



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

MEMORANDUM

TO: Collin P. O'Mara

THRU: David S. Small

THRU: Lee Ann Walling, AICP *LAW*

FROM: Kevin F. Coyle, AICP CEP *KFC*

RE: Recommended CZA Status Decision for Millville Organic Center

DATE: September 17, 2012

Introduction

Millville Organic Center, submitted an application on August 2, 2012, seeking a Status Decision under the Delaware Coastal Zone Act ("CZA;" Chapter 70 of Title 7 of the Delaware Code) to determine if a Coastal Zone Act Permit is required to construct and operate an organic material composting facility on Whites Neck Road in Millville, DE.

Description of the Project

Millville Organic Center will be a "Composting Facility," accepting organic material only, as defined in DNREC's Guidelines for Composting Facilities and as further required under Sussex County's conditional use approval. The public will offload organic material in designated tipping areas. The organic material will be collected, sorted, broken down, and moved to an appropriate windrow where moisture will be added. The windrows will be monitored for temperature, moisture content, and odor. Once the compost reaches the proper consistency, it will be marketed to area homeowners and landscaping contractors.

Delaware's Good Nature depends on you!

Project Analysis

Millville Organic Center has applied for a permit to begin processing organic materials into certified organic compost and mulch within the coastal zone. Although Millville Organic Center's status decision request lacks many details, it is apparent from the nature of the proposed operation and the list of equipment to be used that organic material will be handled with mechanized equipment and turned into compost, a saleable product. After processing, Millville proposes to sell the finished compost or mulch and sell it at retail locations.

The proposed type of operation has, in the opinion of the Attorney General's office, always been deemed a "manufacturing" operation under the Coastal Zone Act. That definition is supported by applicable Coastal Zone Act case law,¹ and the attached memoranda from project number 263SD. See also Peninsula Compost Company, LLC's application for a CZ Permit- 374P.

The Coastal Zone Act provides the secretary with a measure of discretion in reviewing an application for a permit. When "passing on permit requests" the secretary is directed by 7 Del. C. § 7004 (b) to consider a proposed project's environmental impact. The impacts which are to be considered are not strictly limited to those enumerated in § 7004 (b)(1)²; it may be appropriate to also consider the potential environmental benefits of extending the lives of landfills (by diverting organic material from them) and of increasing the amount of organic gardening or agricultural products that are available for sale and use. It will of course be up to technical staff to evaluate any such benefits.

Public Commentary

A legal notice announcing receipt of the Status Decision application was published in the News Journal on August 19, 2012. The Delaware Nature Society, in a memorandum dated August 31,

¹ *City of Wilmington v. Parcel of Land*, 607 A.2d 1163, 1165- 1167 (Del. 1992)

² Section 7004(b) states: In passing on permit requests, the Secretary of the Department of Natural Resources and Environmental Control and the State Coastal Zone Industrial Control Board shall consider the following factors:

(1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors. (Emphasis added)

2012, believes that the applicant should be required to apply for a Coastal Zone Act Permit. Anthony and Ilene Parisi, in a letter dated August 20, 2012, request that the application be denied, citing "quality of life" (e.g., traffic, odors, and equipment air emissions) and "financial" (i.e., effects on property values) issues.

Recommendation

Based on the analysis of the Deputy Attorney General assigned to represent the Department with respect to matters arising under the Coastal Zone Act in a memorandum dated August 27, 2012 (see attached), a coastal zone permit is required by 7 *Del. C.* § 7004 because the proposed facility to produce compost will be a new "manufacturing" use under the CZA. Additionally, CZA Regulations 6.2 and 6.3 require the proposed facility to obtain a permit if the facility is deemed a "recycling" facility or a manufacturing use, respectively. Because its proposed project will or may result in a negative environmental impact within the coastal zone, Millville Organic Center is required to submit an offset plan in connection with its permit application in accordance with Reg. 9.



10/4/12

Approved, Collin P. O'Mara, Secretary

Date

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

MEMORANDUM

TO: Kevin Coyle, Principal Planner

FROM: Robert F. Phillips, Deputy Attorney General

RE: Millville Organic Center- Request for Coastal Zone Status Decision

DATE: August 27, 2012

I have received your request for a legal review of the above-referenced matter. In connection therewith I have reviewed Millville Organic Center's ("Millville") application for a coastal zone status decision, the Coastal Zone Act and the CZA regulations, and two prior memoranda (attached) concerning CZA project number 263SD (which was a similar project proposed in 1992).

