

MEMORANDUM

From: Stacey Hectus, Planning and Zoning Director and Nicolle Shalley, County Attorney
To: Levy County Board of County Commissioners
Date: July 5, 2023
Subject: Regulation of Barn Waste/Horse Manure

Background

On January 20, 2021, County staff and Commission Brooks met with Water Management District and Florida Department of Agriculture (FDACS) staff to discuss barn waste and manure and concern with the opening of the World Equestrian Center. At the February 2, 2021 Board of County Commissioners Regular Meeting Commissioner Brooks expressed concern that the World Equestrian Center could increase the need for these types of businesses reaching into Levy County and asked the Board for direction. The Commissioners agreed by consensus to direct then County Attorney Brown to work with Commissioner Brooks to develop an ordinance and bring it to the Board for approval. The County Attorney retired later in 2021 without an ordinance to allow such uses being drafted.

The Use Regulations in Sec. 50-676 of the County Code in 2021 (and currently) do not list a horse manure or barn waste composting facility as a permitted, accessory or special exception use in any zoning district. Sec. 50-841 of the Code provides a process for requesting a "Conditional Use Permit" as "a mechanism for allowing specific uses not listed as a matter of right or by special exception but which by their nature are compatible with the existing zoning district." County staff is not aware of any manure or barn waste composting facility applying for or being issued a Conditional Use permit by the County.

At the February 8, 2022 Commission Meeting during Commissioner Reports, the issue of barn waste and horse manure was discussed and direction was given to the County Attorney and Planning and Zoning Director to draft resolution(s).

At the February 22, 2022 Commission Meeting, the Board adopted Resolution Number 2022-4 recognizing that the "dumping, storage, disposal, treatment and/or processing of barn waste/manure are not currently allowed commercial or industrial uses in any zoning district within Levy County and, as such, it is recognized that those uses are prohibited. It is also recognized that this prohibition of such commercial or industrial uses does not operate to limit the activity of generating and re-using manure on a bona fide farm operation on land classified as agricultural land, where such activity is done in the course of their normal farming operations as defined and regulated under State law," and directing staff to work on draft "recommendations to address barn waste/manure commercial and industrial uses in a manner that would allow environmentally sound and economically viable re-use/treatment/processing of barn waste/manure into beneficial product, while safeguarding against the devaluation of County property values and the creation of public nuisances (e.g., odor, flies, visual blight) that would result from allowing unregulated dumping, storage or processing of barn waste/manure"

On October 18, 2022, the Board discussed this issue during a workshop that focused on an update of the Zoning Article within the County Land Development Code, in particular the types of uses that will be allowed in each zoning district. At the workshop meeting, the Board recognized Zoning-in-Progress as putting a pause on accepting applications for uses that are under revision in the Zoning article.

At the November 22, 2022 Regular Meeting, County staff presented an informational item with examples of zoning use regulations, including composting, and the Board determined that individual Commissioners and Planning Commission Members would work on researching and developing regulations for particular zoning uses, including composting.

At the December 20, 2022 Regular Meeting, the Board scheduled a Zoning Uses Workshop for February 21, 2023.

At the February 21, 2023 Workshop, the Board reviewed the draft Zoning District Uses Table, heard updates from Commissioners working on particular zoning uses, agreed to pull certain of those uses out of the “main” zoning uses ordinance, and scheduled a workshop on composting for May 9, 2023.

At the May 9, 2023 Workshop, the Board heard staff presentations, heard from industry groups and residents and agreed to further research the issue.

County Staff met with Florida Department of Environmental Protection (FDEP) staff on May 24 and June 27, 2023 and with FDACS staff on June 26, 2023, to learn more about the State regulatory framework and best management practices for barn waste and horse manure.

State Regulatory Framework

Note: What follows is an attempt by County staff (not experts in this area) to summarize a complex State regulatory framework for the sole purpose of assisting the Board in gaining an understanding of how the State regulates barn waste/horse manure, so that the Board may determine whether to create or revise any County solid waste, land use or zoning regulations.

The State Agencies explained to County staff that the definition of “manure” (Chapter 62-701.200 & 62-709.201, F.A.C) includes all of the materials cleaned out of horse stalls and that “manure” is a solid waste regulated by FDEP that must either be: (1) composted and put to beneficial use; or (2) disposed of in a Class I (lined) landfill.

