

ALBANY COUNTY DEPARTMENT OF HEALTH

ALBANY COUNTY DEPARTMENT OF HEALTH RULES AND REGULATIONS REGARDING THE MORATORIUM OF BIOSOLIDS LAND APPLICATION IN ALBANY COUNTY.

SECTION 1: INTENT AND PURPOSE

Pursuant to Executive Order and Directive No. 25-02, these rules and regulations have been promulgated by the Commissioner of Health.

SECTION 2: DEFINITIONS

1. "BIOSOLID" shall mean solid or semi-solid organic materials resulting from the treatment of wastewater.
2. "LAND SPREADING" or "LAND APPLICATION" shall mean the direct application of biosolids to the soil surface or injection to the upper layer of the soil.

SECTION 3: SELLING OR PERFORMING LAND APPLICATION OF BIOSOLIDS

1. No person shall sell, offer for sale, apply, or offer to apply biosolids or compost derived from biosolids, from a wastewater treatment facility for the purposes of application to agricultural, residential or commercial lands located within Albany County.
2. This prohibition shall not apply to land application of organic materials that do not meet the definition of a biosolid including, but not limited to manure, yard wastes, and food processing wastes.
3. Stockpiling or storage of biosolids materials on agricultural, residential or commercial land shall not be allowed within Albany County.

SECTION 4: ENFORCEMENT HEARING AND PENALTIES

AUTHORITY: The Health Commissioner is authorized by Executive Order and Directive No. 25-02 to promulgate rules and regulations and take any and all other reasonable actions necessary to implement and enforce Executive Order and Directive No. 25-02. These rules and regulations shall be enforced by the Commissioner (or her designee).

Upon a member of the Department of Health observing a violation of the executive Order, the Commissioner of the Department of Health, or her designee, shall issue and Notice of Violation and a Cease and Desist Order.

This Notice of Violation and Cease and Desist Order shall be served upon the person or entity in violation via first class mail and to any known electronic mail of the violator.

The Notice of Violation shall provide for the opportunity for the person or entity that has been alleged to have violated the Executive Order (the "Offender") to appear before the a Hearing Officer designated by the Commissioner of the Department of Health on a specific date and time,

within thirty (30) days of the issuance of the Notice of Violation for a hearing on the merits of the issued Notice of Violation and Cease and Desist Order. Should the Offender fail to appear before the hearing officer at said time and date, the Offender shall have waived his/her rights and shall be subject to the Penalties identified below and the Cease and Desist Order shall remain in effect.

At the hearing on the Notice of Violation and Order, the Department of Health shall present all evidence in existence to support the Notice of Violation and Cease and Desist Order. The Offender shall be provided an opportunity to present all evidence and testimony in opposition to the Notice of Violation and Cease and Desist Order. The Hearing Officer shall issue a finding within thirty (30) days. Should the finding result in confirmation of the violation, the penalties articulated below shall be applicable.

PENALTIES: Any person or entity shall be subject to the following penalties for violation of Executive Order and Directive No. 25-02:

1. Civil Penalties:

- A. First Offense – Any person or entity who/that commits a first offense shall be issued a written warning from the Commissioner (or her designee), and the Cease and Desist Order shall remain in full force and effect.
- B. Second Offense – Any person or entity who/that commits a second offense shall be fined Five Hundred (\$500) dollars.
- C. Third and Subsequent Offenses – Any person or entity who/that commits a second offense shall be fined One Thousand (\$1000) dollars.
- D. Penalties shall be timely paid within thirty days of a written decision of the Hearing Officer, or the failure of the Offender to appear at the hearing. Failure to timely pay the fine shall result in additional interest costs of 9% annual percentage rate compounded monthly.

SECTION 5. APPEAL PROCEDURE

- A. Should the Offender seek to appeal the determination and findings of the Hearing Officer, the Offender must submit a written request to the Commissioner of Health and the County Attorney seeking an appeal within thirty (30) days from the date the Hearing Officer issued the findings. The written appeal must include a copy of the finding and the reasons for the appeal.
- B. Upon receipt of a timely appeal from the Offender, the matter shall be referred to the Appeals Officer to conduct a hearing. The Appeals Officer shall provide written notice to the Offender, the Department of Health and the County Attorney of the date and time of

the appeal hearing, which shall occur within thirty (30) days of the receipt of the appeal from the Offender.

- C. The appeal hearing shall be limited solely to (1) the issues raised by the Offender in the initial hearing; (2) the determinations and findings of the Hearing Officer; and (3) and facial or procedural constitutional challenges to the Notice and subsequent hearings.
- D. The Appeals Officer shall issue a written decision within thirty (30) days of the appeal.
- E. Should the Offender seek to appeal the determination of the Appeals Officer, the Offender shall have the right to seek a timely appeal pursuant to Article 78 of the New York Civil Practice Laws and Rules.

SECTION 6. ENFORCEMENT OF PENALIES

- A. The County Attorney may use any and all resources and relief available in equity and law to enforce the collection of penalties against the Offender, including, but not limited to the filing of a lien against a property or business.
- B. The Offender shall be liable for all costs associated in the collection of penalties that are not received timely, including, but not limited to litigation fees, filing fees, recording fees and attorney fees.