Maryland Department of the Environment

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# COMPLIANCE GUIDE FOR REGULATIONS

## On-Farm Composting Facilities-Permit Exemptions

This compliance guide sets forth how on-farm composting of off-site feedstocks is allowable without the requirement of obtaining a composting facility permit from the Maryland MDE of the Environment (MDE) in accordance with the Code of Maryland Regulations (COMAR) 26.04.11. This document is for informational purposes and **should not** be construed as legal advice. Establishments that are considering the permit exemption should consult the law (Environment Article, §§9-1701 and 9-1725, Annotated Code of Maryland), and the regulations, or consult legal counsel.

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## Summary of the Regulations

In 2023, Maryland passed a law (On-Farm Composting Facilities - Permit Exemption, House Bill 253) that requires MDE to revise current regulations that exempt on-farm composting that receive off-site feedstocks from the requirement to obtain a composting permit if the on-farm composting operation uses 10,000 square feet of area or less for active food scrap composting; composts only certain materials, as defined; records the amount and source of off-site type 2 source-separated organics being composted, and the date and time the off-site materials arrived on the farm, retains the records for 5 years, provides records on request, and meets any other condition for a permit exemption as specified.

To implement this law, on _____, the Secretary of the Environment adopted the amended regulations under COMAR 26.04.11 to meet the requirements of HB 253. The amended regulations have an **effective date of _____.**

## Definitions of Key Terms

The following key terms are defined in regulations and are used throughout this compliance guide:

**Active Food Scrap Composting** means source-separated organic material brought onto the farm and commingled material in the process of being composted. Active food scrap composting does not

include any final soil amendment produced.

**Animal Mortality** means an animal carcass that is generated:

a. At a farm during the normal course of operations;
b. At another location and managed by State or local government as part of roadway or other maintenance activities; or
c. At a farm or other location and managed under an Emergency Exemption under COMAR 26.04.11.06

**Composting** means the controlled aerobic biological decomposition of organic waste material.

**Compost** means the product of composting in accordance with the standards established by the Secretary of Agriculture Article, §6-221, Annotated Code of Maryland.

**Contaminated Feedstock** means feedstock that contains more than 2% by dry weight of: man-made inert material, or film plastic.

**Farm** means the site of a business or activity operated for the primary purpose of tilling, cropping, keeping, pasturing, or producing an agriculture product other than compost, including livestock, poultry, plants, trees, sod, food, feed, or fiber, by in-ground, out-of-ground, container, or other culture. "Farm" does not include the site of a business or activity operated for the primary purpose of producing compost.

**Food Residuals** means material derived from the processing or discarding of food, including pre- and post-consumer vegetables, fruits, grains, dairy products, and meats. Food residuals do not include animal mortalities, compostable products, or wastewater that contains material derived from the processing or discarding of food.

**In Support of Composting** means used to conduct any phase of the composting process, including but not limited to feedstock receiving, feedstock preparation, active composting, curing, compost storage, composting equipment storage or maintenance, or storage of any solid waste or non-compostable materials. In support of composting does not include a) Areas used to store mobile, general purpose farm equipment such as tractors and backhoes; b) Areas associated with the housing or movement of animals where manure may accumulate prior to composting; or c) Roads used for transport to the composting facility or between separate composting areas on a site.

**Liquid Feedstock** means grease, oil, or some other liquid. Liquid Feedstock does not include food scraps that contain some liquid.

**Persons** means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation or other person.

**Off-Site Type 2 Feedstock** means Type 2 feedstock that is generated off-site. Off-Site Type 2 Feedstock does not include animal mortalities or industrial animal processing residuals.

**On-Site Type 2 Feedstock** means Type 2 feedstock that is generated on-site. On-Site Type 2 Feedstock includes animal mortalities.

**Type 1 Feedstock** means: 1) yard waste. Yard waste means organic plant waste derived from gardening, landscaping, and tree trimming activities. Yard waste includes leaves, garden waste, lawn cuttings, weeds, and pruning; and 2) Other materials determined by MDE to pose a low level of risk from hazardous substances, human pathogens, and physical contaminates.