FDEP is authorized to issue solid waste permits (which term includes registrations and other forms of licenses), to create exemptions by rule (Section 403.707, F.S.) and to enforce (including assessing administrative penalties per violation per day) the State solid waste laws (Section 403.121, F.S.)

A. Composting of manure in Normal Farming Operations

1) For use on the farm

FDEP has exempted manure that is composted as part of “Normal Farming Operations” (defined in Chapter 62-701.200, FAC) from regulation unless it causes a nuisance or adversely affects public health or the environment (Chapter 62-709.305, FAC).

Composted manure that is used on-farm is a form of fertilizer and therefore, farming operations should (and in some circumstances are required to) file a Notice of Intent to follow the fertilizer Best Management Practices (BMPs) for the type of farming operation that is conducted on the property. The purpose of these BMPs is to minimize the migration of nutrients that impair water bodies. Approximately every 2 years, FDACS staff inspects farming operations that are enrolled in a BMP program. If a violation is observed, a non-compliance letter is sent and if the farmer does not achieve compliance, the matter will be turned over to FDEP for enforcement. FDACS advised that the Florida Forestry Service oversees silviculture BMPs.

It should be noted here that a portion of the State “Right-to-Farm Act” limits the County’s ability to regulate a farming operation that is enrolled in and following industry BMPs. Section 823.14(6), F.S. reads as follows: “Limitation on duplication of government regulation.--It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a local government, and the adopted best management practice or interim measure does not specifically address wellfield protection, a local government may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any local government to address an emergency as provided for in chapter 252.”

It should also be noted that Policy 1.4 in the Infrastructure Element of the County Comprehensive Plan states “The County shall encourage the use of best management practices for livestock and equine waste and will partner with the Florida Department of Environmental Protection, Florida Department of Agriculture and Consumer Services and other agencies that promote best management practices in order to protect the quality of surface and groundwater resources and minimize hazards to health, welfare and safety.”

2) For sale or use off the farm

If the farming operation offers its compost for sale or use off the farm, the farm is required to follow DEP “test and classify” regulations (Section 62-709.530 through .600, FAC). These regulations require sampling and analysis at least every three months, the maintenance of certain records, submittal of annual reports and criteria/restrictions on use of the compost.

B. Composting of manure by non-farm facilities

- 1) A non-farm operation that produces compost solely from vegetative materials, animal by-products, manure and/or yard trash requires annual registration with DEP as a **Source-Separated Organics Processing Facility (SOPF)** (Chapter 62-709, FAC). The regulations for SOPFs require barriers to unauthorized entry, dust and litter control, fire protection, management of operations to control vectors and objectionable odors, and the timely processing of materials. They also specify material blending and disinfection criteria, limit pile height to 12 feet, require removal of material within 18 months, and require compliance with the “test and classify” regulations. FDEP staff indicated that they inspect SOPFs approximately every 4 years. When an SOPF ceases operation, all residual materials must be removed from the site and recycled, or disposed of pursuant to Chapter 62-701, FAC.

According to the FDEP database (that can be accessed at https://fldeploc.dep.state.fl.us/www_wacs/Reports/Yard_Trash_Processors_current_webupdates.asp) the registered composting facilities in Levy County that include manure as a type of waste are:

- Fant Farm #2 (Facility ID #106567) Parcel ID 052740030B, 35th St., Morriston: Yard Trash Recycling Facility, Manure Blending Facility, SOPF and Yard Trash
- Nature Coast Soils (Facility ID #107882) NE 30th St, Williston: Manure Blending Facility and SOPF
- Nature Coast Soils (Facility ID #107884) SE 30th St, Morriston: Manure Blending Facility and SOPF

It should be noted here that the State and County exercise separate regulatory authority, so issuance of a State registration or permit does not mean a facility can operate, unless it is also allowed by and complies with all County regulations.

- 2) A non-farm facility that produces compost from sources other than vegetative materials, animal by-products, manure and/or yard trash requires a 5-year DEP **Solid Waste Management Facility** Permit.
- C. Disposal of Manure - Any facility (farm or non-farm) that collects manure and does not compost it for beneficial use is considered a solid waste disposal facility that requires a DEP **Landfill or other Solid Waste Disposal Facility** Permit.

