

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	10/22/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/12/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

26 04 11 01—.16

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator

Ed Hammerberg

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5. Name of Person to Call About this Document

Kaley Laleker

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Kristen DeWire, Assistant Attorney General, (telephone #410-537-3055) on 10/3/2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert M. Summers, Ph.D.

Title

Secretary of the Environment

Telephone No.

410-537-4187

Date

10/20/2014

Title 26
DEPARTMENT OF THE ENVIRONMENT

**Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND
SOLID WASTE**

26.04.11 Composting Facilities

Authority: Environment Article, §9-1725 Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of the Environment proposes to The Secretary of the Environment proposes to adopt new Regulations .01 - .16 under a new chapter, COMAR 26.04.11. At this time, the Secretary of the Environment is withdrawing the proposed action to adopt new Regulations .01 - .16 under a new chapter, COMAR 26.04.11 Composting Facilities, which was published in 41:1 Md. R. 47-59 (January 10, 2014).

Statement of Purpose

The purpose of this action is to establish new regulatory requirements for composting facilities. This action would: delineate tiers of composting facilities based on feedstock types and sizes; create a Composting Facility Permit, which would be required for certain types of composting facilities; establish exemptions to the requirement for a Composting Facility Permit; provide for the creation of a general Composting Facility Permit; establish siting and design requirements for composting facilities; establish operational requirements for composting facilities; provide a process for approval of variances, pilot programs, and research activities; establish procedures for enforcement; set a timeframe and procedure for existing composting facilities to come into compliance with the requirements; require recordkeeping and reporting by composting facilities; and establish various other requirements related to construction and operation of composting facilities in the State.

The action would fulfill the duty of Maryland Department of the Environment (“the Department”) to adopt composting facility regulations under Environment Article, §9-1725, Annotated Code of Maryland. Because no existing regulations address composting facilities as defined in Environment Article, §9-1701, the Department is proposing to enact a new chapter, COMAR 26.04.11, incorporating the noted regulatory requirements.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed action would establish a new permit and design and operational requirements applicable to some types of composting facilities. The Department would be responsible for writing a general Composting Facility Permit, reviewing permit applications and Notices of Intent, and conducting enforcement. While the proposed action would create a marginal increase in the Department's workload for permit review and enforcement, the total number of composting facilities in the State is expected to be sufficiently small that these duties could be undertaken with existing resources. Based on MDA registration data, the number of composting facilities currently known to exist is 13, but an unknown number of additional composting facilities exist that are not required to register with MDA. The proposed action includes exemptions for small composting facilities, which would further limit increases in workload.

The proposed action could potentially result in costs to local governments that own or operate (or propose to own or operate) a composting facility subject to the requirements. These costs would include the costs to come into compliance with design and operational requirements and obtain a Composting Facility Permit, and may involve installation of design features and preparation of an operations plan. Costs would be mitigated to the extent that a local government already complies with some of the proposed requirements.

The proposed action would potentially result in costs to regulated composting businesses by instituting new design and operational requirements and requiring a new permit. The costs associated with obtaining the permit would be minimal for any facility opting for the general permit. Some design requirements may cause facilities to incur significant costs. Existing facilities would have until January, 2017 to come into compliance with the proposed regulations and some types of small facilities are exempt from the requirements. The exact magnitude of costs is unknown because it would vary based on individual decisions about feedstock types, facility size, and facility design. There are no fees associated with the proposed action.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E+)	Indeterminable
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups: (-) Indeterminable

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The proposed action would create a marginal increase in the Department's workload for permit review and enforcement, but the total number of composting facilities in the State is sufficiently small to allow these duties to be undertaken with existing resources.

C. The proposed action could potentially result in costs to local governments that own or operate (or propose to own or operate) a composting facility subject to the requirements. These costs would include the costs to come into compliance with design and operational requirements and obtain a Composting Facility Permit, and may involve installation of design features and preparation of an operations plan. Costs would be mitigated to the extent that a local government already complies with some of the proposed requirements.

D. The proposed action would potentially result in costs to regulated composting businesses by instituting new design and operational requirements and requiring a new permit. The costs associated with obtaining the permit would be minimal for any facility opting for the general permit. Some design requirements may cause facilities to incur significant costs.

The exact magnitude of costs is unknown because it would vary based on individual decisions about feedstock types, facility size, and facility design. There are no fees associated with the proposed action.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article,

§2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

Primarily businesses and local governments. Private and public owners and operators of composting facilities are the intended beneficiaries in that they would obtain a clearer, and in some ways less burdensome, pathway for permitting of their existing and future facilities. Households and businesses located near composting facilities may indirectly benefit from the proposed regulations if the design and operational requirements result in fewer instances of nuisance conditions or water pollution.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households are not the primary intended beneficiaries and the proposal is not expected to have a direct impact on household income, purchasing power, or patterns of consumer spending.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

The businesses that will be affected by the proposal are composting businesses and other types of businesses that conduct composting incidental to their primary business (such as farms, landscaping companies, etc.). These businesses may be subject to the requirement for a new permit and to new design and operational requirements. However, these requirements would in some cases replace the requirement for a refuse disposal permit. Composting businesses may need to install additional design features for surface and groundwater protection and may need to develop an operations plan and/or design plans. The magnitude of costs to comply with the regulations for any one business would depend on a variety of individual decisions about feedstock types accepted, facility size, and facility design. There are approximately 13 known composting facilities in existence; approximately 6 are known to be privately owned (as opposed to governmental); and at least 1 of these would be outside the scope of the proposed requirements because it accepts sewage sludge. It is unknown how many of the remaining 5 facilities are small businesses. Total payroll or employment of affected small businesses is therefore unknown.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause

businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

In addition to any direct capital costs incurred to bring a composting business into compliance with the proposed regulations, a composting business may incur other costs as a result of the regulations, such as costs to train employees on new operational requirements, develop the required operational plans, and prepare the permit application. For the reasons discussed above, the magnitude of these costs and the number of small businesses impacted cannot be determined. The proposal applies requirements based on facility tier, which is determined primarily by feedstock type and facility size, so costs are unlikely to disproportionately impact small businesses. Exemptions apply to some very small facilities, but these are more likely to be noncommercial entities than small businesses.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

To the extent that composting facilities regulated under the proposal are small businesses, the proposal may benefit small businesses through: reduced regulatory uncertainty; increased clarity and speed of the permitting process (particularly for the general permit); and a potentially increased ability to obtain financing for capital costs due to the increase in certainty.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

Costs to existing facilities are likely to be greatest during the first 2 years after adoption

of the regulations, which is roughly the period for coming into compliance with the requirements. For new facilities, costs are likely to be concentrated in the period prior to beginning operations. If the industry matures in the future to the point that new facility siting declines, the overall costs of the proposal may decrease over time.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

For the reasons described above, neither the number of small businesses impacted nor the magnitude of economic impact can be determined.

The proposal may have some additional indirect impacts on price and consumer choice for compost, as well as on jobs. The increase in regulatory clarity is anticipated to result in an increase in the number of composting facilities. This may result in an increase in the availability and a decrease in the price for compost. In turn, this could result in a lower cost to provide goods and services that use compost as an input (landscaping services, etc.). MDE is aware of research that found that composting facilities employ more people per ton of material managed, on average, than do landfills. Increases in composting due to new facility siting could therefore result in a net increase in jobs.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Kaley Laleker, Waste Diversion and Utilization Program, Land Management Administration, Maryland Department of the Environment, 1800 Washington Blvd., Suite 610, Baltimore, MD 21230-1719, or call 410-537-3314, or email to kaley.laleker@maryland.gov, or fax to 410-537-3321 . Comments will be accepted through January 12, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

The regulations will be implemented with existing resources.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Small Business Analysis Worksheet

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Attached Document:

Title 26 Department of Environment

Subtitle 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste

Chapter 11 Composting Facilities

Authority: Environment Article, §9-1725, Annotated Code of Maryland

.01 Scope.

A. Except as otherwise provided, this chapter applies to persons engaged in the construction and operation of composting facilities.

