

STATE OF VERMONT
District Environmental Commission #8
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Rutland, VT 05701
Telephone: (802) 786-5922
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March 30, 2011

TAM Waste Management
639 North Rd.
Shaftsbury, VT 05262

**Subject: Jurisdictional Opinion # 8-259; Compost operation start-up by
TAM, Route 7A, Mance farm, Shaftsbury**

Dear Trevor:

I. Summary of Opinion

Based on your project description outlined in your letter to me dated March 17, 2011, I believe you are exempt from needing an Act 250 permit provided you remain below the thresholds in the on-farm composting exemption as set forth below, until that exemption expires.

II. Facts and Documents

The Mance farm consists of over 1,000 acres in several contiguous parcels along Rt 7A. This land consists of one parcel for purposes of this analysis. The parcel is primarily devoted to farming. Specifically, the farm raises vegetables, hay, corn, maple syrup, and cuts firewood and timber. The proposed project consists of the preparation, storage and sale of compost on this parcel. The annual gross income from compost sales will not exceed the annual gross income from farming activities on the parcel, for at least the first several years of operation.

The Project will utilize no more 5,000 cubic yards per year of total organic inputs allowed under the agency of natural resources acceptable management practices, including up to 2,000 cubic yards per year of food residuals. The Project will obtain a categorical certification from the Agency of Natural Resources. Fewer than four acres of the 1000-acre parcel will be used for commercial compost management.

At such time in the future that you expect to exceed these limits, or when the exemption expires in 2014, whichever comes first, you will first apply for an Act 250 permit.

III. Analysis

An Act 250 permit is required, in relevant part, for “development.” 10 V.S.A. Section 6081(a). “Development” is defined to exclude, in relevant part:

- (vii) The construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost, provided that:
 - (I) The compost is produced from no more than 100 cubic yards of material per year; or
 - (II) The compost is principally produced from inputs grown or produced on the farm; or
 - (III) The compost is principally used on the farm where it was produced; or
 - (IV) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:
 - (aa) manure produced on the farm; and
 - (bb) unlimited clean, dry, high-carbon bulking agents from any source; or
 - (V) The compost is produced on a farm primarily used for the raising, feeding, or management of livestock, only from:
 - (aa) manure produced on the farm;
 - (bb) up to 2,000 cubic yards per year of organic inputs allowed under the agency of natural resources’ acceptable management practices, including food residuals or manure from off the farm, or both; and
 - (cc) unlimited clean, dry, high-carbon bulking agents from any source; or
 - (VI) The compost is produced on a farm primarily used for the cultivation or growing of food, fiber, horticultural, or orchard crops, that complies with the agency of natural resources’ solid waste management rules, only from up to 5,000 cubic yards per year of total organic inputs allowed under the agency of natural resources’ acceptable management practices, including up to 2,000 cubic yards per year of food residuals.**

10 V.S.A. Section 6001(3)(D). (Note: § 6001(3)(D)(vii) shall be repealed July 1, 2014.) The exemption that applies here is at subsection (VI).

To be eligible for this exemption, the statute further sets requirements regarding income from composting operations compared to the income from farming:

(31) **“Farm,” for purposes of subdivisions (3)(D)(vii)(V) and (VI) of this section, means a parcel of land devoted primarily to farming, as farming is defined in subdivision (22)(A) or (B) of this section, and:**

(A) from which parcel, annual gross income from farming, as defined in subdivision (22) of this section, exceeds the annual gross income from a composting operation on that parcel. For purposes of this subdivision, a federal, state, or municipal highway or road shall not be determined to divide tracts of land that are otherwise physically contiguous;

(B) for purposes of subdivision (3)(D)(vii)(V) of this section, uses no more than 10 acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management;

(C) for purposes of subdivision (3)(D)(vii)(VI) of this section, uses no more than four acres or 10 percent of the parcel, whichever is smaller, for commercial compost management, not including land used for liquid nutrients management.

Section 6001(31).

Based upon the facts as stated above, I believe you qualify under (VI) above since:

- you will use less than 5,000 cubic yards per year of total organic inputs allowed under the agency of natural resources acceptable management practices, including up to 2,000 cubic yards per year of food residuals.
- The composting facility has obtained or will obtain a categorical certification from ANR in compliance with ANR solid waste rules.
- The facility is on a the Mance farm – a parcel primarily used for the cultivation or growing of food, fiber, and horticultural crops.
- Fewer than 4 acres will be used for commercial compost management, not including crops you will be raising for inputs or land area used for liquids management.

IV. Conclusion

Provided you remain below the thresholds outlined above, your composting operation is exempt from Act 250 until these exemptions sunset on July 1, 2014.

V. Reconsideration or Appeal

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A).

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address within 30 days of the date of this opinion.

Any **appeal** of this decision must be filed with the Superior Court, Environmental Division within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. § 1431 and the 5% surcharge required by 32 V.S.A. § 1434a(a), which is \$262.50 as of January 2011.

The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B).

For additional information on filing appeals, see the Court's website at:

<http://www.vermontjudiciary.org/GTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division, 2418 Airport Road, Suite 1, Barre, VT 05641-8701.

Sincerely,

s/s Warren E. Foster
Warren E. Foster
District Coordinator

c: Certificate of Service