



AGENCY OF AGRICULTURE, FOOD & MARKETS

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Sent via email: Dennis.Fekert@vermont.gov

Dear Dennis,

Thank you for the opportunity to comment on the Agency of Natural Resources (ANR) Department of Environmental Conservation (DEC) Solid Waste Management Rules (SWMR). The Agency of Agriculture, Food, & Markets (VAAFAM), has provided comments below on the proposed rule amendment of the SWMR.

As the agricultural community continues to progress and shift, learning more about the impacts of nutrients on water quality health, VAAFAM and farmers alike are recognizing the importance of managing and applying nutrients in a manner that best supports crop growth and decreases excess nutrient loss from fields. As anaerobic digesters and large scale on-farm composting gain traction on an increasing number of farm operations, in a combined effort to keep organic materials out of landfills while utilizing a highly successful and beneficial natural process, the intersect between VAAFAM's Required Agricultural Practices (RAPs) Rule to protect water quality from nonpoint source pollution and DEC's SWMR, which establish procedures and standards to protect public health and the environment by ensuring the safe, proper, and sustainable management of solid waste in Vermont, grows larger.

General Comments

- Any concerns that originate from VAAFAM related to the SWMR are focused on the appropriate application of nutrients on farm fields, including quantity of nutrients, location of any applications, and the concentrations of nutrients in any respective material. VAAFAM requests that any requirements that may apply to nutrient management, storage, and application for farm operations that also fall under the jurisdiction of the SWMR, meet or exceed the requirements established in the RAPs.
- Such requirements would include the prohibition of any application on a field where the soil test phosphorus is above 20ppm if a phosphorus reduction strategy is not present.
- Requiring the inclusion of biosolids when farm operations calculate the Phosphorus Index (P-Index) on their farm fields, as opposed to using a general value of 50. This would help determine if fields can or should be receiving any additional nutrients and would contribute to further understanding relating to land base constrictions for farm operations.
- Additional requirements would allow applications on fields only when applied at agronomic rates during times when crop uptake can occur.
- Setbacks: VAAFAM requests to align setbacks for Mortality Burials, Medium and Large Compost Facility Siting and Small Composting Facilities (as Waste Storage Facilities), and land application to match the setbacks listed in the RAPs to align setbacks for such operations:

Animal Mortalities:

- (A) One-hundred-fifty (150) feet from the property line and the top of bank of surface waters;
- (B) three (3) feet above the seasonal high water table and bedrock;
- (C) two hundred feet from public or private drinking water supplies;
- (D) covered with a minimum of 24 inches of soil; and
- (E) not located on lands in a floodway or subject to annual flooding.

Small Compost Facility Siting AND Medium and Large Compost Facility Siting (to match Waste Storage Facility setbacks):

- (1) 300 feet from the nearest public or private water supplies not owned by the applicant;
- (2) 3 feet from seasonal high water table and bedrock;
- (3) 200 feet from the top of bank of surface water;
- (4) 100 feet from a ditch or conveyance to surface water;
- (5) areas subject to concentrated runoff, including subsurface tile drainage;
- (6) 100 feet from all property lines and edge of public roads; and
- (7) 300 feet from all residences not owned by the applicant and from all public buildings;
- (8) The 100 year flood plain as shown on the National Flood Insurance Maps;
- (9) A class I or class II wetland or its associated buffer zone unless a conditional use determination has been issued by the Secretary;
- (10) A class III wetland unless authorized by the Secretary;
- (11) Any location within a municipality where that municipality has prohibited composting as a part of its zoning bylaws;
- (12) Within a designated downtown or village center, unless the municipality has expressly allowed composting in that area.
- (13) Within 10,000 feet of a runway used by turbojet aircraft, or 5,000 feet of a runway used only by piston-type aircraft.

Land Application

In addition to the restrictions listed in §6-1304 for land application sites, §6-1306 for operating standards, and the isolation distances listed in Table A: Required minimum isolation distances, VAAFMM requests including setbacks for sloped fields and ditches or other conveyances to surface waters.

Comments by Subchapter

Subchapter 2 Definitions

“Land Application” means the diffuse spreading of non-EQ biosolids and stabilized domestic septage on the land at a controlled application rate for the purpose of providing agricultural nutrients at agronomic rates deemed beneficial for crop uptake, improving soil structure, or reclaiming a site.

VAAFM requests that the inclusion of the following definition:

“Required Agricultural Practices Rule (RAPs)” means the Vermont Required Agricultural Practices Rule adopted pursuant to 6 V.S.A. § 4810.