B. Facilities that compost only natural wood waste are subject to the requirements in COMAR 26.04.09.

C. Tier 3 composting facilities are subject to the requirements in:

(1) COMAR 26.04.06, for facilities composting sewage sludge; or

(2) COMAR 26.04.07, for facilities composting solid waste.

D. In addition to the Composting Facility Permit required in Regulation .05A of this chapter, composting facilities may be subject to permit requirements under:

(1) COMAR 26.08.01—.04, relating to State and National Pollutant Discharge Elimination System (NPDES) discharge permits; and

(2) COMAR 26.11.02, relating to air quality permits.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "24-hour, 25-year storm event" means the amount of precipitation, occurring over 24 hours, that has a probability of 1/25 of being met or exceeded during any one-year period.

(2) "Active composting" means the phase of composting prior to curing.

(3) "All-weather pad" means a pad of sufficient construction, firmness, and grading so that composting equipment can manage the process during normal inclement weather, including expected rain, snow, and freezing temperatures.

(4) "All-weather road" means a road of sufficient construction and firmness for vehicles and equipment to traverse during normal inclement weather, including expected rain, snow, and freezing temperatures.

(5) "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 Regulation .06 of this chapter.

(6) "Carbon-rich" means having a carbon-to-nitrogen ratio of at least 60:1.

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

(8) "Compostable products" means containers, films, or food service items, such as a bowls, plates, cups, or cutlery, composed of materials such as:

(a) Vegetable matter;

(b) Paper;

(c) Cardboard; and

(d) *Compostable plastics that are, within the length of time and process employed at the composting facility at which they are used, capable of biological decomposition to a degree that they result in marketable compost meeting the standards established by the Secretary of Agriculture under Agriculture Article, §6-221, Annotated Code of Maryland.*

(9) *“Composting” means the controlled aerobic biological decomposition of organic waste material.*

(10) *Composting facility.*

(a) *“Composting facility” means a facility where composting takes place.*

(b) *“Composting facility” does not include a facility that is required to obtain:*

(i) *A Natural Wood Waste Recycling Facility Permit under COMAR 26.04.09;*

(ii) *A Sewage Sludge Utilization Permit under COMAR 26.04.06; or*

(iii) *A Refuse Disposal Permit under COMAR 26.04.07.*

(c) *The exclusions in §B(10)(b) of this regulation apply only to the areas of a site for which one of the listed permits is required.*

(11) *“Composting Facility Operations Plan” (CFOP) means the plan required by Regulation .09 of this chapter.*

(12) *“Composting Facility Permit” means the permit required by Regulations .05 and .06 of this chapter.*

(13) *Contact water.*

(a) *“Contact water” means liquid, including runoff from precipitation, that has been in contact with feedstocks or active composting material and runs off the feedstock receiving area, feedstock storage area, or active composting area.*

(b) *“Contact water” includes liquid that has passed through or emerged from feedstocks or active composting material and contains soluble, suspended, or miscible materials removed from the piles.*

(14) *“Covered” means covered with:*

(a) *A synthetic, low-permeability cover or tarp designed to prevent precipitation from contacting the covered materials;*

(b) *A roof with either walls or sufficient run-on control measures, such as berms, to prevent run-on from contacting the covered materials; or*

(c) *An alternative approved by the Department.*

(15) *Curing.*

(a) *“Curing” means the phase of the composting process after:*

(i) *Most of the readily metabolized material has been decomposed and stabilized; and*

(ii) *The pathogen reduction requirements in Regulation .09 of this chapter have been met.*

(b) *“Curing” includes periods in which the material is managed to increase maturity prior to use or distribution as compost.*

(16) *“Department” means the Maryland Department of the Environment.*

(17) *“Existing composting facility” means a composting facility that began operations on or before the effective date of this regulation.*

(18) *Farm.*

(a) *“Farm” means the site of a business or activity operated for the primary purpose of tilling, cropping, keeping, pasturing, or producing an agricultural product other than compost, including livestock, poultry, plants, trees, sod, food, feed, or fiber, by in-ground, out-of-ground, container, or other culture.*

(b) *“Farm” does not include the site of a business or activity operated for the primary purpose of producing compost.*

(19) *“Flood plain” means the flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency.*

(20) *“Indoors” means within a structure that is entirely enclosed by walls and has a roof and low-permeability floor constructed of concrete, asphalt, or similar materials.*

(21) *In Support of Composting.*

(a) *“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.*

(b) *“In support of composting” does not include:*

(i) *Areas used to store mobile, general purpose farm equipment such as tractors and backhoes;*

(ii) *Areas associated with the housing or movement of animals where manure may accumulate prior to composting; or*

(iii) *Roads used for transport to the composting facility or between separate composting areas on a site.*

(22) *Major Permit Modification.*

(a) *“Major permit modification” means a significant and substantive change to an individual Composting Facility Permit.*

(b) *“Major permit modification” includes:*

(i) *A change in the facility tier;*

(ii) *A significant increase in facility capacity, throughput, or compost produced per year;*

(iii) *A change in ownership of the facility;*

- (iv) A significant change to the size of the area used in support of composting; and
(v) Any other change determined by the Department to constitute a significant change to the Composting Facility Permit.
- (23) "Minor permit modification" means a change to an individual Composting Facility Permit that is not a major permit modification.
- (24) "Natural wood waste" has the meaning stated in COMAR 26.04.09.02.
- (25) "New composting facility" means a composting facility that began operations after the effective date of this regulation.
- (26) "Organic" means any natural biological substance of plant or animal origin that is capable of microbial degradation.
- (27) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.
- (28) "Physical contaminants" means non-compostable items including non-compostable plastic, glass, rubber, and metal.
- (29) "Run-on" means any rainwater or other liquid that drains over land onto any part of a composting facility.
- (30) "Seasonal high water table" means the highest water table as determined in the soil profile by the encountered indications of soil mottling or iron concretions or by measuring seasonal fluctuations of the water table in a water table well over a period acceptable to the Department.
- (31) Stormwater.
- (a) "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
- (b) "Stormwater" does not include contact water.
- (32) "Stabilized compost" is defined in COMAR 15.18.04.01.
- (33) "Tier 1 Facility" means a composting facility that accepts only Type 1 feedstocks.
- (34) Tier 2 Facility.
- (a) "Tier 2 Facility" means a composting facility that accepts Type 2 feedstocks.
- (b) "Tier 2 Facility" includes a composting facility that accepts Type 1 feedstocks in addition to Type 2 feedstocks.
- (c) "Tier 2 Facility" does not include a composting facility that accepts Type 3 feedstocks.
- (35) "Tier 2 Small Facility" means a Tier 2 Facility that produces 10,000 cubic yards or less of compost per year.
- (36) "Tier 2 Large Facility" means a Tier 2 Facility that produces more than 10,000 cubic yards of compost per year.
- (37) "Tier 3 Facility" means a facility that accepts any Type 3 feedstocks, regardless of whether other feedstock Types are also accepted.
- (38) "Type 1 feedstock" means:
- (a) Yard waste, as defined in Environment Article, §9-1701, Annotated Code of Maryland; and
(b) Other materials determined by the Department to pose a low level of risk from hazardous substances, human pathogens, and physical contaminants.
- (39) "Type 2 feedstock" means:
- (a) 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;
(b) Department-approved animal manure and bedding, with Department approval based on factors such as moisture content and pathogen risk;
(c) Department-approved industrially produced food processing materials, including industrial poultry and seafood residuals;
(d) Animal mortalities;
(e) Manufactured organic materials such as waxed-corrugated cardboard, non-coated paper, and compostable products; and
(f) Other materials that the Department 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 feedstocks.
- (40) "Type 3 feedstock" means:
- (a) Sewage sludge, as defined in COMAR 26.04.06.03;
(b) Biosolids, as defined in COMAR 26.04.06.03;
(c) Used diapers;
(d) Mixed municipal solid waste; and
(e) Any other feedstocks that are not Type 1 or Type 2 feedstocks and that the Department 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 and Type 2 feedstocks.

.03 Incorporation by Reference.

