Content Considerations Outline for Developing Administrative Regulations for Composting

Enabling Legislation

The content and approach of a regulatory program is dependent on the powers granted to the administrative agency by the enabling legislation. To develop a composting program is it helpful to understand how the enabling legislation addresses the following:

- Is composting considered by the legislation as a solid waste disposal activity or as a recycling activity? Does the legislation see disposal differently than recycling?
- Regarding authorizing requirements, does the legislation specify that all composting facilities require a solid waste permit or does it grant flexibility on the authorizing mechanisms that can be used? For example, can mechanisms such as registrations, licenses, permit-by-rule, and exemptions be used instead of permits?
- Who is responsible for authorizing (reviewing, approving and issuing) the facilities? Is it centralized or regional?
- Does the legislation establish fees for permitting or licensing? If not, does it give the administrative agency the flexibility to require fees?
- Does the legislation require that compost meets quality standards? If so, are the standards required to be matched to uses? For example standards that would allow, agricultural, horticultural or sylvicultural uses? Which agency is responsible for developing these standards?
- Is the finished compost considered as a product? Is it only considered a product if it meets standards?
- Does the legislation grant powers to establish operational rules?
- Is the administrative agency authorized to use exemptions and variances mechanisms related to permitting, siting, operations, materials accepted, quality standards and closure requirements?
- Does the agency has delegation to implement other non-solid waste regulations such as NPDES permits for sewage sludge?

Administrative Rules

I. Regulatory Organization –States have used different organizational approaches to their rules. The first step is to decide which is the preferred approach. Below are common approaches to organizing rules (but usually is a combination of all these approaches):
   a. By feedstock types – i.e. different facilities classifications with different regulatory stringencies based on the inherent risk of each feedstock allowed for acceptance. Most states will have more stringent siting criteria, operational and testing requirements for facilities that accept food scraps than for those that only accept yard waste. For example, in Ohio a yard waste only facility has to submit a free registration and is not required to test compost for quality standards. However a facility that composts yard waste and food waste has to submit the same free registration, but must pay an annual license fee, establish financial assurance and test the compost.

b. By facility size and feedstock types. Several states would exempt from permitting any facility under certain volume or size that accepts a specific feedstock. For example any facility accepting less than 20,000 cubic yards of yard waste per year. Some might also add that a facility must be at a farm, school or other setting. Washington and Oregon use these combined approaches.
c. By activity – aerobic composting, processing, anaerobic digestion. Some states (i.e. Florida) are organized as "organics management programs" and have different requirements depending on how the organic waste will be managed. While some states include the shredding of wood waste as a composting activity, others define it as a "processing" activity.

II. Definitions – how are activities and acceptable materials defined. This can make a difference on what can be accepted and how the facility must be operated.

III. Applicability – who has to comply with the rules? Also include any exemptions or exclusions

IV. Authorizing (Permitting) – this ties directly to the organization of the regulatory program Different organization might require different level of permitting. Need to know what level of permitting is required for the feedstocks you want to compost.

a. Types of "permits"
    i. "Full" solid waste permit
    ii. "Registration" or "Notification" – based on the concept of "permit-by-rule", is a registration or notification of compliance with the pre-approved activities. Might not require review or approval prior to registration.
    iii. Lessened permit – might also be a registration that requires some review but not as extensive as a regular permit process
    iv. Licenses – a state might require an operating license in addition to a permit of a permit-by-rule
    v. Financial assurance – financial fund to cover third party cost of cleaning the facility upon failure of the operator to close the facility appropriately

b. Factors for different composting permits
    i. Facility size- might determine the level of permitting. Usually based on area or volume of materials that can be accepted, but could also be based on a calculated maximum amount of capacity. Important to know if there are limits to the size or capacity of the facility before another level of permitting is required.
    ii. Materials (feedstocks, bulking agents, additives) that can be accepted. Materials with more environmental or public health risk will required more stringent permitting.
    iii. Who is disposing or generated the waste – some states exempts composting of waste generated on-site for on-site use. These exemptions usually cover agricultural composting. However a state might not exempt anyone that acts as a disposal facility by accepting waste that was not generated on-site, even agricultural operations.
    iv. Some states exempt facilities that accept less than a specified volume of waste.

c. Siting criteria – where the facility can be permitted to be located could depend on the feedstocks to be accepted (level of permitting) or who is doing the composting (exempted or lessened requirement). In addition, will have to be in compliance with any local zoning requirement.

