

**STATE OF NEW YORK  
DEPARTMENT OF AGRICULTURE AND MARKETS**

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**In the Matter of Compelling Compliance with  
the provisions of §305-a, subdivision 1 of  
the Agriculture and Markets Law by**

**The Town of Sandy Creek  
P.O. Box 52  
Sandy Creek, New York 13145**

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**DETERMINATION  
AND  
ORDER**

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**PRELIMINARY STATEMENT**

Upon receiving a complaint concerning the Town of Sandy Creek's placement, on February 21, 2001, of a moratorium on the spreading of liquid manure for 180 days, the Department of Agriculture and Markets investigated to determine whether the Town had enacted and administered its moratorium in a manner consistent with the provisions of §305-a, subd.1 of the Agriculture and Markets Law (AML).

Section 305-a, subd. 1 prohibits local governments from enacting or administering local laws that would unreasonably restrict farm operations located within an agricultural district unless it can be shown that the public health or safety is threatened.

The Department interviewed the farm owner, conducted a site visit, met twice with Town officials and received information from the Town. Based upon the relevant facts and information gathered, I hereby make the following findings and conclusions which support a Determination that the Town of Sandy Creek has violated AML §305-a, subd.1 and an Order compelling compliance with such law.

**FINDINGS**

1. On March 1, 2001 the Department received a request from the Oswego County Farm Bureau to review the Town of Sandy Creek's moratorium on the land spreading of liquid manure for compliance with AML §305-a. On March 8, 2001 the Department received a similar request from the Jefferson County Farm Bureau.
2. On March 27, 2001, Matt Brower, Agricultural Resource Specialist in the Department's Division of Agricultural Protection and Development Services, met

with Town officials to discuss the moratorium in relation to AML §305-a. Mr. Brower, who is a certified nutrient management planner, discussed the steps and information required to prepare a nutrient management plan that meets the Natural Resources Conservation Service (NRCS) 590 standard; nutrient management planning in relation to the Department of Environmental Conservation (DEC) General State Pollutant Discharge Elimination System (SPDES) Concentrated Animal Feeding Operation (CAFO) permit process, issued pursuant to the Environmental Conservation Law and the Clean Water Act; and the requirements to become a certified nutrient management planner. (The CAFO General Permit requires that an Agricultural Waste Management Plan be developed or reviewed by a certified nutrient management planner.)

3. The SPDES General Permit for CAFOs states that "There shall be no discharge of process waste water pollutants to the surface waters of the State except in accordance with Section 6.c. of this permit." Section 6.c. states that "Retention structures shall contain all process waste waters plus run-off from the 25 year, 24 hour storm event." The General Permit also states that the required Agricultural Waste Management Plan must be prepared in accordance with "NRCS Conservation Practice Standard No. 312-NY". Standard 312 states that "An inventory of the farm will be done to identify areas of potential pollutant sources or polluting sources." The standard also states that "The areas of concern identified by the inventory will be addressed with the specific watershed and the specific farm location in the watershed taken into account. This information may be obtained from the local county water quality committee or the local drinking water authority if the farm is within a public drinking water watershed or aquifer." Therefore, the certified nutrient management planner is required to identify both types of public drinking water sources. According to the standard, "Each farm will be evaluated for the specific risks to the watershed from biochemical oxygen demand (BOD), nutrients, odor, pathogens, and other potential pollutants that it could potentially release to the environment." Required components of a waste management system that meets the 312 standard are Nutrient Management (590) and Waste Utilization (633).

The Nutrient Management (590) standard requires the planner to determine the nitrate leaching potential and the surface runoff potential. This standard also requires the farmer to maintain records of all nutrient applications and rates. In addition, the Waste Utilization (633) standard states that "No food processing waste or manure is to be applied within a distance of 100 feet from wells, springs, ponds, lakes, and marine waters. Do not add manure to recharge areas for wells." In summary, the NRCS standards that must be met for the CAFO permit provide extensive protections for public and private water supplies.

4. On March 30, 2001, Kim Blot, the Director of the Division of Agricultural Protection and Development Services, sent a letter to Town of Sandy Creek Supervisor Margaret Kastler, informing her that the moratorium appears to unreasonably

restrict farm operations within an agricultural district. The prohibition of land spreading of liquid manure significantly limits a farm's nutrient management options and could result in unavoidable violations of a farm operator's CAFO permit issued by DEC.

5. On April 9, 2001 the Department received a request from Timothy and Renee Alford concerning the impact of the Town's moratorium on their farm operation. The Alfords own approximately 53 acres and rent an additional 250 acres in the Town of Sandy Creek for the production of corn and hay. They also are interested in purchasing another 125 acres of farmland in the Town. The Alfords indicate that the moratorium may have a major impact on their ability to function as an effective and efficient farm operation. They state that to be in compliance with their DEC CAFO General Permit, their CAFO plan requires the farm operation to utilize more land for nutrient management purposes and, therefore, they need to use their rented and owned parcels within the Town of Sandy Creek to comply with their CAFO permit. The Alfords further indicate that the moratorium prevents them from using their manure for crop production, as well as selling excess manure to a nursery/tree farm for use within the Town.
6. On May 3, 2001 Mr. Blot sent a letter to Supervisor Kastler informing her of the impacts to the Alford Farm and advising her that the moratorium appeared to unreasonably restrict farm operations, including the Alford Farm, in Oswego County Agricultural District Number 3, in possible violation of AML §305-a, subd.1. Mr. Blot requested the Town's views on the issues raised, including whether it believes that the landspreading of liquid manure on farms within an agricultural district presents a threat to the public health or safety.
7. On May 23, 2001, the Department received a letter from Supervisor Kastler indicating that the land in question is located directly over and/or near the recharge area for the Town of Sandy Creek's water supply. Supervisor Kastler also submitted with her letter a statement concerning the sensitivity of the aquifers in the Town. The statement indicates that manure is a potential source of pathogens and that liquid manure can flow naturally and thus poses a particular threat to streams that provide eventual aquifer recharge. While the Town discusses the potential for manure to contaminate the water supply and states that liquid manure poses a threat to streams, it does not include any evidence or other information to support its position that a public health or safety threat exists.
8. On June 27, 2001, Mr. Brower and Dr. Robert Somers, Chief of the Agricultural Protection Unit, met with Town officials to discuss the prohibition regarding liquid manure and provide the Town with suggestions for a local law that would address the Town's concerns and not violate AML §305-a. Mr. Brower and Dr. Somers explained that the Town could have a local law that mirrors DEC's law for CAFO permits. The local law could require all CAFO's to submit copies of their permit application and permit to the locality; make permit information available for