A. In this chapter, the following documents are incorporated by reference:

- (1) 40 CFR §122.26(b)(14), as amended;

(2) 40 CFR Part 503, Appendix B, §(B)(1), as amended, except wherever the words “sewage sludge” appear, substitute “materials being composted;” and

(3) 40 CFR §503.33(b)(5), as amended, except wherever the words “sewage sludge” appear, substitute “materials being composted.”

.04 General Restrictions and Specifically Prohibited Acts.

A. *Applicability.* This regulation applies to a composting facility, regardless of whether the composting facility is required to obtain a Composting Facility Permit under this chapter.

B. *General Restrictions.* A person shall not engage in composting in a manner which will likely:

(1) Create a nuisance;

(2) Be conducive to insect and rodent infestation or the harborage of animals;

(3) Cause nuisance odors or other air pollution in violation of COMAR 26.11.06 or involve 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;

(4) Cause a discharge of pollutants derived from organic materials or solid waste to waters of this State unless otherwise permitted by the Department;

(5) Harm the environment; or

(6) Create other hazards to the public health, safety, or comfort as may be determined by the Department.

C. The Department, in exercising its authority under these regulations with respect to granting or renewing permits, reviewing operations of a composting facility, or allowing operation under a general permit, may consider any documentation required under these regulations to evaluate whether any of the conditions described in §B of this regulation is likely to occur or has occurred.

D. A person may not own, construct or operate a composting facility in this State except in accordance with these regulations.

.05 Permits Required.

A. *Applicability.*

(1) This regulation applies to a composting facility that is not located at a farm.

(2) Regulation .06 of this chapter establishes the permit requirements for a composting facility located at a farm.

B. *Permits Required.* Except as provided in §§C—E of this regulation and in Regulation .07 of this chapter, a person:

(1) May not cause, suffer, allow, or permit the construction or operation of a composting facility in the State without a permit issued by the Department under this chapter; and

(2) Shall construct and operate the composting facility:

(a) In accordance with the conditions of an individual Composting Facility Permit issued by the Department;

or

(b) In accordance with the conditions of the general Composting Facility Permit after the responsible party has:

(i) Submitted a Notice of Intent (NOI) and all required information in accordance with Regulation .11 of this chapter; and

(ii) Received a letter of acknowledgment from the Department.

C. *Exemptions.* A Composting Facility Permit is not required for a composting facility that complies with the general restrictions in Regulation .04B of this chapter and:

(1) Is located on a residential property and composts organic materials generated on the residential site, if the resulting compost is used on the residential site for personal, household, or family purposes;

(2) Is managed by State or local government and composts animal mortalities as part of roadway or other maintenance activities; or

(3) Is a Tier 1 or Tier 2 Facility that:

(a) At all times, uses no more than 5,000 square feet of area in support of composting operations; and

(b) Except where a smaller pile size is required by local law:

(i) Maintains any raw feedstock storage piles at a height of 9 feet or less; and

(ii) Maintains any active composting pile, curing, or finished compost piles at a height of 12 feet or less.

D. *Tier 3 Facilities.*

(1) A person may not operate a Tier 3 Facility in the State without a permit issued by the Department under COMAR 26.04.06 or COMAR 26.04.07.

(2) A Tier 3 Facility that operates under a permit issued under COMAR 26.04.06 or COMAR 26.04.07 is not required to obtain a Composting Facility Permit issued under this chapter.

E. *Composting Facilities Located at Solid Waste Acceptance Facilities.* A Tier 1 or Tier 2 composting facility that is located at a solid waste acceptance facility, as defined in COMAR 26.04.07.02, is not required to obtain a Composting Facility Permit if:

(1) The composting facility operates under a refuse disposal permit issued under COMAR 26.04.07; and

(2) The composting facility's refuse disposal permit includes design and operational conditions specific to the composting activity.

.06 On-Farm Composting Facilities – Permits Required.

A. Applicability.

(1) This regulation applies to a composting facility located at a farm.

(2) Regulation .05 of this chapter establishes the permit requirements for a composting facility that is not located at a farm.

B. Permits Required. Except for an on-farm composting facility that qualifies for an exemption under §§C—G of this regulation and except as provided in Regulation .07 of this chapter, a person:

(1) May not cause, suffer, allow, or permit the operation of an on-farm composting facility in the State without a permit issued by the Department under this chapter; and

(2) Shall construct and operate the composting facility:

(a) In accordance with the conditions of an individual Composting Facility Permit issued by the Department;

or

(b) In accordance with the conditions of the general Composting Facility Permit after the responsible party

has:

(i) Submitted a Notice of Intent (NOI) and all required information in accordance with Regulation .11 of this chapter; and

(ii) Received a letter of acknowledgment from the Department.

C. A Composting Facility Permit is not required for an on-farm composting facility, regardless of its size, if:

(1) The composting facility complies with the general restrictions in Regulation .04B of this chapter;

(2) The composting facility composts only organic materials generated on site or at another farm controlled by the same operator; and

(3) The compost is used for personal, household, family, or agricultural purposes at the farm where the composting facility is located or at a farm controlled by the same operator.

D. A Composting Facility Permit is not required for an on-farm composting facility that uses no more than 40,000 square feet of area in support of composting operations if the composting facility:

(1) Complies with the general restrictions in Regulation .04B of this chapter;

(2) By no later than January 1, 2017 for an existing composting facility, or before commencement of operations for a new composting facility, is constructed and operated in accordance with:

(a) A nutrient management plan, if required under COMAR 15.20.07; and

(b) Either:

(i) 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 Regulation .04B of this chapter are met; or

(ii) An agricultural 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 Regulation .04B of this chapter are met; and

(3) Composts only one or more of the following:

(a) Organic 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 feedstocks, regardless of the place of generation.

E. A Composting Facility Permit is not required for an on-farm composting facility that uses no more than 5,000 square feet of area in support of composting operations if the composting facility:

(1) Is a Tier 1 or Tier 2 facility;

(2) Complies with the general restrictions in Regulation .04B of this chapter; and

(3) Except where a smaller pile size is required by local law:

(a) Maintains any raw feedstock storage piles at a height of 9 feet or less; and

(b) Maintains any active composting pile, curing, or finished compost piles at a height of 12 feet or less.

F. Emergency Exemption for Composting of Animal Mortalities. A Composting Facility Permit is not required for an on-farm composting facility that:

(1) Complies with the general restrictions in Regulation .04B of this chapter;

(2) Temporarily composts animal mortalities generated as a result of a non-routine, catastrophic die off; and

(3) Operates under the approval of and as directed by Maryland Department of Agriculture, in consultation with the Department.

G. Tier 3 Facilities.

(1) A person may not construct or operate a Tier 3 Facility in the State without a permit issued by the Department under COMAR 26.04.06 or COMAR 26.04.07.

(2) A Tier 3 Facility that operates under a permit issued under COMAR 26.04.06 or COMAR 26.04.07 is not required to obtain a Composting Facility Permit issued under this chapter.

.07 Existing Composting Facilities

A. This regulation applies to composting facilities that began operations on or before the effective date of this regulation.

B. Within 60 calendar days after the effective date of this chapter, an existing composting facility that is required to obtain a Composting Facility Permit under Regulations .05 or .06 of this chapter shall submit an Existing Facility Notification to the Department.

C. The Existing Facility Notification required under §B of this regulation shall be submitted on a form provided by the Department and shall include at least:

- (1) The name and location of the composting facility;
- (2) Days and hours of operation;
- (3) The name and contact information of the composting facility operator and the name of each operator certified by the Department of Agriculture under COMAR 15.18.04;
- (4) A brief description of the feedstocks currently accepted and their sources;
- (5) An estimate of the quantity of feedstocks accepted annually and the quantity of compost produced annually, in cubic yards;
- (6) The area, in square feet, that is used in support of composting operations; and
- (7) Whether the compost is distributed off site.

D. An existing composting facility that has submitted a complete and timely Existing Facility Notification as required under §B of this regulation is not subject to the requirements in Regulations .05, .06 and .08—16 of this chapter until January 1, 2017, if the following conditions are met:

- (1) The composting facility accepts only feedstocks that it accepted as of the effective date of this regulation and that were described in the Existing Facility Notification, except that the sources of feedstocks may change if the nature and type of the material is substantially the same;
- (2) The composting facility accepts materials in quantities not exceeding the annual quantity reported in the Existing Facility Notification; and
- (3) The composting facility does not engage in composting in a manner likely to cause any of the prohibited acts listed in Regulation .04B of this chapter.