V. Other environmental permitting – might not necessarily be issued by the same agency

a. Clean Water Act related – run-off & leachate management, discharges to waters of the state
b. Clean Air Act related – some equipment, such as grinders, might require an air permit. Sometimes just need to demonstrate that the "de minimis" level is met.

VI. Other non-environmental permitting. Might only require notification to other agencies, but in some cases requires a permit or some authorization.
a. Zoning – contact local authority to verify if location is zoned and if it matches the proposed land use.
b. Fire Marshall – could require a fire inspection
c. Solid Waste Management District or local equivalent – they might need to approve or include the facility into the solid waste management plan
d. If marketing compost as a fertilizer, you will need a permit contact the State's Department of Agriculture or appropriate agency.

VII. Construction requirements & site preparation.
a. Rules might specify construction materials that should be used for compost pad. May also require enclosed structures for some materials, such as MSW.
b. Some states allow any material for the pad as long as it meets performance criteria (drains run-off, prevents ponding, can be used in inclement weather, etc.)
c. Layout of facility – might have to be approved and/or mapped
d. Might require an inspection before bringing materials.

VIII. Operational requirements – Can be prescriptive or performance based

a. Acceptable materials
    i. Can be accepted all the time at the facility
    ii. Which materials can be added upon additional approval?
        1. Is this a material specific approval? Do the rules provide for alternative materials requests or pilot projects?
        2. Will the new material trigger reclassification and new permitting of the facility. For example, going from yard waste only to accepting MSW will typically require a completely different permitting approach.
b. Contingency or emergency plan – what to do in case of fire and other emergencies
c. Odor control plan – what to do for controlling nuisance odors
d. Signage requirements
e. Management of compostable and non-biodegradable containers
f. Time requirements for processing of incoming materials
g. Methods of composting – some states specify the methods that should be used for composting and may describe the way to perform. For example, may specify that when using windrow methodology, windrows must be turned 5 times in fifteen days.
h. Monitoring – self inspections, temperature measurements, etc.
i. Storage of finished products
j. Leachate and run-off management
k. Cross-contamination prevention

IX. Record Keeping Requirements –
a. Log of operation is usually required. May have to be completed daily or only on the days of operations.
b. An annual report is usually required

c. State might require specific forms be used for log of operations and annual reports, or might allow customized forms as long as same information is approved. Inquire if electronic records are allowed or only paper copies.
d. Must know how long are the records required to be retained. Typically is the past 3 years of records.
e. Facility might be required to have all records available for inspection at any time. For facilities that do not have an office or shed at the site, a location must be accorded with the inspector.

X. Facility closure requirements. Rules might specify:
a. Length of time allowed for closure process (both voluntary or mandated)
b. How must the facility be cleaned
c. Who needs to be notified
d. Any final inspection required
e. Rules might specify situations that lead to mandatory closure

XI. Quality Standards and Testing
a. What are the required quality standards?
b. The sampling methodology might be specified.
c. Testing might not be required for all facilities or if used on-site only
d. Frequency of testing might be specified in rule. Some states require testing at intervals based on amount produced (every 10,000 cubic yards). Other states require that all compost is tested regardless of amount.
e. Rules might require that you obtain test results and confirm compliance prior to distribution of compost product.
f. You might be required to make test results available to the public.
g. Some states specify how compost must be labeled when packaged for distribution.
h. Some states will accept participation in the STA program as meeting the state's testing requirements
i. Some states will allow you to substitute some tests with prior approval (alternative sampling and testing).
j. Quality standards might apply differently for different materials and are usually customized for materials requiring special approval.
k. Verify if you state requires you to use state certified laboratories.
l. What is the facility allowed to do if compost doesn't meet quality standards?

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