As you know, Millville has applied for a permit to begin processing organic yard waste materials into certified organic compost and mulch within the coastal zone. Although Millville's status decision request lacks many details, it is apparent from the nature of the proposed operation and the list of equipment to be used that yard waste will be handled with mechanized equipment and turned into a saleable product. After processing, Millville proposes to sell the finished compost or mulch and sell it at retail locations.

The proposed type of operation has, as far as I know, always been deemed a "manufacturing" operation under the Coastal Zone Act. That definition is supported by applicable Coastal Zone Act case law,¹ and the attached memoranda from project number 263SD. *See also* Peninsula Compost Company, LLC's application for a CZ Permit- 374P.

A coastal zone permit is required by 7 *Del. C.* § 7004 because the proposed facility will be a new "manufacturing" use under the CZA. Additionally, CZA Regulations 6.2 and 6.3 require the proposed facility to obtain a permit if the facility is deemed a "recycling" facility or a manufacturing use, respectively. Because its proposed project will or may result in a negative environmental impact within the coastal zone, Millville is required to submit an offset plan in connection with its permit application in accordance with Reg. 9.

Whether their status decision request presents an offset proposal that "clearly and demonstrably" more than offsets any negative environmental impacts from the new manufacturing operation is outside the scope of my expertise. Quite frankly, I cannot understand

¹ *City of Wilmington v. Parcel of Land*, 607 A.2d 1163, 1165- 1167 (Del. 1992)

Millville's offset calculations. It is up to DNREC's technical experts to determine whether the offset calculation and the results are reasonably accurate and supported by scientific evidence.

The Coastal Zone Act provides the secretary with a measure of discretion in reviewing an application for a permit. When "passing on permit requests" the secretary is directed by 7 *Del. C.* § 7004 (b) to consider a proposed project's environmental impact. The impacts which are to be considered are not strictly limited to those enumerated in § 7004 (b)(1)²; it may be appropriate to also consider the potential environmental benefits of extending the lives of landfills (by diverting yard waste from them) and of increasing the amount of organic gardening or agricultural products that are available for sale and use. It will of course be up to technical staff to evaluate any such benefits.

I hope this memo adequately responds both to your request for legal assistance. Please contact me if you have any further questions or concerns.

Attachments

cc: Environmental Unit

² Section 7004(b) states: In passing on permit requests, the Secretary of the Department of Natural Resources and Environmental Control and the State Coastal Zone Industrial Control Board shall consider the following factors:

(1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors. (Emphasis added)

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

MEMORANDUM

TO: Dennis Brown
Administrator, Coastal Zone Act

FROM: Keith A. Trostle 
Deputy Attorney General

RE: CZA Application for Status Decision;
Earthgro, Inc.

DATE: April 20, 1992

I have taken the opportunity to review the application for a Status Decision and the accompanying comments to the application filed with the Department by Earthgro, Inc. Without a great deal of discussion I offer the opinion that Earthgro, Inc., proposes an operation which involves the manufacture of materials in order to produce a compost product.

In its opening remarks, Earthgro suggests that it is engaged in a process that is entirely "biological" and, therefore, does not come under the definition of a manufacturer under the Coastal Zone Act. The applicant misinterprets the Act.

Earthgro, Inc., based on information provided in its application, wishes to manufacture a compost material as a saleable product. The manufacturing process to be employed by Earthgro may indeed involve a biological component, but this biological component does not comprise the entire process.

Arguably a biological process involves a chemical process. In any event, without question Earthgro is not suggesting that it is simply going to dump yard and garden waste on the ground and nature will take over and "biologically" produce compost. The application suggests numerous instances where mechanical procedures are necessary in accomplishing the production of this compost.

The application offers the following examples that I suggest demonstrate the mechanical transformation necessary to manufacture the yard waste into a compost product:

- 1) In the first instance, the lawn and garden wastes must be windrowed. The wastes must be physically laid out in planned rows;

- 2) In order that odor problems from the process be avoided, the windrows must be constantly turned by mechanical means to help the wastes properly oxygenate;
- 3) To assist the biological process, moisture levels must be sufficiently maintained so that the composting process will produce the desired product. During drought periods careful moisture control of the windrows must be artificially maintained; and
- 4) To maintain the proper carbon-nitrogen ratio necessary to again produce the desired product, a blending process of low nitrogen containing materials is continually necessary so that the biological process component can be maintained.