E. Nothing in this regulation shall be construed to prohibit the Department from enforcing any other law, regulation, or permit applicable to the existing composting facility.

.08 Composting Facility Siting and Design Requirements.

A. This regulation applies to composting facilities that are required to obtain a Composting Facility Permit under this chapter, and establishes conditions that the composting facility operator shall meet with respect to construction of the composting facility.

B. Siting Criteria.

(1) Except where a greater setback is required by local, State, or federal law or regulations, feedstock receipt, feedstock storage, active composting, curing, and compost storage areas of a composting facility may not be located closer than:

- (a) 50 feet to the property line of a property not owned or controlled by the operator of the composting facility;
- (b) 300 feet to a dwelling not owned or operated by the operator of the composting facility;
- (c) 100 feet to a domestic well; and
- (d) 100 feet to a stream, lake, or other body of water except an impoundment for use in the composting process.

(2) A composting facility shall be located in accordance with all applicable federal laws, regulations, or guidance related to the location of composting facilities at or near airports.

(3) A composting facility may not be located in a flood plain, except as otherwise approved by the Department.

(4) A composting facility shall be located and constructed in accordance with COMAR 26.23 and COMAR 26.24, relating to nontidal and tidal wetlands, respectively.

(5) A composting facility may not be located in conflict with the Chesapeake Bay Critical Area Commission Criteria under COMAR 27.01 or any locally adopted Critical Area Plan.

C. Basic Design Criteria.

(1) As required by Regulation .09 of this chapter, the CFOP shall clearly define:

(a) The locations at the composting facility to be used for feedstock receiving and storage, active composting, curing, and compost storage; and

(b) The maximum throughput and capacity of the composting facility.

(2) No material shall be stored in excess of the capacity specified in the CFOP.

(3) The composting facility shall be of sufficient size to allow processing of materials as necessary to avoid nuisance conditions and shall have adequate space for material stockpiles, windrows, or piles of manageable dimensions for maintaining aerobic conditions, curing piles, staging of finished compost, and equipment.

(4) The maximum windrow or pile size and minimum windrow or pile spacing shall match the capability and requirements of the equipment used at the composting facility.

(5) Access to the composting facility shall be limited to authorized entrances, which shall be secured from public access when the composting facility is not in operation.

(6) The composting facility shall have a sign at its entrance that lists:

- (a) The name and address of the composting facility;
- (b) Days and hours of operation; and
- (c) Emergency contact information.

(7) The composting facility shall have all-weather access roads.

(8) Structures such as berms or ditches shall be used to prevent run-on to the feedstock receiving, feedstock storage, active composting, curing, and compost storage areas.

D. Distance to Groundwater.

(1) The composting facility shall be constructed and located to comply with the following minimum vertical distances between the seasonal high water table and any surfaces used for feedstock receiving, feedstock storage, active composting, curing, or compost storage:

(a) For a composting facility located outside the coastal plain province, as shown in COMAR 26.04.02.13, the minimum distance shall be 4 feet; and

(b) For a composting facility located within the coastal plain province, as shown in COMAR 26.04.02.13, the minimum distance shall be as follows:

(i) For a composting facility located in an area with an applicable groundwater protection report approved by the county health department under COMAR 26.04.02.04, the minimum distance shall be the distance specified in the report as the minimum soil treatment zone for an on-site sewage disposal system;

(ii) For a composting facility located in an area where no approved groundwater protection report applies, the minimum distance shall be 4 feet;

(iii) For a composting facility that will operate under the general Composting Facility Permit, the minimum distance shall be the distance specified in the general permit;

(iv) The Department may set another distance if necessary to adequately protect groundwater, as determined by the Department and based on factors such as whether the composting facility is located in a wellhead protection area, the permeability of the buffer zone between the surface and groundwater, the proportion of rock in the buffer zone, whether the composting facility is located near a sole source aquifer, and any other relevant hydrogeologic factors; and

(v) Notwithstanding §D(1)(b)(i)—(iv) of this regulation, the minimum distance shall in no case be less than 2 feet.

(2) The Department may specify the method to be used for determining the distance to the seasonal high water table.

(3) The Department may exempt an indoor composting facility from the requirement for distance to the seasonal high water table in §D(1) of this regulation.

E. Pad Requirements.

(1) Slope of surfaces. All surfaces used for feedstock receiving, feedstock storage, active composting, curing, and compost storage shall be sloped between 1 and 6 percent, as determined by site conditions and as sufficient to prevent ponding, except for areas located indoors, which shall have slope sufficient to prevent ponding and facilitate cleaning.

(2) Pad Requirements for Tier 1 Facilities. For Tier 1 Facilities, the surfaces used for feedstock receiving, feedstock storage, active composting, curing, and compost storage shall be composed of an all-weather pad.

(3) Pad Requirements for Tier 2 Small Facilities.

(a) For Tier 2 Small Facilities, the surfaces used for feedstock receiving, feedstock storage, curing, and compost storage shall be composed of an all-weather pad.

(b) Surfaces used for active composting shall be composed of:

(i) An all-weather pad with a 6-inch layer of carbon-rich substrate such as wood chips placed beneath each active composting pile or windrow, above the all-weather pad; or

(ii) A low-permeability pad constructed in accordance with the requirements for Tier 2 Large Facilities in §E(4)(b) of this regulation, if the requirements for management of contact water in §F(2) or F(3) of this regulation are also met.

(c) The 6-inch layer of carbon-rich substrate required under §E(3)(b)(i) of this regulation shall be placed under an active composting pile or windrow at the time it is initially formed, but the layer is not required to be replaced each time the pile is turned or consolidated.

(4) Pad Requirements for Tier 2 Large Facilities.

(a) For Tier 2 Large Facilities, surfaces used for curing and compost storage shall be composed of an all-weather pad.

(b) Surfaces used for feedstock receipt, feedstock storage, and active composting shall be constructed of a low-permeability pad that meets the following requirements:

(i) A pad constructed on the surface of the ground shall have a hydraulic conductivity of 1×10^{-5} cm/sec or less;

(ii) A pad that is buried shall have a hydraulic conductivity of 1×10^{-6} cm/sec or less;

(iii) A pad made of asphalt concrete or Portland cement concrete shall be designed to minimize the potential for cracking and allow equipment to operate without damage; and

(iv) A pad made of compacted clay shall have a minimum thickness of one foot and shall be protected from desiccation and installed in a manner such that the integrity of the pad will not be impaired by the operation of heavy equipment used on the pad.

(c) For Tier 2 Large Facilities in which the active composting piles are covered, the active composting area required to have a low-permeability pad under §E(4)(b) of this regulation is limited to the area directly underneath each covered pile and does not include the aisles between the covered piles.

F. Design Requirements for Management of Stormwater and Contact Water.

(1) The composting facility shall be designed to manage any stormwater discharges associated with industrial activity, as defined in 40 CFR §122.26(b)(14), in accordance with:

- (a) The NPDES permit issued by the Department;
- (b) State and local stormwater requirements; and
- (c) State and local erosion and sediment control requirements.

(2) Uncovered Tier 2 Large Facilities.

(a) This subsection applies to Tier 2 Large Facilities in which the active composting piles are not covered.

(b) The feedstock receiving, feedstock storage, and active composting areas shall direct contact water to a collection basin, tank, or other containment system before:

(i) Reuse on feedstock storage or active composting piles in accordance with the CFOP and in a manner that prevents contamination of materials that have met the pathogen reduction requirements in Regulation .09B(10) of this chapter;

(ii) Transport off site for treatment at a permitted facility; or

(iii) Discharge under COMAR 26.08.01—04.

(c) The collection basin, tank, or other containment system used to collect contact water shall:

(i) Be sized to handle at least a 24-hour, 25-year storm event;

(ii) For a basin, have a synthetic or compacted clay liner with a hydraulic conductivity of 1×10^{-7} cm/sec

or less;

(iii) For a liner constructed of compacted clay, have a thickness of at least 1 foot; and

(iv) For a tank or other containment system, be constructed of impermeable material acceptable to the

Department.

