

No. 141. An act relating to the regulation of composting.

(H.614)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Composting is a process by which organic material is mixed and tending to create a soil amendment that reduces runoff, increases plant fertility, and builds living soil;

(2) Composting is an agricultural practice that farmers traditionally have practiced in order to recycle nutrients and manage wastes on their farms;

(3) The benefits of composting include the recapture of nutrients and the rebuilding of soils, both of which also help to protect surface waters from nutrient runoff, improve soil productivity, mitigate the generation of greenhouse gases, and reduce the demands on the state's solid waste management system; and

(4) The development of composting facilities that support Vermont's goals for waste recycling, nutrient redistribution, farm viability, and sustainable food systems should be encouraged.

Sec. 1a. 10 V.S.A. § 6001(3)(D) is amended to read:

(D) The word "development" does not include:

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(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.

Sec. 1b. 10 V.S.A. § 6001e is added to read:

§ 6001e. COMMERCIAL COMPOSTING FACILITY; CIRCUMVENTION

Notwithstanding subdivisions 6001(3)(D)(vii)(I)–(VI) of this title, a permit under this chapter may be required for the construction of improvements below the elevation of 2,500 feet for the onsite storage, preparation, and sale of compost if the chair of the district commission, based on the information available to the chair, determines that action has been taken to circumvent the requirements of this chapter.

Sec. 2. 10 V.S.A. § 6001(3)(E) is amended to read:

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued

under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets. Any portion of the tract that is used to produce compost ingredients for a composting facility located elsewhere on the tract shall not constitute land which supports the development unless it is also used for some other purpose that supports the development.

Sec. 3. 10 V.S.A. § 6001(31) and (32) are added to read:

(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.

(32) “Livestock” means cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, chukar partridge, court-nix quail, camelids, ratites (ostriches, rheas, and emus), llamas, alpacas, yaks, rabbits, cultured trout propagated by commercial trout farmers, or other animal types designated by the secretary of agriculture, food and markets by procedure.

(33) “Compost” means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

Sec. 3a. SUNSET OF COMPOSTING EXEMPTIONS

10 V.S.A. §§ 6001(3)(D)(vii) (composting exemptions), 6001(31) (definition of farm for compost exemptions) and 6001e (circumvention authority) shall be repealed July 1, 2014.

Sec 3b. 6 V.S.A. § 4810(b) is amended to read:

(b) Cooperation and coordination. The secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in

implementing and enforcing programs, plans and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. The secretary of agriculture, food and markets and the secretary of natural resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing and how they will coordinate watershed planning activities to comply with Public Law 92-500. The secretary of agriculture, food and markets and the secretary of the agency of natural resources shall also develop a memorandum of understanding according to the public notice and comment process of ~~subsection~~ 10 V.S.A. § 1259(i) of Title 10 regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the state agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the secretary of agriculture, food and markets and the secretary of natural resources shall be consistent with

the secretary's duties, established under the provisions of ~~subsection 10 V.S.A.~~ § 1258(b) of Title 10, to comply with Public Law 92-500. The secretary of natural resources shall be the state lead person in applying for federal funds under Public Law 92-500, but shall consult with the secretary of agriculture, food and markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. The secretary of agriculture, food and markets shall be represented in reviewing these projects for funding. Actions by the secretary of agriculture, food and markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of Title 10 and the federal Clean Water Act as amended. In addition, the secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm.

Sec. 3c. NATURAL RESOURCES BOARD REPORT

On or before January 15, 2012, and on or before January 15, 2014, the natural resources board, after consultation with the agency of agriculture, food and markets and the agency of natural resources, shall report to the senate and house committees on agriculture, the senate and house committees on natural

resources and energy, and the house committee on fish, wildlife and water resources regarding the application of 10 V.S.A. chapter 151 to commercial composting operations in the state. The report shall include:

(1) the number of composting operations that have applied for an Act 250 permit since July 1, 2010, the disposition of those applications, and a short summary of the composting operation proposed in each application; and

(2) recommendations for extending, amending, or repealing the exemptions under 10 V.S.A. chapter 151 that relate to composting.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

Approved: June 1, 2010