

Compost Study Committee
Meeting Minutes
October 3, 2008

Attendees:

Amy Shollenberger, Director, Rural Vermont
Phil Benedict, Director, Agriculture Resource Management and Environmental Stewardship Division, Agency of Agriculture, Food and Markets
Brian Jerose, Partner, WASTE NOT Resource Solutions, Treasurer, Composting Association of Vermont (CAV)
Teri Kuczynski, District Manager, Addison County Solid Waste Management District
Pat O'Neill, Program Director, Composting Association of Vermont
Melanie Kehne, Attorney, Land Use Panel (Act 250)
Cathy Jamieson, Manager, Solid Waste Program, VT Department of Environmental Conservation (DEC)

Missing:

Karen Horn, Vermont League of Cities and Towns
Scott Dillon, Survey Archeologist, Vermont Department of Historic Preservation

Observers/Staff:

Vicky Viens, Compost Specialist, Waste Reduction Section, DEC
Dave DiDomenico, Environmental Engineer, DEC
Dave Rogers, Rural Vermont

Facilitator:

Catherine Gjessing, Director of Policy, Research, and Planning, Agency of Natural Resources (ANR)

Minutes

The minutes for the September 9, 2008 meeting were approved with minor changes.

Compost Website

The website contains the agenda, most background information and handouts for the meetings and the approved minutes of the first few meeting. It is located at:

<http://www.anr.state.vt.us/dec/wastediv/solid/WorkingGroups.htm>

Discussion of Strawman

The Strawman is meant to facilitate the discussion. Section one identifies problems with the existing structure. Section two identifies acceptable elements with the existing structure. Section three identifies areas that the committee may not be able to address, such as federal requirements or definitions. Section four is the proposed conceptual structure.

Section 1

Discussion on biosolids. This was discussed last time and thought to be beyond the scope of this committee. Biosolids are part of solid waste management rules and are currently being revised. Should the biosolids and compost rule be revised together? Currently, biosolids are regulated under a full certification. There has been no push to change this.

Comment on #8. The end product of anaerobic digestion (AD) is referred to as “digestate”. Digestate should be included in this discussion as it can be further composted or used directly. It can include various feedstocks similar to composting (including carcasses). Need to discuss different types of digestate for feedstock to compost facilities. One concern is whether material still has pathogens. Would bedding from an AD meet “Process to Further Reduce Pathogens” (PFRP) requirements?

One missing issue is that of whether it is appropriate to define organics as a resource rather than waste. The focus and the structure of the regulatory framework changes if you classify organics as a resource. If we want to facilitate the use of organics as a resource, we may want to exempt it from the definition of solid waste.

If there is a functioning market for organics, then you could consider it outside the solid waste definition (as the definition of waste includes the concept of “discarded.”) Improper management can result because of those transactions. Here, the concern is that if organics are not included in the definition of waste, there may be no regulatory oversight for improper management.

If we are trying to set a state policy for organics as nutrients, if we call it waste and regulate it as waste, people will continue to consider this as a problem. How can we change the regulations to think of these nutrients as resources?

It may be best to include the organics as a resource concept in the waste policy. Talk about composting as a resource management instead of a waste management. Other materials also could be considered as resources. There is a difference for a neighbor thinking about a waste management facility and thinking of a nutrient management facility.

Manure has a condition that it is not a solid waste if used as a soil amendment as an example.

Section II

Next section working with existing certifications. Categorical Certifications cover most composting facilities and are sufficiently protective of the environment and human health.

Section III

What can't be addressed; federal delegation. Transfer of authority to AAFM could be difficult. Can't change certain regulations unless Federal authority changes.

Proposed structure

Subsection A of the structure.

There was some discussion of whether 100 cu yd a year is appropriate. If there is a nuisance, ANR has the right to intervene. Allows one to fill 1 cu yd backyard composter 100 times in a year. Comment, may want a notification for multiple families, as this information is good to have. Comment, generally thinking this is geared for a single family or farm. 100 cy could be large enough for approximately 50 people and could be appropriate for a condo association, for example.

Subsection B of the structure.

On farm composting governed by expanded AAP's.

