

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

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

**Town of Bennington
905 Old Alleghany Road
Bennington, New York 14011**

**DETERMINATION
AND ORDER**

PRELIMINARY STATEMENT

By letter dated December 3, 2014, Stanley Travis, owner of TRAVCO Farms, requested that the Department of Agriculture and Markets ("Department") review the Town of Bennington's Local Law No. 1 of 2014 for compliance with Agriculture and Markets Law (AML) §305-a (1) with respect to TRAVCO Farms' proposed land application of "*Equate*" on land used for crop production.

The Department staff visited the farm; obtained information from Stanley Travis; reviewed correspondence together with accompanying materials submitted by David M. DiMatteo, Esq., legal counsel for the Town of Bennington; and considered the Town of Bennington's Zoning Law.

Based upon the facts ascertained by the Department during the course of its investigation and upon its analysis set forth below, the Department has determined that the administration of the Town of Bennington's Local Laws No. 1-1995 and No. 1-2014 unreasonably restricts the TRAVCO Farms farm operation and that the Town did not demonstrate that the public health or safety is threatened by the operation's land application of *Equate* on land used for crop production.

BACKGROUND

TRAVCO Farms grows field crops and consists of 18 acres owned land and approximately 350 acres rented land, located within Erie and Wyoming Counties. The farm intends to apply biosolids to approximately 128 acres of land located in the Town of Bennington, within Wyoming County Agricultural District No. 4, for corn and soybean production.

On December 29, 2014 the Department sent a letter to Town of Bennington Supervisor Ellen Grant informing her that the Department had received a request from Stanley Travis, TRAVCO Farms, for a review of the Town of Bennington's Local Law No. 2014 for compliance with AML §305-a (1).

The Town of Bennington's Local Law No. 1-2014 amends Local Law No. 1 of 1995 to include Disposal of Sludge, Sewage Sludge and Septage and provides, in pertinent part, no person shall dispose of any sludge, sewage sludge or septage which were generated or collected from sources within the Town of Bennington unless such person possesses a DEC permit to dispose of such waste and such contents are disposed of in compliance with all applicable statutes, ordinances, local laws, codes, permit processes, rules, and regulations, of the United States of America, State of New York, County of Wyoming, and Town of Bennington. The local

law also provides that the Town of Bennington may at any time and from time to time prohibit the disposal of such sludge, sewage sludge or septage or limit the amount of sludge, sewage sludge, or septage which may be disposed of at such approved site. The local law does not allow any sludge, sewage sludge or septage which were generated or collected from sources located outside the Town of Bennington to be disposed of within the Town.

Matthew Brower, Department Environmental Analyst, visited TRAVCO Farm's operation on February 18, 2015. Mr. Brower observed the farm, the proposed land application sites and the surrounding area. By letter dated February 25, 2015, David M. DiMatteo, Esq., legal counsel for the Town of Bennington, forwarded materials produced by Dr. Murray McBride. Mr. DiMatteo referencing those materials argued that applying sewage sludge to farm land poses an unacceptable risk to the public health and safety and the continued viability of farm land.

On May 28, 2015, the Department sent Mr. DiMatteo a letter which determined that the farm meets the Department's standard for AML §305-a protection. The Department addressed Mr. DiMatteo's concerns and advised that the Town Zoning Code and its administration by the Town unreasonably restricts the farm operation in possible violation of AML §305-a (1). The Department invited the Town to provide any documentation and other evidence that the public health or safety is threatened by the farm operation's land application of biosolids. Neither the Town nor Mr. DiMatteo submitted any additional information or documentation.

STANDARD OF REVIEW

AML §305-a (1)(a) mandates that when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, local governments do so in a manner as may realize the policy and goals of AML Article 25-AA. The statute further provides that local governments "shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened."

FINDINGS

1. TRAVCO Farms grows field crops (corn, wheat, soybeans and peas) on 18 acres of owned and approximately 350 acres rented land, located within Erie and Wyoming Counties. TRAVCO Farms is a "farm operation" for purposes of AML §305-a (1).
2. The Town of Bennington's Local Law No. 1-2014 and Local Law No. 1 of 1995, as administered by the Town, unreasonably restrict the farm operation in violation of AML §305-a (1) for the following reasons:
 - a.) The Department considers the standards and permitting requirements under the DEC's regulations in evaluating whether restrictions on agricultural land use and nutrient management practices are unreasonably restrictive in violation of AML§305-a.
 - b.) DEC Part 360-4 regulations minimize the potential for adverse impacts from land application of nutrients and the Town has not demonstrated that these provisions are inadequate.
 - c.) DEC Part 360-4 regulations minimize risks of groundwater contamination and DEC conducts site specific reviews.

