

## PRODUCT LABELING AND CLAIMS

# STATE FERTILIZER AND SOIL

### RELATED DEFINITIONS

**Fertilizer:** Any substance containing one or more recognized plant nutrient(s) which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and other products exempted by the regulation by the (name state).

**Specialty Fertilizer:** A fertilizer distributed for nonfarm use.

**Soil Amendment** (commonly referred to as a Soil Additive or Soil Conditioner): Any substance or a mixture of substances which is intended to improve the physical, chemical, biochemical, biological or other characteristic of the soil, except fertilizer, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetables manures, pesticides and other materials exempt by regulation.

**Compost:** A biologically stable material derived from the composting process.

**Digestate:** The liquid or solid material processed through anaerobic digestion. Labeling digestate materials shall be designated by prefixing the name of the feedstock from which it is produced, i.e., cow manure digestate, biosolids digestate, etc.

*Departments of Agriculture in every state regulate fertilizer and soil amendment sales/distribution, including compost and digestate products. Here's a summary of the latest rule developments, FAQs and more.*

Ron Alexander

## COMPOST AND DIGESTATE REGULATIONS UPDATE

**T**HE Association of American Plant Food Control Officials (AAPFCO) is an organization of State Department of Agriculture representatives responsible for regulation of fertilizer and soil amendment sales/distribution (as well as liming agents, pesticides, etc.). The organization seeks to protect consumers and assist in creation of uniform legislation and regulation. The US Composting Council (USCC) has been engaged with AAPFCO for over 10 years to promote the uniform and scientifically valid regulation of compost, as well as to provide its membership with options related to the products' regulation. The USCC has also assisted members and allies by working on issues related to anaerobic digestate (liquid and solids), food by-products, biosolids and manure recycling, and products allowable for organic certification.

Understanding and monitoring state fertilizer and soil amendment regulation is key to the legal distribution of compost and digestate prod-

ucts. Further, working within these regulations allows product marketers to make more informed product claims (discuss end use benefits) on product labels and legally distribute them over multiple state borders. Finally, it must be understood that related state regulations (e.g., heavy metal limits, labeling claims allowances) can act as a second tier of regulation that can impact a producer's ability to market.

### WHAT'S NEW?

At the semiannual meeting of AAPFCO officials held in February 2013, important issues arose that impact (or potentially impact) the organics recycling industry. These are discussed below.

**Cautionary Statement:** This pertains to products containing and claiming beneficial microbe content, which may also be potential human pathogens. This issue has been discussed because many microbially-based products have come into the marketplace, some of which are also known to be, or contain,

# AMENDMENT RULES

## LEGAL COMPOST CLAIMS

**W**ORKING through a variety of AAPFCO Committees, the US Composting Council has negotiated a list of legal compost claims, which technically can be used on product labels. It should be noted, however, that each individual state may exclude the use of one or more of these claims. Further, nutrient related claims (#13, below) could only be used if the product is registered as a fertilizer and numerical nutrient claims are properly made on the label.

The 13 claims/benefits are:

- 1) Improves soil structure and porosity — creating a better plant root environment.
- 2) Increases moisture infiltration and permeability, and reduces bulk density of heavy soils — improving moisture infiltration rates and reducing erosion and runoff.

- 3) Improves the moisture holding capacity of light soils — reducing water loss and nutrient leaching, and improving moisture retention.
- 4) Improves the cation exchange capacity (CEC) of soils.
- 5) Supplies organic matter.
- 6) Aids the proliferation of soil microorganisms.
- 7) Supplies beneficial microorganisms to soils and growing media.
- 8) Encourages vigorous root growth.
- 9) Allows plants to more effectively utilize nutrients, while reducing nutrient loss by leaching.
- 10) Enables soils to retain nutrients longer.
- 11) Contains humus — assisting in soil aggregation and making nutrients more available for plant uptake.
- 12) Buffers soil pH.
- 13) Supplies primary, secondary and micronutrients.

human pathogens. The cautionary statement will be required on products making claims on their label that “they contain microbes,” and will be based on the microbes known risk level (compare microbe type to Risk Group Level classification). The approved cautionary statement is as follows: “This product contains live microorganisms and may cause adverse effects to persons with a compromised immune system. Avoid contact with eyes, mouth and broken skin. Do not inhale product. Wear eye and skin protection when handling. Wash hands after using.” Although not developed or currently applied to compost or digestate products, it is feasible that this could come to pass in certain states.

