

April 22, 2003

TO: NYS Persons Interested in Compost
FROM: Ellen Z. Harrison, Director
RE: Compost and NYS Fertilizer Law

The goal: To enable compost producers, many of whom are livestock farmers, to effectively market their compost and to enable compost users to identify and obtain composts that meet their needs.

To accomplish this goal, composts, which are soil amendments and not fertilizers, should be made exempt from NYS fertilizer rules.

The issue: Under NYS rules, composts that make any representation regarding nitrogen, phosphorus, potassium, calcium, magnesium, copper, iron or zinc content, or that make statements such as “helps plants grow” could be considered a fertilizer.

The goal of the fertilizer law is consumer protection from false advertising – being sure that there is at least as much of the NPK and other trace elements as is claimed by the fertilizer producer. It includes an exemption section for various items (like “unmanipulated manure”).

NYS Composters: There are many compost producers in NYS (see map at: <http://www.cfe.cornell.edu/wmi/Compost/mapsearch.htm>). Composting is increasingly being implemented by livestock farmers in NYS as a method to manage manure. Response to CAFO rules is part of the reason for this trend. Composting helps to control odors and enables farmers to avoid spreading on wet or frozen ground. Where farms have excess nutrients, selling compost moves nutrients off the farm and provides an economic return. Under current rules a CAFO that is marketing composts is inevitably breaking the law. They cannot simultaneously meet the CAFO rules and fertilizer rules. CAFO rules require them to represent the average nutrient value of materials moved off the farm to those receiving the materials. Fertilizer rules do not allow claims beyond the minimum guaranteed nutrient content.

To realize the economic benefits, farmers must be able to market their composts. Providing information to customers about the quality of the compost is critical to marketing, but is hampered by the NYS fertilizer rules. Many customers are purchasing sludge-based composts because these products are effectively marketed (in part because they are subsidized through tip fees since sludge disposal is recognized as a cost). Some sludge composts are moving large distances to market, being purchased when local agricultural composts are available.

There are several organizations in NYS with an interest in promoting the recycling of organic matter through composting. These include the NYSAR (NYS Association for Reduction, Reuse and Recycling) which has established an Organics Recycling Council, the NYSASWM (NYS Association for Solid Waste Management) and the NYS chapter of SWANA (Solid Waste Association of North America). In addition, through Cornell Cooperative Extension, a Program Work Team has been established that includes farm-based and other composters as well as others interested in recycling organic residuals through composting.

What is proposed: Exempt compost from NYS fertilizer rules. There are several options for this. The most straight forward is to clarify that the definition of “unmanipulated animal and vegetable manure” includes compost produced from animal manure and vegetable matter. This is logical since the intent of “manipulation” was likely the addition of chemicals (such as fertilizer) and not simply the turning of the materials to encourage natural decomposition. Other options requiring more time and process would be to exempt compost either through revising the regulations or amending the law. This would be accomplished by adding compost to the list of exempt materials and adding a definition of compost.

The language in the law would seem to allow the Commissioner of the Department of Agriculture and Markets to add compost to the list of exempt materials by modifying the regulations.

New York State Consolidated Laws accessed 3/20/03 at
<http://assembly.state.ny.us/leg/?cl=4&a=23>

Agriculture & Markets

ARTICLE 10

SALE AND ANALYSIS OF COMMERCIAL FERTILIZER

Section 143. Definitions.

S 143. Definitions. When used in this article, unless otherwise expressly stated:

a. The term "commercial fertilizer" shall mean any substances containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the commissioner.

A proposed definition is: “Compost is the stable humus-like material resulting from an aerobic decomposition of animal and vegetable matter to which no additional chemical fertilizer has been added.” It would not apply to materials to which additional concentrated nutrients had been added to manufacture a product to be used as a fertilizer.

Why?:

Science:

Compost nutrients are present in low concentrations.

N, P, K in composts are mainly in organic forms providing slow release and less subject to leaching.

Compost is not used as a fertilizer. It is a soil amendment used to increase OM and establish beneficial microbial populations.

Compost is not formulated, so it is a variable product.

Policy:

Compost from CAFO farms requires reporting of average nutrient content while the fertilizer rules allow only a statement of minimum guaranteed nutrient content. Thus CAFO composters must violate one law or the other.

Many farms produce a relatively low volume of compost, so costs to register and keep records as required for fertilizers are relatively high.

Fertilizer is used in pounds/acre, compost in tons/acre, so a fee/ton is not equitable.

Misfit with current law and regulations:

The current NYS fertilizer rules regulate on a per weight basis, but compost is moist and may dry out on the shelf. Composters who are registered as a fertilizer and thus subject to the regulations find that they must overpack bags so that if the compost dries out, they are not found in violation. One farm-based compost producer reportedly overfills bags by 10% to prevent such violations, not an economically advantageous situation.

If regulated as a fertilizer, composts could not provide important information. The regulations state that “No claims or guarantees shall be made for any commercial fertilizer except for the elements set forth above.” (section 153.2a). This would prevent compost from reporting important parameters such as maturity, pH, and organic matter. Nor could they make slow-release information available (153.3a, b, c).

The test methods specified in the rules are not applicable to composts (153.5). Compost testing is difficult due to its heterogeneous, highly organic nature. Recently the US Compost Council has developed a set of methods that are being adopted by laboratories around the US.