**Type 2 Feedstock** means: 1) Source-separated organics from residential curbside or drop-off programs and non-residential sources, including but not limited to pre-consumer and post-consumer food scraps and non-recyclable paper; 2) MDE-approved animal manure and bedding, with MDE approval based on factors such as moisture content and pathogen risk; 3) MDE-approved industrially produced food processing materials, including but not limited to industrial poultry, cattle, swine, and seafood residuals; 4) Animal mortalities; 5) Manufactured organic materials such as waxed-corrugated cardboard, non-coated paper, and compostable products; and 6) Other materials that MDE determines pose a low level of risk from hazardous substances and a higher level of risk from physical contaminants and human pathogens, compared to type 1 feedstock.

## Persons Subject to Regulations

### Who is subject to the regulations?

A person is subject to the regulations if the person is performing composting on-site at a farm and meets certain feedstock or size allowances. MDE describes compliance requirements as defined by the composting area size and feedstock allowance in options 1, 2, and 3 below along with additional requirements associated with the exception from a compost facility permit.

### Are there any General Restrictions and Specifically Prohibited Acts?

Regardless of whether a person is required to obtain a composting facility permit under COMAR 26.04.11, a person shall not engage in composting in a manner which will likely:

- Create a nuisance;
- Be conducive to insect or rodent infestation or the harborage of animals;
- Cause nuisance odors or other air pollution in violation of COMAR 26.11.06 or involve in construction of a source of air pollution subject to a permit to construct or operation of a source of air pollution subject to a permit to operate unless permitted under COMAR 26.11.02;
- Cause a discharge of pollutants derived from organic materials or solid waste to waters of the State unless otherwise permitted by MDE;
- Harm the environment; or
- Create other hazards to the public health, safety, or comfort as may be determined by MDE.

## On-Farm Composting Facilities, Permit Exemption

### Composting Permit Exemption Mandate

#### Applicability Criteria

The regulations authorize a person meeting the following criteria of an exemption from the requirement to obtain a composting permit from MDE:

- A person that uses 10,000 square feet of area or less and accepts certain feedstocks from outside of the farm; or
- A person that uses no more than 40,000 square feet of area and accepts Type 1 feedstock and, manure and animal bedding from outside the farm; or
- A person that uses unlimited area on the farm, no outside feedstock is allowed, and uses all the compost on the farm.

### Compliance Requirements

#### Option 1 – Uses 10,000 square feet of area or less on farm and accepts certain outside feedstocks.

To maintain the permit exemption, an operator shall perform the following in addition to the aforementioned general restrictions and specifically prohibited acts:

- Provide Written Notice to MDE
  The operator must provide a written, signed notice (attached) electronically to MDE's Land and Materials Administration, Waste Diversion Division, prior to composting at the described limitations identified within the regulations (e.g., overall size and feedstocks). The notice shall identify:
  a. How operator will maintain compliance with the active composting area;

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b. Types of feedstocks used for operations;
c. Constructions and operations requirements provided below;
d. Additional regulations defined below; and
e. Disclose the start date of the composting facility at the expanded area allowance.

- Composting Area and Feedstocks
  Operators are limited to 10,000 square feet of area, or less for active food scrap composting and feedstocks are limited to one or mor of the following:
  a. Organics materials generated on-site or at another farm controlled by the same owner or lessee of the farm;
  b. Animal manure and bedding generated, on-site;
  c. Type 1 feedstock regardless of the place of generation;
  d. On-site Type 2 feedstock; or
  e. Off-site Type 2 feedstock that is: 1) Not contaminated or liquid; 2) Immediately mixed with carbonaceous Type 1 feedstock; and 3) Incorporated into active food scrap composting within 24 hours after arriving on-site.