The Land Use Panel is concerned about the exemption for unlimited bulking agents, manure and associated issues such as traffic. These could be huge projects with big environmental impacts and no relation to farming. The Panel agrees with the "principally used" test suggested by AAFM. Why pre-consumer food waste specified – more pathogen issues. Post consumer waste is not included in the definition of on farm composting because there are more pathogen issues. If a farmer becomes community composting site, is the farm still a farm? AAFM has concerns about regulating pathogens in post consumer food waste. Ag doesn't have a concern with farmer composting it's own waste and community food but this puts them into a different regulatory system. If vegetable operation and buying all their manures and most of their high carbon, they ought to be able to sell some portion of it. The greater the risk associated with materials transported onto the farm, the higher the level of necessary oversight. Principally used on the farm, addresses these concerns. Bulking agents are still a concern for Act 250.

What was the idea behind unlimited amount of imported manure? Should there be some limit to the amount of imported manure.

Ag needs to promulgate regulations on nuisance issues such as flies and pests.

Comment, concern about nuisance issues being added to AAP's. Do not want nuisance issues expanded in AAP's. ANR does not regulate AAP's. If there are violations of clean water act or if there is a discharge or significant noncompliance with environmental laws, then ANR can get involved, but not for a violation of AAP's. The size of the operation will trigger MFO's or LFO's. LFO's trigger other concerns and the higher level of regulation is appropriate. Ag should have authority to write standards on all farms for regulating noise and pests, under the general authority of Secretary. Some are tough issues.

Management of animal mortalities. Should not be shipped or used offsite. This is a prion issue. If composting cattle, additional risk. Composted on farm, don't contaminate other animals. We could broaden this by referring to animals that are potentially affected by some form of TSEs (Transmissible Spongiform Encephalopathies). For a chicken farmer this is not an issue. What about road kill? If it is an issue would require education and new levels of enforcement. Because of absence of rendering companies, farms compost their mortalities. The goal is not to sell or spread prions. Keep it out of the food chain.

Biosecurity. One option might be disclosure. Material is labeled in some way. If you had animals wouldn't take that material. Education issue. Issue of future use of the land.

Question of how Act 250 regulates traffic with zoning and LFO. Zoning doesn't address traffic like Act 250. Act 250 does a thorough review of traffic. . Act 250 can not deny a permit based on Criterion 5 traffic, unless there are infrastructure impacts under Criterion 9K. Act 250 can add conditions for traffic impacts.

Two issues. Have a manure source. Bulking agent all comes from off farm. Some on farm but generally gets used for animal mortality. Can digest the manure and sell the solids as much as you want as long as it comes from the farm.

Vegetable farms need to be able to bring in animal manure and need to bring in bulking agent, as long as they use more than half of it on the farm. Vegetable operations have different issues than livestock. Farm can export 100% of their manure and still be a farm because it is principally produced. Still have as much ability to bring in as much bulking agent as you want, assuming you wouldn't bring in more than you need.

There are issues other than traffic: odor, noise, pest issues. 1000 cu yd per year, could it be at any one time, is there a maximum on-site?

Subsection C of the structure.

Municipally based compost. Input amount and distance threshold. Similar to AAP's need to follow ACP's. Probably be facility design and management design that are prescriptive to avoid triggering Federal regs. 3-5,000 cu yds would cover most towns. Goal is to shift from review to site visits.

The Land Use Panel objects to an Act 250 exemption for this category. These projects can generate traffic and have other significant impacts. If there are no significant impacts, the project would be eligible for minor application process. And if impacts can be eliminated through standards for design, construction, siting and operation, a way to streamline the Act 250 process might be permit by notice, 10 V.S.A. § 6025(b)(2). This has not been discussed by the Panel, but will be at their October meeting. It would work something like a general permit. Rather than a full application, you file a notice with the Commission. List such things as the operations performed on site, the siting criteria used, how you manage traffic impacts, other permits obtained if needed. If you change

the project, you would need a permit amendment. In these types of permits, theoretically, there will be siting and management components; keep facilities away from waterways, neighbors, archaeological districts, etc. Come up with objective ACP's. Municipal projects already get a jurisdictional benefit from Act 250 (10-acre physical disturbance threshold).

Comment suggesting deemed approval: send in information and if don't give an answer in 45 days automatically get an approval. Act 250 would have to ensure eligibility, as in the stormwater program. You would have to get Act 250 approval prior to construction. Is there something that can be done at town level? Fear is getting caught up in an appeal process. Neighbor would have to be able to prove that the project was not eligible for permit by notice. If it is an Act 250 permit by minor application, a neighbor could request a hearing, but no hearing will be held unless a substantive issue has been raised. There has to be an appeal process.