Again, the above represents some of the various examples which demonstrate a manufacturing process as defined under the Coastal Zone Act.

Earthgro, Inc., to operate in the Coastal Zone, needs to secure a Coastal Zone permit from the Department.

If you have additional questions, please contact me.

KAT:kg:B37-47
92-D-50

Status document

3030
Keith - for your files.
01
57

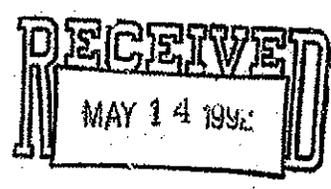


STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
SECRETARY

TELEPHONE: (302) 739-4403
FAX: (302) 739-6242

CONFIDENTIAL
MEMORANDUM



DNREC
LEGAL OFFICE

TO: EDWIN H. CLARK, II
THRU: DAVID S. HUGG, IES *DSH*
FROM: DENNIS BROWN *DB*
SUBJECT: COASTAL ZONE STATUS DECISION RECOMMENDATION FOR
EARTHGRO, INC.; CZA PROJECT NO. 263SD
DATE: APRIL 8, 1992

DECISION RECOMMENDATION

The Earthgro proposal for a major composting facility near New Castle is regulated by the Coastal Zone Act. A Coastal Zone Permit is necessary for this new manufacturing operation.

FACTS

Earthgro, Inc. submitted a complete Request for a Coastal Zone Status Decision to the Department on March 11, 1992. Earthgro, Inc. is a new company to Delaware. The company proposes to establish a twenty to thirty acre open-air composting facility in the Coastal Zone just south of New Castle (near Grantham Lane) on the east side of Route 9. The facility will produce a compost material from leaves and yard waste for packaging and sale to garden shops and other commercial entities for use a soil conditioner and fertilizer. The facility will accept truck loads of leaves and yard wastes and will use a front end loader to form "windrows" on the ground. This front end loader, or some other mechanical device will periodically turn, or mix the material in the windrows to provide adequate aeration and temperature control for the composting process.

This facility will have no chemical processing equipment, distillation towers, or reaction vessels, etc. One lagoon may be

necessary to trap stormwater and leachate from the composting materials. Compared to most manufacturing sites, this site will have relatively little environmental impact, if stormwater runoff is handled properly and the formation of fowl odor is prevented.

The composting process will produce carbon dioxide, water, minerals and humus. The carbon dioxide will be released to the atmosphere. The water will runoff to a settling lagoon. The water will be allowed to evaporate or be discharged to the Delaware River. The minerals produced by the composting process will be retained in the humus.

The company claims that foul odors will not be generated by this composting activity because the preferred composting process is aerobic. The windrows will be turned or mixed on a regular basis to provide the essential oxygen for the composting materials. Proper moisture content in the material is essential. During dry spells, water will be added via spray or soaker hoses. However, excess water can over-saturate the materials and lead to anaerobic conditions, which can cause unpleasant odors.

Once the humus is produced, it will be loaded onto trucks and transported to an off-site bagging facility.

Environmental effects from this proposed facility appear to be minimal if the facility is managed properly. The main points of concern will be that of water quality to both surface water and ground water, noise and odors. If you concur with this recommendation, the company will soon apply for a Coastal Zone Permit. When this occurs, great care should be taken in writing the permit (if allowed) to safeguard the area's surface and ground water resources. Perhaps, special conditions could be added to the permit. Noise and odors may be issues also with the permit application. Again, special conditions on the permit could be added to safeguard the local property owners, if the permit is granted. This project will (probably) reduce the amount of materials discarded into the local landfill.

DECISION FACTORS

The recommendation to have the company acquire a Coastal Zone Permit is based on two main facts. First, the proposed use is a manufacturing use rather than a heavy industry use as defined by Section 7002(d) of the Coastal Zone Act. Secondly, this project represents a new manufacturing use by a new company in the Coastal Zone. The project is not a minimal expansion or extension of a current use. As seen on the attached memorandum, the D.O.J. has endorsed this decision.

Attachment

cc: Keith Trostle, DAG