(3) Covered Tier 2 Large Facilities.

(a) This subsection applies to Tier 2 Large Facilities in which active composting piles are covered.

(b) The following are considered contact water at Covered Tier 2 Large Facilities and shall be collected and contained in accordance with the requirements of §F(3)(d) of this regulation:

(i) Liquid that drains from the bottom of a covered pile; and

(ii) Runoff from any uncovered feedstock receipt or feedstock storage areas.

(c) The following are not considered contact water at Covered Tier 2 Large Facilities and are not subject to the collection and containment requirements of §F(3)(d) of this regulation:

(i) Runoff from active composting areas that has contacted only covered piles, roofs, or empty aisles; and

(ii) Runoff from any feedstock receipt and feedstock storage areas covered by a roof, if the runoff has contacted only the roof or empty aisles.

(d) Contact water from Covered Tier 2 Large Facilities shall be collected and contained in a collection basin, tank, or other containment system before:

(i) Reuse on feedstock storage or active composting piles in accordance with the CFOP and in a manner that prevents contamination of materials that have met the pathogen reduction requirements in Regulation .09B(10) of this chapter;

(ii) Transport off site for treatment at a permitted facility; or

(iii) Discharge under to COMAR 26.08.01—04.

(e) A collection basin, tank, or other containment system used to collect contact water shall:

(i) Be sized to contain all contact water generated by the composting facility;

(ii) For a basin, have a synthetic or compacted clay liner with a hydraulic conductivity of 1×10^{-7} cm/sec or

less;

(iii) For a liner constructed of compacted clay, have a thickness of at least 1 foot; and

(iv) For a tank or other containment system, be constructed of impermeable material acceptable to the

Department.

G. Monitoring Wells. The Department may require a composting facility to install monitoring wells and conduct groundwater monitoring if:

(1) The composting facility is located in karst terrain;

(2) The composting facility is located in a wellhead protection area; or

(3) The Department otherwise considers monitoring necessary to adequately protect groundwater because of the particular characteristics of the site.

.09 Composting Facility Operating Requirements.

A. This regulation:

(1) Applies to composting facilities that are required to obtain a Composting Facility Permit under this chapter, and

(2) Establishes requirements that the composting facility operator shall meet in operating a composting facility.

B. Basic Operating Requirements.

(1) Composting Facility Operations Plan (CFOP).

(a) A composting facility shall have and follow a Department-approved CFOP that contains:

- (i) A description of the operational procedures for the composting facility in order to comply with the requirements of this chapter;
- (ii) A description of the methods, equipment, and feedstocks to be used;
- (iii) A description of the movement of materials throughout the composting process, including a description of the locations to be used at the composting facility for receipt, active composting, curing, and storage phases.
- (iv) A maximum capacity and annual throughput for the composting facility;
- (v) A plan to prevent creation of nuisances, including nuisance odors and litter, and to respond to complaints;
- (vi) A plan to prevent harborage and infestation of vectors;
- (vii) A description of methods used to control contact water and stormwater;
- (viii) An emergency preparedness plan for responding to and minimizing the occurrence of fires, explosions, and releases;
- (ix) A plan and procedure for monitoring temperature of each windrow or pile, including a procedure for demonstrating that the pathogen reduction requirements of §B(10) of this regulation are met;
- (x) A plan and procedure for monitoring moisture during composting;
- (xi) A plan for periodic inspection of the site by the facility operator or personnel, including inspection of the pad and any stormwater and contact water control measures;
- (xii) A plan for periodic cleaning and maintenance;
- (xiii) A description of the methods for handling unacceptable wastes delivered to the composting facility, including how they shall be identified, segregated, and handled before recycling or final disposal;
- (xiv) Employee safety training requirements;
- (xv) A description of procedures for recording and reporting incidents of noncompliance with this chapter;
- (xvi) Methods used to prevent mud, soil, and debris from the composting facility from entering public roadways and a procedure for cleaning roads if necessary;
- (xvii) A plan for disposal of product that does not meet quality or regulatory standards;
- (xviii) For Tier 2 Facilities, a plan for determining whether the product is stable, meets the pathogen reduction requirements of §B(10) of this regulation, and is suitable for placement in the curing or compost storage area; and

(xix) A listing of the composting facility personnel that hold a composting operator certification issued by the Department of Agriculture under COMAR 15.18.04.03.

(b) The composting facility operator shall review the CFOP internally at least once per year and update the CFOP when there is a change in Certified Operators, procedures, or feedstocks.

(c) The composting facility operator shall ensure that a copy of the CFOP is available on site and shall make the CFOP available to the Department upon request.

(2) The composting facility operator shall complete and document training in the basics of composting facility operations in accordance with COMAR 15.18.04.03.

(3) The composting facility shall be maintained in a clean and sanitary condition, free of unsecured trash and non-compostable materials at the end of each operating day.

(4) The composting facility operator shall ensure that a copy of the current Composting Facility Permit is on site at all times.

(5) The composting facility, including the feedstock receipt, feedstock storage, active composting, curing, and compost storage areas, shall be maintained and repaired as needed.

(6) The composting facility operator shall ensure that the composting facility is in compliance with all local rules, regulations, and ordinances.

(7) Feedstocks shall be managed in a timeframe that prevents nuisance odors, unauthorized discharge of contact water, fire, and scavenging by vectors.

(8) Compost shall not be stored on site longer than 12 months, unless approved by the Department on a case-specific basis and addressed in the CFOP.

(9) Non-compostable waste shall be removed or stored in a waste container or containment area, and then disposed at a permitted solid waste facility or recycled:

- (a) Within the timeframe provided in the approved CFOP;
- (b) As required by local regulating authority; and
- (c) Whenever the container is full.

(10) Pathogen Reduction and Vector Attraction Reduction.

(a) The material being composted shall undergo the composting Process to Further Reduce Pathogens under 40 CFR Part 503, Appendix B, §(B)(1); and

(b) A Tier 2 facility shall implement a method to control vector attraction, including:
(i) The Vector Attraction Reduction method in 40 CFR §503.33(b)(5); or
(ii) An alternative method specified in the CFOP, which may include a time and temperature combination or other management control.

(11) Any stormwater discharges associated with industrial activity, as defined in 40 CFR §122.26(b)(14), shall be managed in accordance with:

- (a) A NPDES permit issued by the Department;
- (b) State and local stormwater requirements; and
- (c) State and local erosion and sediment control requirements.

C. Additional Operating Requirements for Tier 2 Small Facilities.

(1) Type 2 feedstocks with free liquid shall be promptly mixed with drier feedstocks, bulking material, or compost so that the liquid is absorbed and not allowed to flow from the compost piles or windrows.

(2) By the end of each operating day, Type 2 feedstocks shall be processed into an active composting pile, transferred to leak-proof containment, or mixed with carbon-rich bulking material and covered in a manner that prevents nuisance odors and scavenging by vectors.

(3) Except for covered piles, a 6-inch layer of compost or carbon-rich material shall be placed over active composting piles by the end of the operating day on which they are formed and again after each time the piles are turned.

D. Additional Operating Requirements for Tier 2 Large Facilities.

(1) Any Type 2 feedstocks with free liquid shall be mixed with drier feedstocks, bulking material, or compost so that the liquid is promptly absorbed and not allowed to flow from the compost piles or windrows.

(2) Free liquid that is not absorbed by drier feedstocks is contact water and shall be directed to a containment system and managed in accordance with §D(4) of this regulation.

(3) By the end of each operating day, Type 2 feedstocks shall be processed into an active composting pile, transferred to leak-proof containment, or mixed with bulking material and covered in a manner that prevents nuisance odors and scavenging by vectors.

(4) Contact water shall be collected and contained in a collection basin, tank, or other containment system designed in accordance with Regulation .08F of this chapter before:

- (a) Reuse on feedstock storage or active composting piles in accordance with the CFOP and in a manner that prevents contamination of materials that have met the pathogen reduction requirements of §B(10) of this regulation;
- (b) Transport off site for treatment at a permitted facility; or
- (c) Discharge under COMAR 26.08.01—.04.