Existing County Regulatory Framework

Solid Waste: Section 403.706(1), F.S. states “The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.” And “Pursuant to this section and notwithstanding any other provision of this chapter, counties shall have the power and authority to

adopt ordinances governing the disposal of solid waste generated outside of the county at the county's solid waste disposal facility.” Subsection 403.706(2)(i), F.S. states “Each county is encouraged to consider plans for composting or mulching organic materials that would otherwise be disposed of in a landfill. The composting or mulching plans are encouraged to address partnership with the private sector.”

Chapter 74 of the County Code of Ordinances regulates and impose fees for the collection and disposal of solid waste. Sec. 74-34(a) states “[n]o person shall dispose of solid waste at any location in the county other than at the Bronson landfill site;” however, (e) lists certain types of “special waste” that may not be deposited at the landfill without special permission. Except for Sec. 74-41 which exempts “animal manure and absorbent bedding used for soil enrichment” from the definition of solid waste for purposes of solid waste collection service licensing, Barn waste and horse manure are not specifically addressed in Chapter 74. Although Sec. 74-33(4) recognizes the authority of the board of county commissioners to “At its discretion provide for the disposal of solid waste and is authorized and empowered to dispose of solid waste using, among other methods the following:” “d. Composting plants, whether privately or government owned and operated.”

Zoning: As previously stated in Resolution Number 2022-4, the “dumping, storage, disposal, treatment and/or processing of barn waste/manure are not currently allowed commercial or industrial uses in any zoning district within Levy County and, as such, it is recognized that those uses are prohibited.” Nor does County Code allow Solid Waste Management or Disposal Facilities.

Discussion and County Staff recommendations

County staff recommends the Board analyze these uses as they are classified and regulated by the State:

- 1) Composting of Manure in Normal Farming Operations for use on the farm: County staff recommends this use be added to County Code (perhaps in the definition of bona-fide agricultural operation) so that it is a permitted use when enrolled in and following BMPs.
- 2) Composting of Manure in Normal Farming Operations for sale or use off the farm: County staff recommends this use be added to County Code (perhaps in the definition of bona-fide agricultural operation) so that it is a permitted use when enrolled in and following BMPs and the DEP’s “test and classify” regulations.
- 3) Source-Separated Organics Processing Facility (SOPF): County staff recommends continuing the prohibition of SOPFs that process horse manure because it does not appear that the State has a robust enough regulatory program to ensure the proper management of this waste that otherwise must be disposed of in a Class I landfill. County staff considered whether such facilities could be a permitted use in Commercial or Industrial zoning districts, but given the nature of the operations (e.g., relatively large land area for materials as they are worked/decompose, concern with odor and vectors, proximity to wellfields) staff cannot recommend this use in these zoning districts that are generally close to the municipalities and dense residential development.

- 4) Solid Waste Management Facility: County staff recommends continuing the prohibition of Solid Waste Management Facilities for the same reasons stated in 3.
- 5) Landfill or other Solid Waste Disposal Facility: The County Landfill is the only general solid waste disposal facility permitted in the County; however, it is a Class III Landfill and cannot accept manure (which again must be disposed of in Class I (lined) landfill).

In discussions with the State agencies there was concern expressed that intensive horse farm operations will not be able to get rid of all horse manure through Normal Farming Operations (1 & 2 above) and if no other facilities are permitted in the County, the horse farms will be required to dispose of it out of county through a removal service and/or disposal in a Class I Solid Waste Disposal Facility (such as the New River Landfill.) However, neither County staff, nor the State regulatory agencies, could readily identify a local government in Florida that has addressed horse manure composting with clear and comprehensive regulations. If the Board wishes to develop land use and zoning or solid waste regulations to address and allow non-farm manure composting facilities (e.g., SOFPs, Solid Waste Management Facilities or Solid Waste Disposal Facilities) in Levy County, staff recommends the retention of a consultant with expertise in this type of waste as the Board will need guidance on issues such as:

- Which zoning district for which type of facility
- Setbacks, buffers and/or screening from property lines, residential and other development
- Hauling routes and traffic issues
- Prohibited areas, such as within Basin Management Action Plans (BMAPs) and Springs Priority Focus Areas (PFAs), wellfield protection areas, wetlands, floodplains, and other environmentally sensitive lands
- Proper waste handling and coordination/integration with State regulation

In addition, when developing any new regulatory requirements, the Board will need to consider adequate staffing for administration and enforcement.