

## **Guidelines for Review of Local Laws Affecting On-Farm Composting Facilities**

- Agriculture and Markets Law §301(16) defines the term “[c]ompost, mulch or other organic biomass crops” to mean “...the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation’s agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, “compost” shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.” In addition, the definition of “farm operation” (AML §301, subd. 11) now includes “compost, mulch or other biomass crops.”
- The composting of materials such as animal waste, recognizable and non-recognizable food waste, sludge, and septage is a beneficial biological process that produces valuable soil amendments for crop production. Agricultural wastes and by-products, including manure, must be utilized or disposed of in an environmentally safe manner. The composting of such waste is a preferred method because it is recycled and utilized as a soil amendment to enhance plant growth for both crop production and off-farm uses (e.g. landscaping, home gardens, etc.). Agriculture and Markets Law §305-a, subdivision 1 protects the on-farm composting of these materials when the composting is part of the agricultural production function of the farm, that is, the farm composts to rid the farm of its excess agricultural waste *or* the farm composts to create a soil amendment for crop production. On-farm composting of these materials should be allowed in all areas within a county-adopted State certified agricultural district provided that the activities are in compliance with Department of Environmental Conservation (DEC) regulations and absent a showing that the public health or safety is threatened or other special local circumstances warrant the additional regulation.
- Some local laws try to limit on-farm composting only to the production of compost for use on the farm *or* limit the waste used to that generated on-farm. Such restrictions are generally considered by the Department to be unreasonably restrictive. If a farm operation composts to remove its excess

agricultural waste, and off-farm waste (e.g., leaves as a carbon source; bulking agents; manure for nutrient content; etc.) is used only as a minor component when needed as part of the composting process, the farm should be allowed to sell all of the compost and move it off the farm in bulk. The processing of the compost for marketing, such as bagging it for distribution, and the on-farm retail sale of the compost, are not part of a farm operation. If the compost is intended to be used as a soil amendment on the farm, the farm should be allowed to use both on-farm and off-farm waste. If necessary, *all* of the waste used could be off-farm waste (for example, crop farms do not generate manure). Accordingly, all of the compost generated under this process must be used on the farm operation.

- The DEC regulations pertaining to composting are set forth in 6 NYCRR Subpart 360-5. Section 360-5.3(a) exempts facilities that compost less than 3,000 cubic yards of yard waste per year, as well as facilities that process only animal manure and associated bedding material as long as certain conditions are met. Composting facilities that are subject to DEC permitting requirements are subject to a technical analysis of the proposed activities; a review of environmental impacts through the SEQRA process; notice and public comment for major projects; and possibly a public hearing.
- The Department considers the standards and permitting requirements set forth in the DEC's regulations when evaluating whether local laws affecting on-farm composting facilities are unreasonably restrictive. In many instances the Department has found that local laws that exceed State standards are unreasonably restrictive. However, if a local government believes that local conditions warrant standards that differ from the DEC's the Department will consider those conditions in evaluating whether the standards are unreasonably restrictive.
- Generally, a local requirement that composting facilities regulated by the DEC provide copies of permit applications or other documentation submitted to the DEC is not unreasonably restrictive. Those facilities could also be inspected by local officials, under reasonable criteria, to ensure that the permit requirements are being followed.