has found local laws that exceed State standards unreasonably restrictive. Each law, however, is judged on its own merits and reviews are performed on a case-by-case basis. If a local government believes that local conditions warrant standards that differ from the DEC's, the Department considers those conditions in evaluating whether the standards are unreasonably restrictive.

#### *Regulations Affecting Animal Waste Management Facilities*

- Animal waste management facilities (including manure pile areas) are a common land use for dairy and livestock operations and farmers must handle waste management in a timely and effective manner. Absent any showing of an overriding local concern, a farmer should not be required to obtain special permits and engage in site plan review when locating these facilities in a county adopted, State certified agricultural district.
- Larger farms are required to have a plan for the proper management of liquid and solid waste prepared according to the NRCS Conservation Practice Standard "Waste Management System No. NY-312" in order to obtain a DEC Concentrated Animal Feeding Operation (CAFO) General Permit. Such a plan includes other NRCS practice standards needed to address resource concerns, such as, "Waste Storage Facility NY313" and "Nutrient Management (Supplement) NY590."

- The DEC's permitting process for CAFOs addresses public health and safety issues related to water pollution. The Department believes that the thresholds and standards established by DEC for the CAFO permit are appropriate. A requirement that a DEC regulated and permitted activity also obtain a locally administered permit would generally not be unreasonably restrictive if the local permit requirements did not exceed the State standard, applications were timely considered and without substantial fees or costs. A local law which required CAFO farms to submit copies of their permit application and permit to the locality; make the permit information available for inspection; and to keep the locality updated on changes in permit status, would be reasonable. Also, to the extent permitted by State and federal law, a local law could adopt the State standard and include an enforcement mechanism.
- Since the State does not require CAFO permits for smaller farms, requiring all farmers to comply with the standards required for a CAFO permit might be unreasonably restrictive, unless the local government can show conditions that warrant the more stringent standards.

#### *Restrictive Zoning of Animal Housing or Waste Management Facilities*

- Zoning provisions that require animal housing or waste management facilities to be set back a great distance from roads or neighboring lot lines could be unreasonably restrictive. A farm operation's barns and waste management facilities may already be located within the setback, or the farm operation may need to locate new facilities within the setback, both to meet the farm operation's needs and CAFO permit requirements. The establishment of unreasonable setback distances increases the cost of doing business for farmers because the infrastructure needed to support the operation (e.g., water supply, utilities and farm roads) is often already located within, and adjacent to, the farmstead area or existing farm structures. Setbacks can also increase the cost of, or make it impracticable to construct new structures for the farm operation. In summary, setback requirements may adversely affect the farm operator's ability to manage the farm operation effectively and efficiently.
- Many local laws prohibit the storage of manure, and other odor or dust-producing substances within one hundred (100) feet of any lot line. Some zoning laws also prohibit buildings housing farm animals from being located within one hundred (100) feet of any lot line. There may be situations when the most favorable location for manure storage and livestock housing, both environmentally and operationally, may be less than 100 feet from a property line and a 100 feet setback may be considered unreasonable under certain circumstances. Also, adjoining land may consist of vacant land, woodland or farmland. One of the most important issues involving any type of waste is the

protection of ground water. The NYS Department of Health's (DOH's) standards for water well construction (private supplies) (10 NYCRR, Appendix 5-B) include a minimum distance of 100 feet between a new **well** and barnyards, silos, barn gutters and animal pens and 200 feet between a new **well** and storage areas for a manure pile. According to the standards, the separation distance between a new well and a manure pile may be reduced to 100 feet if the area is managed to prevent contamination of surface and ground water. In view of this, the Department concluded that a 100 feet setback from any **existing wells** and new barnyards, silos, barn gutters, livestock confinement structures, and animal pens would be reasonable. A 200 feet setback from any **existing wells** would also be reasonable for a manure pile, or 100 feet from a manure pile managed to prevent contamination of surface and ground water<sup>2</sup>. A 100 feet setback is also reasonable for lined manure storage ponds or fabricated units, while a 300 feet setback is reasonable for unlined self-sealing manure storage facilities (based on NRCS standards and specifications for waste storage facilities).

- The State Environmental Quality Review (SEQR) regulations at 6 NYCRR Part 617 list "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" as Type II actions which do not require preparation of an EAF or other compliance with SEQR. The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

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<sup>2</sup> The NYS Dept. Of Health standards also include a separation distance of 200 feet between new wells and areas used for manure application. The separation distance may be reduced to 100 feet based upon an on-site evaluation of the agricultural property by a certified nutrient management planner or soil and water conservation district official. Note that well drillers, not the owners or operators of agricultural land, are required to comply with the NYS DOH setbacks for construction of new wells. The NYS DOH confirms that the requirements are only applicable to the location of water wells at the time of construction and do not regulate existing or future agricultural activities. The setback requirement is the responsibility of the residential landowner and well driller, not the agricultural operator.