.10 Application for Individual Permit and Permit Review.

A. Requirements for Application.

(1) An applicant for an individual Composting Facility Permit shall submit a permit application on a form provided by the Department.

(2) An applicant for an individual Composting Facility Permit shall also apply for any air quality permits required under COMAR 26.11.02 and any discharge permits required under COMAR 26.04.02.09 and COMAR 26.08.04, including a permit for storm water discharges if required.

(3) The application for an individual Composting Facility Permit shall include:

- (a) The name and address of the applicant;
- (b) The applicant's Social Security Number, if the applicant is an individual, or the applicant's federal tax identification number, if the applicant is not an individual;
- (c) A description of the composting facility for which the permit is requested, including an explanation of how the requirements of this chapter shall be met;
- (d) A listing of all other applicable permits required under local, State, or federal law and regulations, including permit numbers for those currently held;
- (e) A marketing plan and strategy for the compost produced at the composting facility;
- (f) Copies of plans and engineering reports as described in §B of this regulation; and
- (g) A description of any variances for which the applicant is applying at the time of application, in accordance with Regulation .14 of this chapter.

B. Engineering Plans and Specifications.

(1) The applicant shall submit engineering plans and specifications for the composting facility to the Department as part of the application.

(2) The information contained in these plans and specifications shall include:

- (a) A map showing the specific location of the composting facility and types of land uses, including any residential areas, schools, or other institutions located within 1/2 mile of the boundaries of the composting facility;
- (b) Drawings of on-site buildings and other composting facility structures, including any pads and contact water or stormwater containment systems, showing the type of construction, layout, and dimensions;
- (c) For facilities with any outdoor operations, including feedstock receipt or curing, a topographic map of the site that identifies slopes greater than 25 percent, floodplains, wetlands, streams, and aquifer recharge areas;

- (d) Drawings showing feedstock receipt and storage, compost storage, equipment storage, curing, and active composting areas;
- (e) A site plan designating the property boundaries, existing and proposed composting facility structures, and roads;
- (f) A descriptive statement of processes and technology to be used;
- (g) The distance to the seasonal high water table, demonstrating compliance with Regulation .08D of this chapter;
- (h) A description of the following:
 - (i) Major items of equipment including manufacturer, type, model, capacity, and number of units;
 - (ii) Types and anticipated quantities of feedstocks to be accepted and processed daily;
 - (iii) Types of feedstocks that are not accepted;
 - (iv) Means by which the quantities of materials entering the composting facility, processed at the composting facility, and leaving the composting facility are determined;
 - (v) Geographic areas expected to be served by the composting facility;
 - (vi) Measures that shall be taken to prevent or control ground or surface water pollution, fires, explosions, odors, noise, dust, litter, vectors, and other nuisances;
 - (vii) Methods of controlling contact water and stormwater from the composting facility;
 - (viii) Soil types and depths at the composting facility site;
 - (ix) Employee safety and sanitary facilities including the location of on-site sewage disposal and water supply systems;
 - (x) Number and positions of employees; and
 - (xi) Hours of operation;
- (i) A copy of the CFOP required under Regulation .09 of this chapter;
- (j) If required, an erosion and sediment control plan that meets the requirements of COMAR 26.17.01 and has been approved by the local soil conservation district or appropriate approving authority;
- (k) A grading permit as required by the local jurisdiction;
- (l) A description of site security and access control; and
- (m) An approved and bonded stormwater management plan, if required by the local jurisdiction.

C. Term of License. A Composting Facility Permit shall be issued for a term of 5 years.

D. The Department shall distribute the applications submitted to the:

- (1) Governing body, the county executive, or both, of a county or municipality in which the activity is proposed;
- (2) Local operating agency responsible for solid waste and recycling management;
- (3) Local health or environmental official;
- (4) Department of Natural Resources;
- (5) Appropriate soil conservation district;
- (6) U.S. Army Corps of Engineers;
- (7) State Highway Administration;
- (8) State Fire Marshal's Office; and
- (9) Local fire marshal.

E. The Department shall invite each person receiving a copy of the application under §D of this regulation to:

- (1) Inspect the site that is the subject of the application during a joint inspection scheduled by the Department; and
- (2) Submit comments to the Department within 30 calendar days of receipt of the application and supporting information.

F. Public Notice.

(1) Upon an applicant's submission of a completed application for an individual Composting Facility Permit, the Department shall publish a notice of the application on the Department's website, including:

- (a) A statement of the location of the proposed facility and the type and quantity of feedstocks intended to be composted;
- (b) A statement that the Department shall allow 30 calendar days for public comment on the application before issuance of the permit;
- (c) The procedure and deadline for submitting comments on the application; and
- (d) Any other information related to the application that the Department considers relevant.

(2) The Department shall publish notice of issuance of an individual Composting Facility Permit on the Department's website.

G. Contested Case Hearing.

(1) The applicant shall have an opportunity for a hearing on a denial of an individual Composting Facility Permit or any condition of an individual Composting Facility Permit, if the applicant files a written request with the Department within 10 calendar days of receipt of the notice of denial or issuance of the permit with conditions.

(2) A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

H. Permit Modification.

(1) The Department may modify an individual Composting Facility Permit upon request by the permittee if all the following conditions are met:

(a) The permittee is in compliance with this chapter and all the conditions of the permit;

(b) The permittee submits to the Department a modification application, on a form provided by the Department, including:

(i) A description of the proposed modification and an explanation of why the modification is needed;

(ii) A revised version of any documentation listed in §B of this regulation that will change as a result of the modification, including a revised CFOP incorporating the proposed modifications; and

(iii) Any other information requested by the Department to evaluate the proposed modification; and

(c) The Department determines that the proposed modification is in compliance with this chapter and does not adversely affect the environment or public health.

(2) An application for a major permit modification shall be subject to the notice and comment opportunities provided in §§D and F of this regulation, except that only provisions of the permit subject to modification shall be open for comment.

(3) An application for a minor permit modification is not subject to the notice and comment opportunities provided in §§D and F of this regulation.

.11 General Permit to Operate a Composting Facility.

A. Eligibility for the General Composting Facility Permit.

(1) A person may construct and operate a Tier 1 or Tier 2 Facility under the general Composting Facility Permit issued under §H of this regulation if:

(a) Either:

(i) The operator of an existing composting facility for which a timely and complete Existing Facility Notification was filed under Regulation .07 of this chapter submits the documentation required under §§B—D of this regulation not later than January 1, 2017 and receives an acknowledgement from the Department under §G of this regulation; or

(ii) The operator of a new composting facility submits the documentation required under §§B—D of this regulation and receives an acknowledgement from the Department under §G of this regulation before beginning operations; and

(b) The composting facility is in compliance with:

(i) The terms of the general permit; and

(ii) All requirements of this chapter, without variances.

(2) If an existing composting facility has not filed a complete and timely Existing Facility Notification under Regulation .07 of this chapter, a person may not operate the existing composting facility under the general Composting Facility Permit until the operator submits the documentation required under §§B—D of this regulation and receives an acknowledgement from the Department under §G of this regulation.

(3) A proposed Tier 1 or 2 Facility that requests a variance from the requirements in this chapter or that would not comply with the terms of the general permit shall apply for an individual Composting Facility Permit under Regulation .10 of this chapter.

B. A person intending to construct or operate a composting facility under the general permit shall submit to the Department:

(1) A Notice of Intent (NOI); and

(2) A copy of the CFOP required by Regulation .09 of this chapter.

C. The NOI shall be signed by a responsible party and shall be sent by certified mail.

D. A person signing an NOI shall certify that the composting facility will operate in compliance with the conditions of the general permit.

E. Becoming a permittee under the general permit obligates the person to comply with the terms and conditions of the general permit.

F. Duration of the Permit. The general Composting Facility Permit shall have a term of 5 years and may be reissued with or without changes at the discretion of the Department.

G. Dates of Coverage Under the Permit.

(1) Authorization to operate a composting facility under the general Composting Facility Permit is effective on the date the Department acknowledges receipt of a complete NOI and a complete CFOP.