- Additional Regulations, As Applicable
  As defined in the law, operators may be subject to additional laws and regulations, and it is the responsibility of the operator to ensure their site meets those requirements. If the operator identifies any of the following regulations is not applicable to their operation, documentation shall be provided identifying the "no applicability" for the operation to the appropriate agency (See Table 2):
  a. A nutrient management plan authorized by the Maryland Department of Agriculture (MDA) under COMAR 15.20.07;
  b. A composting facility operator certification authorized by MDA under COMAR 15.18.04.04;
  c. A product registration authorized by MDA under COMAR 15.18.04.02;
  d. Erosion and Sediment Control Plan authorized by MDE under COMAR 26.17.01;
  e. Either: 1) A soil conservation and water quality plan that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures to ensure that the requirements of COMAR 26.04.11.04B are met; or 2) An agriculture waste management system plan that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures to ensure that the requirements of COMAR 26.04.11.04B are met.
  f. Industrial Discharge Permit authorized by MDE under COMAR 26.08.04.09B;
  g. Groundwater Discharge permit authorized by MDE under COMAR 26.08.04.09
  h. Construction General Permit authorized by MDE under COMAR 26.08.04.09A

- Recordkeeping and Reporting
  Operators shall maintain the following information on-site for 5 years from the date of notification to MDE of the operations under this exemption. Annually, this information shall be reported on the attached form to MDE electronically. The annual report must be submitted to MDE by no later than January 31st of each year for the preceding year data:
  a. Amount and source of off-site Type 2 source separated organics being composted; and
  b. Date and time the off-site Type 2 source separated organics arrive on the farm.

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**Option 2 – Uses no more than 40,000 square feet of area on farm and accepts Type 1 feedstock and/or accepts manure and animal bedding from outside of the farm.**

To maintain the permit exemption, an operator shall perform the following in addition to the aforementioned general restrictions and specifically prohibited acts:

- Composting Area and the Feedstocks
  Operators are limited to 40,000 square feet of area, or less in support of composting operation, and feedstocks are limited to one or more of the following:
  a. Organics materials generated on-site or at another farm controlled by the same operator;
  b. Animal manure and bedding, regardless of the place of generation; and
  c. Type 1 feedstock regardless of the place of generation.

- Additional Regulations, As Applicable
  As defined in the law, operators may be subject to additional laws and regulations, and it is the responsibility of the operator to ensure their site meets those requirements. If the operator identifies any of the following regulations is not applicable to their operation, documentation shall be provided identifying the "no applicability" for the operation to the appropriate agency:
  a. A nutrient management plan authorized by the Maryland Department of Agriculture (MDA) under COMAR 15.20.07;
  b. Either: 1) A soil conservation and water quality plan that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures to ensure that the requirements of COMAR 26.04.11.04B are met; or 2) An agriculture waste management system plan that describes the composting facility components and design, schedule for storage and utilization of the materials, system maintenance, and operational procedures to ensure that the requirements of COMAR 26.04.11.04B are met.

**Option 3 – Uses unlimited area on the farm, no outside feedstocks accepted.**

To maintain the permit exemption, an operator shall perform the following in addition to the aforementioned general restrictions and specifically prohibited acts:

- Composting Area and the Feedstocks
  Operators are authorized to perform composting without restriction of area on the farm without the mandate of a composting permit as long as:
  a. Feedstock is only organic materials generated on-site or at another farm controlled by the same operator; and
  b. Compost generated is limited to personal, household, family, or agriculture purposes at the farm site where generated or controlled by the same operator.

## Compliance with Local Requirements

MDE recognizes that some counties or municipalities have local requirements in which certain establishments must report their solid waste and/or recycling activities to the local governments. A person subject to MDE and local reporting requirements will need to comply with both, and ensure they are satisfying the most stringent reporting requirements and submission deadlines of MDE the local government. If a person has confusions regarding how to comply with a MDE and local reporting requirement, they may contact MDE's Waste Diversion Division at 410-537-3314 or the county recycling coordinator. A list of county recycling coordinators is available here.