- d.) DEC Part 360-4 regulations include protective measures to minimize public exposure to pathogens.
 - e.) The EPA reviews sewage sludge regulations every two years and has not identified additional toxic pollutants in biosolids for regulation under the Clean Water Act. As such, the DEC does not believe that additional parameters or an increased frequency of testing is needed.
 - f.) EPA continually researches and assesses biosolid sources and has concluded that the risk potential associated with "unregulated contaminants" is low.
 - g.) EPA and DEC concluded that other metals are not found in sufficient concentrations to pose a risk to human health or the environment.
 - h.) TRAVCO Farms proposes to inject biosolids and will not apply by disking.
 - i.) There will be no animals grazing on the land; TRAVCO proposes to inject biosolids for corn and soybean production.
3. Although given the opportunity to do so, the Town of Bennington did not provide the Department with any correspondence, documentation or other information showing any public health or safety threat relating to the land application of biosolids by the farm operation.
4. A list of Relevant Documents Considered by the Department is attached to this Determination and Order.

DETERMINATION AND ORDER

Now, therefore, in consideration of the above-stated findings, it is hereby determined that the Town of Bennington violated AML §305-a (1), and it is hereby

ORDERED, pursuant to the provisions of AML §36 that the Town of Bennington comply with the provisions of AML §305-a (1) by permitting TRAVCO Farms to land apply *Equate* biosolids on land which has received DEC permit approval for land application of biosolids.

This Order shall take effect immediately upon service of a certified copy thereof on the Town of Bennington Supervisor, by mail to Hon. Ellen Grant, Supervisor, Town of Bennington, 905 Old Alleghany Road, Attica, NY, 14011. Further, the Town shall notify the Department within ten business days whether the Order is accepted and will be obeyed.



RICHARD A. BALL, Commissioner of Agriculture
and Markets of the State of New York

Dated and Sealed this 9th
Day of June, 2016 at
Colonie, New York



Town of Bennington Order

List of Relevant Documents Considered by the Department

1. December 3, 2014 letter from Stanley Travis, TRAVCO Farms, to Bob Somers (1 page);
2. New York State Department of Agriculture and Markets Law (AML) Section 305-a Review Application submitted by Stanley Travis, dated December 2, 2014 (2 pages);
3. November 18, 2014 letter from David M. DiMatteo, Attorney Town of Bennington, to Nathan Carr, Quasar Energy Group, (1 Page);
4. Town of Bennington Local Law No. 1 of 1995 (5 pages);
5. Town of Bennington Local Law No. 1 of 2014 (6 pages);
6. December 29, 2014 letter from Michael Latham, Department Director of the Division of Land and Water Resources, to David M. DiMatteo (2 pages);
7. February 20, 2015 e-mail from Bruce Bailey, Quasar Energy Group to Matthew Brower, Department Associate Environmental Analyst (1 page);
8. February 25, 2015 letter from David M. DiMatteo to Michael Latham, (3 pages);
9. Environmental Protection Agency's 2011 Biosolids Biennial Review (2 pages);
10. Review of 'emerging' organic contaminants in biosolids and assessment of international research priorities for the agricultural use of biosolids, Bradley O. Clarke and Stephen R. Smith (22 pages);
11. Risk Assessment of the Use of Biosolids Containing Emerging Organic Contaminants in Agriculture, Paolo Roccaro and Federico G.A. Vagliasindi (6 pages);
12. May 19, 2015 e-mail from Sally Rowland, NYS Department of Environmental Conservation Environmental Engineer, to Matthew Brower (1 page);
13. May 28, 2015 letter from Michael Latham to David M. DiMatteo (6 pages);
14. NYS DEC Part 360-4 regulations (27 pages);
15. August 26, 2015 letter from Michael Latham to David M. DiMatteo (2 pages);
16. Case for Caution Revisited: Health and Environmental Impacts of Application of Sewage Sludge to Agricultural Land, Ellen Z. Harrison and Murray McBride (28 pages);
17. Land application of sewage sludges: an appraisal of the US regulations, Ellen Z. Harrison, Murray B. McBride and David R. Bouldin (32 pages);
18. Environmental Protection Agency Report No. 14-P-0363 More Action Is Needed to Protect Water Resources From Unmonitored Hazardous Chemicals (26 pages);
19. Minutes from Town of Bennington Open Meeting on February 4, 2015 (81 pages);
20. Natural Resources Conservation Services Web Soil Survey for Wyoming County (1 page);
21. Department's Guidelines entitled Review of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge, Animal Waste Storage/Management), dated 4-2-15 (4 pages).
22. Responsiveness Summary Marilla and Bennington, dated June 29, 2015 (6 pages).
23. DEC Fact Sheet Quasar Anaerobic Digestion Facilities – Update, dated December 2013 (5 pages).
24. DEC letter from Sally Rowland to Michael Latham dated March 11, 2016 (1 page).
25. EPA Technical Support Documents, (Volume I and II).
26. NYSDOH letter from Commissioner Zucker, dated June 25, 2015 (2 pages).
27. NYSDEC letter from Commissioner Martens, dated May 29, 2014 (2 pages).