(2) Authorization under the general Composting Facility Permit ends when the earliest of the following events occurs:

(a) The permit term expires, unless the permittee submits to the Department a request for continuing coverage under §G(3) of this regulation at least 60 calendar days before the permit expires;

(b) The permittee permanently ceases operations after notifying the Department under §G(4) of this regulation;

(c) A change in ownership or control of the composting facility occurs; or

(d) The Department provides written notice to a permittee of suspension or revocation of the permittee's coverage under the general Composting Facility Permit, in accordance with Regulation .16A of this chapter.

(3) *Request for Continuing Coverage.*

(a) *The request for continuing coverage under §G(2)(a) of this regulation may be fulfilled by submission of a renewal NOI and current CFOP.*

(b) *Once a request for continuing coverage has been filed, an expired general permit continues in force and effect until the general permit is reissued and any deadline for opportunity to register under the new permit is reached or the general permit is revoked or withdrawn.*

(4) *A permittee who intends to permanently cease operations shall notify the Department of the permittee's intent to do so and shall comply with the requirements in Regulation .13 of this chapter related to composting facility closure.*

H. General Permit – Public Notice, Public Meeting and Issuance.

(1) *Before issuance or reissuance of the general Composting Facility Permit, the Department shall prepare a draft permit.*

(2) *The Department shall publish a notice of the draft permit prepared under §H(1) of this regulation on the Department's website, and include in the notice:*

(a) *A copy of the draft permit;*

(b) *A statement that the Department shall allow a minimum of 30 calendar days for public comment on the draft permit before the issuance or reissuance of the permit; and*

(c) *The procedure and deadline for submitting comments on the draft permit.*

(3) *The Department shall schedule a public meeting on the draft general Composting Facility Permit when a written request is made within 20 calendar days of the publication of the notice of draft permit.*

(4) *The Department may, at its discretion, hold a public meeting on a draft general Composting Facility Permit if no request for a public meeting is received.*

(5) *A public meeting may be cancelled if all persons who made timely written request for the meeting withdraw their requests.*

(6) *If a public meeting is scheduled, the Department shall:*

(a) *Publish a notice of the public meeting on the Department's website a minimum of 30 calendar days prior to the meeting; and*

(b) *Include in the notice:*

(i) *The draft permit; and*

(ii) *The date, time, and location of the meeting.*

(7) *The Department shall:*

(a) *Provide an opportunity at the public meeting for comments concerning the issuance of a general permit; and*

(b) *Accept written comments on the proposal to issue a general permit for at least 5 calendar days after a public meeting.*

(8) *The Department shall publish notice of issuance or reissuance of the general Composting Facility Permit on the Department's website.*

I. Transfer of Ownership.

(1) *Participation in the general permit:*

(a) *Is not transferable; and*

(b) *Authorizes only the signatory party to operate the permitted facility.*

(2) *If there is a change in control or ownership of the property not caused by death of the permittee, the permittee shall:*

(a) *Notify the succeeding owner by certified mail of:*

(i) *The existence of the permit; and*

(ii) *Any outstanding permit noncompliance; and*

(b) *Make the notification required by §I(2)(a) of this regulation a minimum of 60 calendar days before the change in control or ownership; and*

(3) *The permittee shall provide the Department with a copy of the notification required in §I(2) of this regulation at the same time that the notification is provided to the succeeding owner.*

J. Submission of Revised NOI.

(1) *A permittee that is authorized under the general Composting Facility Permit shall submit a revised NOI a minimum of 60 calendar days before either of the following changes occurs:*

(a) *A permitted Tier 1 Facility becomes a Tier 2 Facility by beginning to accept Type 2 feedstocks; or*

(b) *A permitted Tier 2 Small Facility becomes a Tier 2 Large Facility by increasing production to greater than 10,000 cubic yards of compost per year.*

(2) *The permittee shall submit with the revised NOI an updated CFOP required by Regulation .09B(1) of this chapter incorporating any proposed operational changes to be made in association with one of the events listed in §J(1) of this regulation.*

(3) *Upon submission of a revised NOI under §J(1) of this regulation, the permittee shall comply with all requirements of this chapter and of the general Composting Facility Permit applicable to the new facility tier.*

K. Contested Case Hearing.

(1) An applicant shall have the opportunity for a hearing on a denial of authorization to operate under the general Composting Facility Permit, if the applicant files a written request with the Department within 10 calendar days of receipt of a notice of denial.

(2) A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.12 Recordkeeping and Reporting.

A. This regulation applies to composting facilities required to obtain a Composting Facility Permit.

B. Measurement for Recordkeeping and Reporting.

(1) For the purpose of the composting facility records required in §C of this regulation, quantities may be measured in either volume or weight.

(2) For the purpose of the annual report required in §D of this regulation, quantities shall be reported by:

(a) Weight, for Tier 1 Facilities; and

(b) Both weight and volume, for Tier 2 Facilities.

(3) For the purpose of the annual report required in §D of this regulation, a facility may calculate approximate weight or volume using a method for converting volume to weight or weight to volume that is described in its annual report and is reasonably accurate, as determined by the Department.

C. Beginning on the date a composting facility is issued an individual Composting Facility Permit or begins operating under the general Composting Facility Permit, the composting facility shall keep records for a minimum of 5 years from the date of each record, in a form suitable for submission to or inspection by the Department, including:

(1) Source, type, and quantity of feedstocks received, including the county in which each quantity was generated;

(2) Quantity and type of feedstocks processed into compost;

(3) Quantity and classification of compost produced using the product classifications specified by the Department of Agriculture in COMAR 15.18.04.05;

(4) Quantity and classification of compost distributed;

(5) Quantity of residues produced and removed from the composting facility;

(6) The results of any analytical testing required by the Department of Agriculture under COMAR 15.18.04.04—
.05 and .11;

(7) Results of temperature monitoring that demonstrate compliance with the pathogen reduction requirements in Regulation .09B(10) of this chapter; and

(8) Results of moisture monitoring conducted in accordance with the CFOP required by Regulation .09B(1) of this chapter.

D. Annual Report.

(1) A composting facility shall submit an annual report on a form provided by the Department.

(2) The composting facility shall submit the annual report by January 31 of each year for the preceding calendar year's data.

(3) The composting facility shall submit all required data on the form provided by the Department, and shall include, at a minimum, the following:

(a) Quantity and type of feedstocks received during the preceding calendar year, indicating the county in which each quantity of material was generated;

(b) Quantities of compost and residues produced by composting during the preceding calendar year; and

(c) Quantities of compost and residues removed from the composting facility during the preceding calendar year.

E. Annual Submission of the CFOP. A composting facility shall submit to the Department a current version of the CFOP, updated in accordance with Regulation .09B(1)(b) of this chapter, by January 31 of each year with the annual report required in §D of this regulation.

F. The Department may impose other recordkeeping and reporting requirements considered necessary.

.13 Closure.

A. A composting facility required to obtain a Composting Facility Permit under this chapter shall submit to the Department a notice of final closure within 270 calendar days after receipt of the final load of feedstocks.

B. Notice of final closure required under §A of this regulation shall include:

(1) The date of final feedstock receipt; and

(2) A site closure plan that provides for:

(a) Management of all feedstock and active, curing, and finished compost and compost-blended products remaining on site;

(b) Treatment or removal of contact water stored in containment structures or ponds;

(c) Removal of compost within 12 months from the time it is finished; and

(d) Removal of all other materials on site, including any solid wastes or feedstocks that are not being composted, within 12 months of receipt of the final load of feedstocks, unless the material is being used as part of site closure as described in the site closure plan.

C. A composting facility, other than one operated on a seasonal basis only, as specified in the CFOP, that does not receive material for 270 calendar days shall be deemed abandoned in violation of this regulation unless properly closed, and its permit shall be suspended.

.14 Variances.

A. A person proposing to construct or currently operating a composting facility may make written application to the Department for a variance from one or more of the provisions in this chapter.

B. The Department shall grant a variance when the design or method of operation proposed in the variance application shows, to the satisfaction of the Department, that the composting facility operations will conserve and protect the public health, natural resources, and environment of the State, prevent nuisances, and control air, water, and land pollution to at least the same extent as would be obtained by compliance with these regulations.