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## Frequently Asked Questions

### Scope and Application of the On-Site Composting Exemption

1. If I lease parts of my farm for compost operations, am I required to obtain a permit or am I exempt?
   **The person who operates the on-farm composting facility will be subjected to the permitting requirements or the exemptions. Subsequently, the lessee will be responsible for complying with composting regulations. For the permitting requirements, contact MDE's Waste Diversion Division at 410-537-3314 or LMA.WDD@maryland.gov.**

2. Surrounding farms bring their animal manure to my property and I compost it with food scraps from a private hauler, which option can I use to exempt from the permit?
   **To be exempted, a person can operate a composting facility within 10,000 square feet of area and comply with all applicable regulatory requirements.**

3. The private hauler that brought food scraps to my property had a load with a lot of compostable bags and biodegradable trays, is this considered contamination?
   **Not necessarily. See the definition of contaminated feedstock on page 2 of this guidance and compostable products in COMAR 26.04.11.02. §9–2101 of the Environment Article has definitions for applicable biodegradable standards.**

4. The butcher up the road wants to compost their own scraps, are they exempt?
   **The butcher has to be located on a farm to be exempted under the on-farm composting exemptions. If the butcher is located on a commercial location, the butcher can still get the permitting exemptions if its composting operation is within 5000 square feet of area.**

5. Does the 10,000 square feet area include compost that is a final soil amendment?
   **No. The final soil amendment product compost storage is not included in the requirement of 10,000 square feet area. However solid waste regulations prevent the storage of finished soil amendments for more than 1 year. Otherwise, it becomes solid waste and not a product.**

6. Are federally owned and operated farms subject to the permit or may they also be exempted?
   **The composting regulations (COMAR 26.04.11) apply to farms regardless of farm ownership.**

7. How do I measure the 10,000 square feet area?
   **Square feet are a unit for Area (A) that measures only Length (L) x Width (W). A=L x W. Hence 10,000 square feet = 100 feet x 100 feet or 10,000 square feet = 200 feet x 50 feet. This includes feedstock staging areas and where composting is occuring.**

8. Are seasonal businesses able to take advantage of the exemption?
   **Yes, they can establish a small-scale composting operation that would meet the regulatory requirements for permitting exemptions or send their organics to the closest permitted or exempted composting facility.**

9. What does "carbonaceous Type 1" feedstock mean?
   **Carbonaceous Type 1 feedstock refers to yard waste materials that consist of, contain, relate to, or yield carbon.**

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### Technical Assistance

1. What type of outreach or technical assistance will MDE provide regarding on-farm composting applications?
   **MDE can discuss the permitting exemptions requirements in person or by telephone to help the applicant to complete the notification to MDE. MDE can provide sample documents to further assist the applicant to obtain the exemption.**

2. How will this exemption affect my Nutrient Management Plan?
   **There will be no impact on the Nutrient Management Plan (NMP). A person must have an active NMP to apply for the exemption.**

3. Am I required to obtain a compost facility operator certification?
   **For details, contact Mr. Philip Davidson, MDA's Product Registration Supervisor" at 410-841-2721 or by email at Philip.davidson@maryland.gov.**

4. Is the lease required to obtain a compost facility operator certification.
   **For details, contact Mr. Philip Davidson, MDA's Product Registration Supervisor" at 410-841-2721 or by email at Philip.davidson@maryland.gov.**

5. May I sell the finished compost under this exemption?
   **Yes. The product will still need to be registered with MDA. For details, contact Mr. Philip Davidson, MDA's Product Registration Supervisor" at 410-841-2721 or by email at Philip.davidson@maryland.gov.**

6. May I give away (donate/free) the finished compost under this exemption?
   **Yes. The product will still need to be registered with MDA. For details, contact Mr. Philip Davidson, MDA's Product Registration Supervisor" at 410-841-2721 or by email at Philip.davidson@maryland.gov.**

7. I am not an industrial facility, I am a farm. Will I need other environmental permits?
   **Possibly. Please refer to table 2 for contacts of the potentially applicable permitting programs.**

## Enforcement

1. Who is responsible for enforcing when there is a facility that needs a permit but has been operating under this exemption?
   **MDE's Solid Waste Program (SWP) enforces the composting regulations and manages the complaints concerning the composting activities. A person can contact the SWP at 410-537-3315.**

2. Can the local jurisdiction take enforcement actions against a noncompliant facility required to obtain a permit?
   **No. However, the local jurisdiction can take enforcement action for the zoning violations.**