**Phosphorus (P) Restrictions:** These are being implemented by various states pertaining to fertilizer products (13 to date). There is very little uniformity regarding these regulations from state to state, and they typically pertain to nonagricultural applications of fertilizer. Compost and biosolids based products are even written out of the regulations in some states. However, two important general statements can be made regarding these state P restrictions: 1) Composts registered as fertilizers and making P content claims are more likely to be impacted by these regulations; and 2) Going into the future, P application restrictions may impact the allowable application rates of compost and other recycled organic products.

There has been discussion regarding the development of a Phosphorus SUIP (Statement of Uniform Interpretation and Policy) within AAPFCO. The concept is to develop a policy that would suggest to states that restricting use of P may actually cause a reduction in

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turf quality (thinning), which would then expose more soil to the environment, thus allowing more soil to erode. This eroding soil would release even greater volumes of P to the environment. Therefore, an out and out P restriction is not good policy even in nutrient impacted areas.

**Produce Safety Rules:** The Food and Drug Administration's (FDA) proposed "Produce Safety Rules" are currently under public review (through May 16, 2013), and will enact new regulations in order to improve human pathogen reduction in fruits and vegetables primarily consumed "fresh." The most relevant part of the proposed regulation is the required treatment of manure before application (e.g., composting) or a

A relevant part of the proposed Produce Safety Rules is the required treatment of manure before application, such as composting.

9-month waiting period between the application of manure and harvest. This regulation could potentially expand markets for commercially manufactured compost to produce growers, increase custom composting services on farm sites, and/or increase the number of farmers becoming commercial manure composters. ■

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## AAPFCO FAQs

Questions arise frequently about the AAPFCO initiatives, especially about registering the sale of compost — which would also refer to digestate products.

### **Q: Do I have to register my compost if I am going to sell it?**

**A:** If you sell your compost in a state with a fertilizer or soil amendment law, and you make related claims, then the simple answer is YES! If you make soil amendment claims, you need to register as a soil amendment. If you make nutrient claims, then you register as a fertilizer. There are a few states that exempt compost from registration. Some states also allow a product to go unregistered if no soil amending or fertilizer claims are made on its label or in other sales tools. The bottom line is, if your state has a soil amendment law and you are making soil-amending claims, then technically you need to be registered.

Two important notes:

- 1) Municipal composters are not exempt from registration.
- 2) Products that are given away (distributed), and not sold, still technically need to be registered.

### **Q: What registration options exist?**

**A:** This depends on which states you manufacture and distribute the compost within. However, there is typically an option of registering compost as a soil amendment or a fertilizer. Some states may even require dual registration. The choice in registration will be dependent upon the product

claims made. Right now, 48 states have fertilizer laws (Arizona and Hawaii do not) and 38 states have state soil amendment laws. By the way, in most states, composted or digested manures are considered to be "fertilizers" because they are defined as "manipulated manures." This includes the liquid fraction from manure digesters.

### **Q: What do the State Control Officials consider to be a label?**

**A:** The definition within the AAPFCO Official Publication (No. 66) states the following:

*Uniform State Fertilizer Bill:* The term "label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer. *Uniform Soil Amendment Bill:* "Label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a soil amendment. Today, Fertilizer Control Officials consider a label to be any information written (e.g., websites, advertisements) or spoken about the product.

### **Q: Is a lab analysis sheet (containing nutrient data) considered to be a nutrient guarantee?**

**A:** Yes, it has been made clear that any reference to the term nutrients or fertilizer is not allowable, un-

less the compost is registered as a fertilizer. Further, any written references to nutrient content could be deemed a claim or guarantee (which then would require registration as a fertilizer). This is a very common mistake by composters.

### **Q: What are the costs associated with registering compost?**

**A:** Fees associated with registering both soil amendments and fertilizers vary from state to state. There may be a registration fee per product or company and/or a tonnage fee (known as an inspection fee). Often you pay both a registration fee (typically ranging from \$0 to \$250/product and a tonnage fee (typically ranging from \$0 to \$0.90/ton).

To avoid any conflict or fines from State Control Officials, we suggest that you get more familiar with the fertilizer and soil amendment registration regulations in the states in which you operate and sell your compost products. Also, if your products are registered, or if you plan to register them, use this fact as a marketing benefit. This is one way to regain the costs associated with the regulation fees. Although many feel that compost, as an environmental product, should be exempted from any such regulations, it is important to understand the current "lay of the land."