C. A person requesting a variance shall submit the information required by the Department, including:

(1) The nature and location of the composting facility;

(2) The reasons the variance is requested, including the economic, technological, or environmental justification;

and

(3) Other relevant information the Department may require in order to make a determination regarding the requested variance.

D. The Department shall make a determination, in writing, to either grant or deny the requested variance. If the variance request is denied, the Department shall inform the applicant in writing of the basis for the denial and the procedures for appeal of the determination.

E. Contested Case Hearing.

(1) An applicant shall have the opportunity for a hearing on a denial of a variance, if the applicant for the variance files a written request with the Department within 10 calendar days of receipt of the notice of denial.

(2) A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

F. The variance shall become effective when:

(1) The Department has issued a written determination granting the requested variance;

(2) The composting facility for which the variance is requested has been issued an individual Composting Facility Permit; and

(3) The composting facility for which the variance is requested has obtained any other permits or approvals required by State, local, or federal law or regulation.

G. A person operating under or proposing to operate under the general Composting Facility Permit of Regulation .11 of this chapter may not obtain a variance.

H. The Department may rescind a variance if it finds that the facility has violated any of the general restrictions listed in Regulation .04B of this chapter as a result of operating according to the variance or for other good cause.

.15 Pilot and Research Projects.

A. A person may apply for approval to conduct a pilot or research project at a composting facility permitted under this chapter if the project would require the composting facility to temporarily deviate from one or more provisions of this chapter, the general or individual Composting Facility Permit, or the Composting Facility Operations Plan submitted with the NOI or permit application.

B. Activities Eligible for Approval. To be eligible for pilot or research approval the project must be temporary and serve a pilot or research purpose, including to:

(1) Plan for or assess the feasibility of establishing a Tier 2 Facility by accepting limited quantities of Type 2 feedstocks at a permitted Tier 1 Facility;

(2) Perform academic research or conduct testing related to composting;

(3) Address a one-time, seasonal, or temporary need for processing a specific material that the composting facility is not currently authorized to accept; or

(4) Further any other valid pilot or research purpose, as determined by the Department.

C. Request for Approval.

(1) A request for approval for a pilot or research project may be made at the time of application for the Composting Facility Permit or at any time during the term of the permit.

(2) A person requesting pilot or research project approval shall submit the information required by the Department, including:

(a) A description of the activity to be conducted, including the types and quantities of feedstocks to be used;

(b) A statement identifying the provisions of this chapter, the Composting Facility Permit, or the CFOP from which the activity would require deviation;

(c) The purpose of the proposed pilot or research project; and

(d) The proposed length of time needed to conduct the activity.

D. The Department shall make a determination, in writing, to either grant or deny the requested approval. If the request is denied, the Department shall inform the applicant in writing of the basis for the denial and the procedures for appeal of the determination.

E. The Department may issue approval with conditions, including, but not limited, to additional monitoring, recordkeeping, and reporting requirements.

F. Contested Case Hearing.

(1) An applicant shall have an opportunity for a hearing on a denial of approval or any condition of approval, if the applicant files a written request with the Department within 10 calendar days of receipt of the notice of denial or approval with conditions.

(2) A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

G. Duration of Approval.

(1) Approval for pilot or research activities shall be limited in duration, as specified in the approval issued by the Department, with a maximum duration of 1 year.

(2) The permittee may apply for extension of an approval for subsequent periods with a maximum duration of 1 year each.

(3) The approval shall become effective when:

(a) The Department has issued a written determination granting the request for approval;

(b) The composting facility for which the approval is requested has been issued a Composting Facility Permit or is covered under the general Composting Facility Permit; and

(c) The composting facility for which the approval is requested has obtained any other permits or approvals required by State, local, or federal law.

H. Effect of Approval.

(1) The approval operates as a temporary variance from only those provisions of this chapter, the general or individual Composting Facility Permit, or the CFOP that are specified in the approval. The temporary variance does not affect the application of other local, State and federal laws.

(2) The approval does not otherwise change the effect or term of the Composting Facility Permit.

I. The Department may rescind the approval if it finds that the composting facility has violated any of the general restrictions listed in Regulation .04B of this chapter or for other good cause.

.16 Enforcement.

A. Suspension or Revocation of Permits.

(1) After written notification and an opportunity to request a hearing by the Department, the Department may suspend, revoke, or modify a Composting Facility Permit or authorization to operate under the general Composting Facility Permit if the Department finds that:

(a) False or inaccurate information was contained in:

(i) The Composting Facility Permit application or NOI to operate under the general Composting Facility Permit;

(ii) The information and forms, including the CFOP, required as part of the Composting Facility Permit application or NOI to operate under the general Composting Facility Permit; or

(iii) Information required to be submitted to the Department under this chapter or the Composting Facility Permit;

(b) As part of a regulated activity by a permittee, there is or has been a violation of:

(i) The Environment Article, Annotated Code of Maryland;

(ii) Applicable requirements of this chapter;

(iii) Any condition of the Composting Facility Permit;

(iv) Any condition of a State or NPDES discharge permit issued under COMAR 26.08.02.09 or COMAR 26.08.04; or

(v) Any condition of an air quality permit issued under COMAR 26.11.02.

(c) Substantial deviation from approved plans, specifications, or requirements, including the CFOP, has occurred, as determined by the Department;

(d) The Department or an authorized representative of the Department has been refused entry to the premises for the purpose of inspecting or sampling to ensure compliance with the terms and conditions of the Composting Facility Permit;

(e) Conditions exist which are causing or may cause an undue risk to the environment or public health, safety, or welfare as may be determined by the Department;

(f) The permittee has been negligent or incompetent in operating the composting facility; or

(g) Any other good cause exists for suspending, revoking, or modifying the Composting Facility permit or authorization under the general Composting Facility Permit.

(2) Immediate Suspension or Revocation.

(a) Notwithstanding other provisions of this chapter or the terms and conditions of the Composting Facility Permit, the Department may immediately suspend or revoke a Composting Facility Permit or authorization to operate under the general Composting Facility Permit if the Department determines there is an immediate and substantial threat to the environment, public health, safety, or welfare.

(b) The Department shall deliver written notice of an immediate suspension or revocation of a Composting Facility Permit or authorization to operate under the general Composting Facility Permit to the permittee, which:

(i) Informs the permittee of the emergency suspension or revocation;

(ii) Cites the regulations with which the permittee has failed to comply that are the basis for suspension or revocation;

(iii) Specifies the corrective action to be taken by the permittee and the time period within which the action shall be taken; and

(iv) Notifies the permittee of the right to request a hearing.

(c) The filing of a hearing request does not stay the revocation or suspension.

(3) An opportunity shall be provided for a hearing if the permittee files a written request with the Department within 10 calendar days of receipt of the notice of suspension, revocation, or modification.

(4) A hearing provided for in this regulation shall be conducted by the Department at a designated time and place in accordance with the provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(5) Actions taken in accordance with this regulation do not preclude the Department from taking other administrative, civil, or criminal action for violations of State law, regulations, or terms and conditions of the Composting Facility Permit.

(6) Reinstatement of Suspended Permits or Authorization to Operate Under the General Permit. A person whose Composting Facility Permit or authorization to operate under the general Composting Facility Permit has been temporarily suspended may make application at any time for a reinspection for the purpose of reinstatement of the permit or authorization to operate under the general permit. Following receipt of a written request, including a statement signed by the permittee that the deficiencies which caused suspension have been corrected, the Department may make a reinspection. If the permittee is complying with the requirements of the permit and these regulations, the Department may reinstate the permit or authorization to operate under the general permit.

B. Inspections.

(1) General. The Department may inspect the composting facilities permitted under this chapter, and may make as many additional inspections and reinspections as are necessary for the enforcement of these regulations.

(2) Right of Entry. A composting facility shall allow an agent of the Department, after presenting proper identification and during normal operating hours of the composting facility, to enter the buildings, structures, and premises owned by a person supplying composting services, and to enter private property for the purpose of collecting samples, records, and information, and taking photographs to ascertain whether the regulations, orders, and permits of the Secretary of the Environment are being obeyed.