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August 23, 2022

Commissioner Basil Seggos
New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233

RE: Regulation Identification, Comments on the Proposed Revised Part 360 Solid Waste Management Facilities

To Whom It May Concern,

New York Farm Bureau (NYFB), the State's largest general agricultural advocacy organization, appreciates the opportunity to comment on the New York State Department of Environmental Conservation's (DEC) proposed rules on Solid Waste Management Facilities, 6 NYCRR Part 360. The Part 360 Regulations impact farmers across the state from waste tire regulations, custom manure application, composting measures, as well as other nuanced provisions, and NYFB would like to offer the following feedback on the revised rule.

Waste Tire Beneficial Use Determination

Section 360.12, (2) (iv) Beneficial Use

In 2018, the DEC issued a Beneficial Use Determination (BUD) for the use of waste tires on farms which allowed for the continued critical use of waste tires on farms, mostly in the utilization on bunk silos. The enforcement discretion and beneficial use for the use of "waste tires" on farms is still critical, and NYFB continues to support the need for farmers to be able to use waste tires as a tool in agricultural feed storage. NYFB appreciates efforts by DEC staff to learn about the usage of waste tires on farms and supports maintaining the enforcement discretion use of waste tires to secure tarpaulins in agricultural storage. Tires are a crucial part of a farm's feed quality management system, by acting as a weight to hold down the tarps. This protects feed from any of nature's elements and contaminants and allows for the feed to properly ferment. Additionally, proper tire coverage ensures that feed will be less likely mold. It is important that feed is able to ferment appropriately and without mold to ensure quality feed for animals and for ultimately better animal health.

While we understand that the tires are required be used in a single layer to cover the tarpaulin and that they either need to be cut in half, have one side wall removed with the cut side placed down, have sufficient holes drilled in them or if whole tires are used that they must be covered and arranged on the tread in close alignment or stored in a manner to prevent water retention

unless being used to secure tarpaulins, NYFB still has remaining concerns with these provisions. Cutting tires can be challenging due to the metal pieces that are internally part of a tire and could end up in the animal feed or injuring farm employees. Cutting tires can also become time consuming and most farmers purchase tires already cut due to do lack of the special machinery needed to cut tires. This only works for bias-ply tires that do not contain metal and would be safe to cover feed with. In addition, farmers may need to double stack tires on the tarpaulins to ensure they are properly weighted. It is also important to understand that it is not practical for farmers to cut or drill holes in every tire as certain tires have metal wires that pose both an animal health hazard and an employee health risk when handling the tires. NYFB submitted specific comments on tire types and structure in our 2017 comments to DEC. We appreciate the Departments understanding to allow farmers to use whole tires to cover tarpaulins. This will ensure quality animal feed and animal safety.

NYFB has received feedback from farmers that there appears to be regional discrepancies in the enforcement of the BUD and some farmers have been cited for having tire piles that may not be currently in use on bunks. While farmers do their best to manage tire inventories on their farms, there may be times of the year when tires are piled to a side or farmers may not need some tires in one year but may in another, depending on feed inventories. In addition, due to the high cost of recycling tires, it can be a financial burden for farmers to recycle a large amount of tires at a time. It cost about \$180 per ton to recycle tires with 2-3 tractor tires making up a ton. Many farms have 100 or more tons on their farms, that would add up very quickly and be unaffordable for most farms who are already managing high operating costs.

NYFB would like to request that a program be established to assist with wide-scale tire recycling would be beneficial. Often municipalities or county Soil and Water Districts will hold “tire recycling days,” but participants are often limited to bringing 4 tires, which doesn’t begin to address the number of tires that farms may be interested in recycling, NYFB is committed to working with the state legislature to request funds for such programs. Tire use and storage on farm is still a work in progress and we recognize the work that has been done on this issue this far and continue to work to make improvements.

Custom Manure Application

Section 361-2.3, (5) (c) Registered Facilities

While New York Farm Bureau does not have policy supporting or opposing the registration of custom manure applicators hired by CAFO’s to apply manure in accordance with the farms NMP, NYFB reached out to dairy and livestock farmers to get their feedback on such a proposal. Based on the feedback that NYFB received, it does see why this proposal could be beneficial to both the CAFO farm and to the manure applicator. Despite this benefit, there are some issues with the proposed language that need to be addressed prior to the Department finalizing this provision. NYFB would encourage the Department to do robust outreach to both CAFO farms who hire these custom manure applicators and the applicators themselves, but we submit the following commentary to begin the conversation.

First, the definition of a “third-party CAFO land applier” is vague and could be confusing NYFB recommends that specific language indicating that the “third-party CAFO land applier” is a

person engaged in the business of providing a service, similar to the definition provided by Vermont's licensing program.

“(c) Registration requirements for third-party CAFO land appliers. The following persons must be registered. (1) a person or entity who is engaged in the business of applying manure or nutrients to land other than the owner or employee of a CAFO, who applies manure or process wastewater from a CAFO, referred to hereinafter as the manure applier, provided the following conditions are satisfied:”

Additionally, there are other questions that are not clear in the proposed regulation. First, it is unclear how long the registration period is. Is this an annual requirement, or other set period? Other states provide for a multi-year certification with annual renewals. These other states like Vermont and Pennsylvania also have basic education requirements to ensure that these individuals engaged in manure application understand the basics of manure handling and application.^{1 2}

NYFB strongly encourages the Department to continue to do outreach to further develop this proposal so that it attains the goals that it is intended to while protecting the complex relationship between CAFO farms and custom manure applicators.

Cannabis Disposal

Section 360.8 Prohibited Activities, (e) Cannabis

NYFB has concerns with the lack of clarity and definition of “Cannabis” for this section and we are concerned that this could be interpreted to impact all “cannabis” cultivation. NYFB would encourage making this clearer with industry and stakeholder input.

NYFB thanks the Department of Environmental Conservation for the opportunity to submit these comments on the revised Part 360 Solid Waste Management regulations. If you have any questions regarding these comments, please contact our office.

Sincerely,



Kyle Wallach
Associate Director of Public Policy
New York Farm Bureau

¹ <https://agriculture.vermont.gov/custom-applicator>

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https://www.agriculture.pa.gov/Plants_Land_Water/StateConservationCommission/CommercialManuer/Pages/default.aspx