Comment, want to flag a few details. There should be a range of operating conditions or scale, 2,000 cubic yards, feedstocks are seasonable. Allow flexibility for operation for a part of the year. Permit saying intend to operate within in this range. Could it be management based? Could only have 5 tractor trailer trucks or 10 windrows. You can allow of waver for emergency situations. Seasonality (such as harvest volumes) and year to year variations need to be considered. Weekly and daily requirements need to take this into account.

Comment, guidance on Act 250 requirements such as Ag soils would be helpful. Could allow some use; just cannot reduce the agricultural potential of primary ag soils without meeting the test in Criterion 9B of Act 250.

Suggest that we increase or eliminate the 10 mile distance. CAV used 40 miles and/or the border. Some distance controlled by trucking cost. Comment that it is completely unenforceable.

Maybe could make it a BMP which would only kick in if it is under special circumstances. If more then 50 % need to come from more then 10 miles away. Attempt to confine to smaller localized facilities.

Can a commercial company set up with towns to set these up all over. Discussed that no restriction on who is providing this. Main difference is scale with categorical certification.

Subsection D

Small commercial compost facilities. Categorical: sites subject to Act 250 process. Animal mortalities set aside.

Scenario: a person uses 9 acres of a 100 acre farm to compost. Commission can only regulate the 9 acres and whatever supports it (roads, buffers, etc.). When getting a permit for that composting facility, you can ask Act 250 to draw a line, called a Stonybrook. Act 250 jurisdiction is then limited to operations inside that line.

Look at Subsection B #5 as if there are no other requirements associated with it. If I am a farmer, and I want to take all of Chittenden county food waste, and used 70% on the farm, does it trigger Act 250.

If it is located on a farm, if someone else other than the landowner is operating it, how does it affect Act 250? It doesn't matter. If it's "on-farm" composting, it doesn't matter who does it. If it is a larger commercial project on a farm, it will need an Act 250 permit, but Act 250 can only regulate that development and whatever supports it; not the rest of the farm. You can ask the Commission to draw the line to show what will not be subject to Act 250 amendment jurisdiction.

Act 250 looks at the size of the entire tract; not just a leased portion. If lease 3 acres on 500 acres for a cell tower, still need an Act 250 permit. The same is true on a farm, but on farms Act 250 limits jurisdiction to the development.

Comment that there is going to be a disincentive to locate a compost facility on a farm if it needs an Act 250 review. Farmers are not going to want to go through that process even if it's a simple process. Composting that is successful is isolated from neighbors. Composting works when well when buffered.

Ultimately, the goal is to remove as many barriers from small facilities. Suggest have small medium and large. How can it be as flexible as possible to site a small scale facility. Want it as close to the farm source as possible so don't have to truck manure far. Wondered about making small commercial smaller and making three tiers. Some desire to being able to move through greater number of tiers. Jump to 5 to 40,000 is too large of a jump. Numbers may be wrong way to go. So at least discuss wet tons as well as cubic yards.

Suggestion that the land use panel set up a set of standards to meet Act 250 criteria; a set of standards to protect the neighborhood from traffic hazards and congestion, noise and other aesthetic concerns, and protect historic resources, etc. ANR has standards or can develop them for some issues that come up under Act 250, like nuisances, and vectors (pests, flies). General consensus favored further exploration of Act 250 permit by notice.

Comment that composting done on a farm should be under the same treatment whether it's on or off a farm. If farmer sold someone the land and didn't need an Act 250 permit, shouldn't need one if leased. Act 250 looks at the entire tract and the nature of the land use.

Will or should compost be regulated based on inputs or outputs. Should we require sampling to determine the destruction of pathogens, for example? Could have other criteria for different outputs. Everyone would need to do regular testing on the end products. Does that make sense from a regulatory or economic perspective? Need to meet certain minimum treatment whether you are a small facility or large facility. Would come in ACP's. Food stock with potential of pathogens would have to meet time and temperature criteria.

Next meetings and next steps.

Scheduled meetings for October 28 and November 19. Next panel meeting October 21. Scheduled another meeting for Monday, December 1, if needed.

Discussion of next steps.

Matt will revise the strawman based on this discussion and send it out to the committee.

People will need to send in suggestions for composting industry and public outreach and education.

Need to examine/define high carbon bulking agent list.

Question of whether 50% meets needs of farms. If farm is only handling manure and wants to take neighbors manure, would like to see clarification on that. This is an issue of how certifications work now in B.