Subchapter 9 Storage, Transfer, Recycling, and Treatment Facilities

§6-906 Storage, Treatment, Recycling, and Processing Facilities Applications

VAAFM requests that a provision be included in this section, in addition to the FMP requirement, that would require Organic Recovery Facilities (ORFs) meeting the definition of a farm under the RAP definition, to indicate adequate storage capability either through a NRCS 590 Nutrient Management Plan (where applicable) and/or an associated VAAFM issued permit or certification prior to material being transported to the respective facility.

Subchapter 11 Compost Facilities

§6-1102 Organic Specific Definitions

VAAFM requests that the inclusion of the following definition:

“Agricultural Waste” means material originating or emanating from a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251(12).

In requesting to include this term, VAAFM requests that agricultural wastes be used in addition to the listed agriculturally related materials that are often composted: animal offal, slaughterhouse wastes, or animal mortalities. Under the RAPs, animal mortalities are included as an agricultural waste, however, VAAFM understands that when referring to certain provisions, the focus is on animal mortalities and not necessarily all agricultural wastes. VAAFM requests to include this provision as other agricultural wastes can and are composted, such as livestock waste.

VAAFM requests that the inclusion of the following definition:

“Anaerobic Digester” means a facility that provides biological treatment of animal waste in the absence of oxygen.”

VAAFM asks to include the NRCS definition of an anaerobic digester, Practice Code 366, for purposes of consistency across agencies and organizations.

VAAFM requests that the inclusion of the following definition:

“Farm” means a parcel or parcels of land owned, leased, or managed by a person and devoted primarily to farming, as defined in Section 2.16 of the Vermont Required Agricultural Practices Rule, and that meets the threshold criteria as established in Section 3 of the Vermont Required Agricultural Practices Rule, provided that the lessee controls the leased lands to the extent they would be considered as part of the lessee’s own farm. Indicators of control may include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the leased period.

VAAFM makes this request as defining what farm operations fall under the jurisdiction of VAAFM and the RAPs is an important differentiation that isn’t explicitly clear with the current proposed definition.

§6-1105 Small Composting Facilities – Accepted Composting Practices

VAAFM has concerns regarding provision (c)(1)(D) of this section: Small Composting Facility Design. Any waste runoff that is generated on a farm operation that may also meet the definition of a small composting facility may not be directed to a vegetated treatment area (VTA) under VAAFM and NRCS standards. Both VAAFM and NRCS do not design systems where concentrated waste is directed into VTAs as a management technique, regardless of farm size. This would also hold true for compost management areas where the current proposed amendment includes language directing water runoff from compost management areas into the VTA. NRCS designs VTAs to manage high flow leachate, and VAAFM strongly advocates to include this distinction in the SWMR amendment.

§6-1107 Medium and Large Compost Facility Design Standards

(a)(4)(A) – VAAFM uses the term waste storage facility (WSF), NRCS Practice Code 313, to define available methods of storing waste on a farm operation.

“Waste Storage Facility” means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof. (Section 2.41 of the RAPs)

As leachate is considered an agricultural waste, it’s storage can be considered to be a waste storage facility, which is the method VAAFM would implement to manage such materials. Waste storage facility would be a more accurate term in place of lagoon, to describe the method for waste management that would be prescribed by the Agency, meeting the NRCS Standards of Practice Code 313.



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NRCS Practice Code 378 refers to a pond: “A pond stores water for livestock, fish and wildlife, recreation, fire control, erosion control, flow detention, and other uses such as improving water quality.”

NRCS Practice Code 359 refers to a waste treatment lagoon: “A waste treatment impoundment made by constructing an embankment and/or excavating a pit or dugout.”

(a)(6)(D)(i) – VAAFM requests to include the following provision in place of current provision:

(i) Application rate shall not exceed agronomic rates, soil analysis and agronomic recommendations.

Or

(i) Application rate shall not exceed nutrient recommendations such that it ceases to be useful or beneficial for plant uptake.

Subchapter 12 Organics Management Facilities

§6-1202 Organics Management Facilities

(b)(4)(viii) – VAAFM requests to include the following language in place of current provision:

(Viii) digestate meets standards for pathogen treatment and contaminant content and concentration established by the Secretary or Secretary of Agriculture, Food, and Markets. Digestate meeting these standards may be exempted from solid waste disposal siting and certification requirements where collection and land application occur under an approved nutrient management plan prepared in accordance with Natural Resource Conservation Service Practice Standard 590 and, if not used on crops for direct human consumption, and if applied in a manner that minimizes the potential for contact with such crops, both during and after application to such crops.

The Agency greatly appreciates this opportunity to comment on these proposed amendments the Solid Waste Management Rules. Please do not hesitate to get in touch with any follow up questions or for clarity on any topic.

All the best,

Kaitlin Hayes
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Agency of Agriculture, Food & Markets