inspection; and to keep the locality updated on changes in the permit status. To the extent permitted by State and federal law, a local law could adopt the State standard and include an enforcement mechanism including on site inspection and review of the plan as the result of a complaint.

9. On July 6, 2001, Mr. Blot wrote Supervisor Kastler and explained that the Department agrees with the Town that the area in question is hydrological sensitive and that manure is a source of pathogens. Regarding the Town's position that liquid manure poses a particular threat to streams, Mr. Blot stated that whether or not manure is discharged to streams depends on circumstances and management. The intent of the CAFO General Permit and required nutrient management plan is to protect water quality. The timing, rate and method of manure application for each field is identified in the plan and is based on a number of specific site conditions including, but not limited to, soil type, soil drainage, runoff potential, and crop being grown. Mr. Blot stated that the Town has not demonstrated that the CAFO General Permit and the NRCS "Waste Management System No. 312-NY" standard are not adequate to protect the water supply. He also indicated that the Town has not demonstrated that the land application of liquid manure cannot be done without contaminating the water supply.
  
10. Mr. Blot also informed Supervisor Kastler that the Department has concluded that the moratorium, which prohibits the spreading of liquid manure, unreasonably restricts farm operations, including the Alford Farm, within Oswego County Agricultural District Number 3, in violation of AML §305-a, subd.1. The local law prevents the effective and efficient management of farm wastes; interferes with farms' implementation of their DEC CAFO Permits; and prevents farms from using their manure for crop production, thereby restricting production options and adversely affecting farm management. Mr. Blot also stated that the Town had not demonstrated that the public health or safety is threatened by the spreading of liquid manure for agricultural production purposes on farm operations within an agricultural district. Mr. Blot requested that the Town allow farm operations within a county adopted, State certified agricultural district to spread liquid manure and that corrective action be taken within 30 days.
  
11. The Department has not received a reply from the Town of Sandy Creek to Mr. Blot's July 6, 2001 letter. However, on August 20, 2001, the Department received a letter from Supervisor Kastler enclosing a copy of a Town of Sandy Creek resolution, dated August 8, 2001, which extended the moratorium on the spreading of liquid manure for another six months.

## CONCLUSION

Based upon the above findings, I conclude the following:

1. The Town of Sandy Creek's enactment and administration of the moratorium on the spreading of liquid manure unreasonably restricts farm operations, including the Alford Farm operation, in Oswego County Agricultural District #3 insofar as it prohibits land application of liquid manure.
2. The Town has expressed general concerns about the potential impacts of land application of liquid manure on its water supply and on the public health or safety. However, the Town has not demonstrated that the public health or safety is threatened by the spreading of liquid manure for agricultural production purposes on farm operations within an agricultural district. Further, the Town did not provide the Department with any documentation or other evidence which substantiates its position that the DEC CAFO permit requirements and NRCS standards and specifications are not adequate to protect public health or safety. The DEC CAFO Permit requirements and NRCS standards and specifications address these concerns as they require the farmer to examine water supply issues and the potential for pollution. Further, CAFO Agricultural Waste Management Plans include extensive protections for public and private water supplies.
3. If the Town wishes to regulate the land application of liquid manure, a requirement that a DEC regulated and permitted activity also be subject to a locally administered permit would not be unreasonable if the local permit requirements did not exceed the State standard, applications were timely considered and issued without substantial fees or costs. A local law which required CAFO farms to submit copies of their permit application and permit to the locality; make permit information available for inspection; and to keep the locality updated on changes in the permit status, would be reasonable. Also, to the extent permitted by State and federal law, a local law could adopt the State standard and include an enforcement mechanism.

## DETERMINATION AND ORDER

Now, therefore, in consideration of the above-stated findings and conclusions, it is hereby determined that the Town of Sandy Creek has violated §305-a, subd. 1 of the AML, and it is hereby

ORDERED, pursuant to the provisions of §36 of the AML, that the Town of Sandy Creek comply with the provisions of AML §305-a, subd. 1 by allowing the land application of liquid manure on farm operations located within a State certified agricultural district.

This Order shall take effect immediately upon service of a certified copy thereof on the Town of Sandy Creek, by mail to Supervisor Margaret Kastler, at P.O. Box 52 Sandy Creek, New York 13145.



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Nathan L. Rudgers  
Commissioner of  
Agriculture and Markets

Dated and Sealed this 12th  
day of September 2001  
at Colonie, New York

