

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

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<b>In the Matter of Compelling Compliance with the provisions of §305-a, subdivision 1 of the Agriculture and Markets Law by</b>	:	
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	:	<b>DETERMINATION</b>
	:	<b>AND</b>
<b>The Village of Lacona</b>	:	<b>ORDER</b>
<b>11 Church Street</b>	:	
<b>Lacona, New York 13083</b>	:	
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**PRELIMINARY STATEMENT**

Upon receiving a complaint concerning the enactment and administration of the Village of Lacona's Local Law #4 of 2000, in Oswego County Agricultural District #11, the Department of Agriculture and Markets investigated to determine whether the Village enacted and administered Local Law #4 of 2000 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 Village officials and received information from the Village. Based upon the relevant facts and information gathered, I hereby make the following findings and conclusions which support a Determination that the Village of Lacona has violated AML §305-a, subd.1 and an Order compelling compliance with such law.

**FINDINGS**

1. On March 9, 2001 the Department received a request from Vivian Robins concerning the Village of Lacona's action with regard to Local Law#4 of 2000. Ms. Robins explained that she owns a parcel of land, approximately 49 acres in size, which is located in the Village of Lacona. Ms. Robins indicated that the Village enacted Local Law #4, amending Local Law #3 of 1996, to prohibit the land application of liquid manure. Ms. Robins indicated that a large dairy operation is interested in purchasing her farm but is reluctant to do so because of the local law.

2. On March 27, 2001, Matt Brower, Agricultural Resource Specialist in the Department's Division of Agricultural Protection and Development Services, met with Village officials to discuss the local laws 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, 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 May 10, 2001, Kim Blot, the Director of the Division of Agricultural Protection and Development Services, sent a letter to Village of Lacona Mayor Peggy Manchester, informing the Village that the Department had received a request from Vivian Robins to conduct a review of the Village of Lacona's Local Law #4 of 2000 for compliance with AML §305-a. Mr. Blot informed Mayor Manchester that 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 DEC CAFO permit. Mr. Blot also advised that Local Law # 4 of 2000 appeared to unreasonably restrict farm operations, including the Robbins Farm, within Oswego County Agricultural District Number 11, in possible violation of AML §305-a, and requested the Village's views on the issues raised, including whether it believes that the subject farm practices present a threat to the public health or safety.
5. On June 1 2001, the Sandy Creek Lacona Joint Waterworks wrote Mr. Blot and advised that the area in question (the "green area" designated as "Osg"- Outwash Sand and Gravel on a map entitled "Surficial geology of the Lacona-Sandy Creek area") is hydrologically sensitive because of a high leaching potential and a high runoff potential and that best management practices would not be adequate to protect the village's water supply. The Sandy Creek Lacona Joint Waterworks also indicated that the CAFO permit does not address public health and safety issues related to water pollution in relation to the Sandy Creek/Lacona water supply. Without operator accountability and the ability to review CAFO permits, the Village stated that its water supply may be contaminated by the application of liquid manure in the "green area."
6. The Sandy Creek Lacona Joint Waterworks provided Mr. Blot with a letter dated May 29, 2001 from Mr. Claude Cormier, Vice President of HydroSource Associates, Inc., indicating that manure application could result in potential water contamination from e-coli, fecal coliform, giardia and cryptosporidium. However, Mr. Cormier did not indicate that water contamination is unavoidable as a result of liquid manure application.
7. On June 27, 2001, Mr. Brower and Dr. Robert Somers, Chief of the Agricultural Protection Unit, met with Village officials to discuss the prohibition regarding liquid manure and provide the Village with suggestions for a local law that would address the Village's concerns and not violate AML §305-a. Mr. Brower and Dr. Somers explained that the Village could have a local law that mirrors DEC's requirements 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.

8. On July 6, 2001 Mr. Blot wrote Mayor Manchester and explained the Department's position that the NRCS planning standards and the CAFO permitting process address the Village's concerns with potential water contamination as they include a review of site specific conditions such as soil type, as well as leaching and runoff potential. Mr. Blot explained that a nutrient management plan must include best management practices such as timing and rate of manure application and erosion control practices to address water quality issues. Mr. Blot expressed the Department's conclusion that the Village has not demonstrated that the NRCS standards and the CAFO permitting process are not adequate.
9. Mr. Blot also informed Mayor Manchester that the Department has concluded that Local Law No. 4 of 2000, which prohibits the spreading of liquid manure, unreasonably restricts farm operations, including the Robbins Farm, within Oswego County Agricultural District Number 11, 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 informed Mayor Manchester of the Department's conclusion that the Village 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. Mr. Blot requested that the Village allow farm operations within a county adopted, State certified agricultural district to spread liquid manure and that corrective action be taken within 30 days.
10. On July 30, 2001, a letter, dated July 25, 2001, was received from the Village's attorney, Mark Gebo. Mr. Gebo stated that the Village of Lacona does not believe that it should be required to rescind its local law regarding limitations on the spreading of liquid manure. He noted that the Village has a water source which consists of shallow wells and that the Village has received reports from its hydrogeologist and engineer concerning the impact of liquid manure spreading upon this source and the high potential for contamination of the only water source for the Village. Mr. Gebo requested that the Department advise what the next step is so that the Village may take appropriate action.
11. On August 13, 2001, Department Associate Attorney spoke with Mr. Gebo concerning his July 25, 2001 letter. Mr. Rusnica explained to Mr. Gebo that since the Department and the Village are unable to resolve the issue concerning landspreading of liquid manure, the issuance of an Order under AML §36 would be considered.



## CONCLUSION

Based upon the above findings, I conclude the following:

1. The Village of Lacona's enactment and administration of Local Law #3 of 1996, as amended by Local Law#4 of 2000, unreasonably restricts farm operations, including the Robbins farm operation, in Oswego County Agricultural District #11 insofar as it prohibits land application of liquid manure.
2. The Village 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 Village 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 Village 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 the Village's 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 Village 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 Village of Lacona 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 Village of Lacona 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 Village of Lacona, by mail to Mayor Peggy Manchester, at 11 Church Street Lacona, New York 13083.

*Nathan L. Rudgers*

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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