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## Table 1 – On-Farm Composting Facilities – Summary Chart

| Category | Area (Sq Ft) Limitation | Acceptable On-Site Feedstock | Acceptable Off-Site Feedstock | Other Applicable Requirements |
|---|---|---|---|---|
| Option #1 | Up to 10,000 Sq ft | - Organic Materials generated on-site or at another farm controlled by the same owner or lessee of the farm.<br>- Animal manure and bedding generated on-site<br>- Type 1 feedstock regardless of place of generation<br>- On-Site Type 2 Feedstock | - Type 1 feedstock regardless of place of generation<br>- Off-Site Type 2 feedstock that is:<br>a. Not contaminated or liquid;<br>b. Immediately mixed with carbonaceous Type 1 feedstock; and<br>c. Incorporated into active composting within 24 hours after arriving on site. | - MDA's Nutrient Management Plan under COMAR 15.20.07<br>- MDA Composting Facility Operator Certification under COMAR 15.08.04.04<br>- MDA Product Registration under COMAR 26.08.04.02<br>- MDE Erosion and Sediment Control Plan under COMAR 26.17.01<br>- County Soil Conservation and Water Quality Plan under COMAR 15.20.11<br>- USDA Agricultural Waste Management System Plan<br>- MDE Industrial Discharge Permit under COMAR 26.08.04.09B<br>- MDE Ground Water Discharge Permit under COMAR 26.08.04.09<br>- MDE Construction General Permit under COMAR 26.08.04.09A |
| Option #2 | Up to 40,000 Sq ft | - Organic Materials generated on-site or at another farm controlled by the same operator<br>- Animal manure and bedding regardless of the place of generation<br>- Type 1 feedstock regardless of the place of generation | - Animal manure and bedding regardless of the place of generation<br>- Type 1 feedstock regardless of the place of generation | -MDE General restrictions and Prohibited Acts under COMAR 26.04.11.04<br>- MDA's Nutrient Management Plan under COMAR 15.20.07<br>- County Soil Conservation and Water Quality Plan under COMAR 15.20.11<br>- USDA Agricultural Waste Management System Plan |
| Option #3 | No defined restrictions | - Organic Materials generated on-site or at another farm controlled by the same operator | -Not Allowed | -MDE General restrictions and Prohibited Acts under COMAR 26.04.11.04 |

## Table 2 – Contact Information

| Subject/Activity | Contacts | Telephone/Email | COMAR |
|---|---|---|---|
| **MDE-Land & Materials Administration** | | | |
| On Farm Composting Permitting Exemptions<br>Composting Facility Permit | Tariq Masood | 410-537-3326<br>tariq.masood@maryland .gov | 26.04.11 |
| **MDE-Water & Science Administration** | | | |
| Industrial Stormwater or Wastewater Discharge Permit | Casey Leach | 410-537-3619<br>casey.leach@maryland.gov | 26.08.04 |
| Groundwater Discharge Permit | Mary Dela Onyemaechi | 410-537-3778<br>mary.dewa@maryland.gov | 26.08.04.09 |
| Construction General Permit | Jennifer Nitsch | 410-537-3292<br>jennifer.nitsch@maryland.gov | 26.08.04.09A |
| Erosion and Sediment Control Plan | A list of the approval authorities is available at: https://mde.maryland.gov/programs/water/wwp/pages/ListofApprovalAuthorityContacts.aspx | | 26.17.01 |
| **MDA** | | | |
| Nutrient Management Plan | Nutrient Management Program | 410-841-5959<br>nminfo.mda@maryland.gov | 15.20.07 |
| Composting Facility Operator Certification | State Chemist<br>Philip Davidson | 410-841-2721<br>philip.davidson@maryland.gov | 15.08.04.04 |
| Compost Product Registration | | | 15.18.04 |
| Soil Conditioner or Fertilizer Quality and Distribution | | | 15.18.03 |
| **USDA** | | | |
| Agricultural Waste Management System Plan | Natural Resources Conservation Service | 833-ONE-USDA<br>askusda@usda.gov | Part 651 - Agriculture Waste Management Field Handbook Chapter 9 |

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