



Local Regulation of Biosolids and Septage Use

by Ned Beecher, NEBRA

This year, Gilmanton and Newport considered banning local uses of biosolids and septage, respectively. This kind of local debate occurs occasionally and typically such debates begin when neighbors to farm sites where biosolids or septage are used are upset by malodors or other nuisances. When they look for more information about “sewage sludge,” they find a variety of information on the Internet, some of which is inaccurate and may heighten concerns. New Hampshire’s tradition of local control empowers them to take local measures, believing they are protecting the environment and public health.

But local bans or severe restrictions on biosolids and septage recycling disrupt an effective, beneficial environmental program on which all New Hampshire residents depend. And they impinge on the rights of farmers and other landowners.

In Gilmanton, several farmers have used biosolids annually to fertilize their crops, some for nearly 20 years. In 2011, a petitioned warrant article biosolids ban was defeated, and a similar petitioned warrant article was defeated this past March. This year, Bob McWhinnie, a life-long resident, wrote in a letter to the editor:

“I have been farming here and taking care of the land and my animals as this is the place I love to call home. I grow hay crops to feed my buffalo, and this is my livelihood. I use biosolids because it is beneficial for my soil and it helps to keep my costs manageable so I can continue to farm, maintain productive fields and leave them as green open space. Anybody who knows me recognizes that I work hard in my fields and tend my farm 365 days per year. Farming is my passion. I use biosolids because I believe it

is the right thing to do. I would not jeopardize my land or my family.”

Any debate about biosolids or septage recycling is not just theoretical or local. There is a direct link between every household and business in the state, whether connected to a sewer system or a septic tank. For example, most of the septage from Gilmanton goes to the Franklin Wastewater Treatment Facility - 270,000 gallons a year. That facility produces biosolids that are land applied - and Gilmanton septage adds to that production. We all add to biosolids production, wherever we are.

U.S. Environmental Protection Agency (USEPA) and NH Department of Environmental Services (NHDES) believe their regulations protect public health and the environment. Other agencies concur, such as the U.S. Department of Agriculture, the U.S. Food and Drug Administration, and the NH Department of Health and Human Services, which have all reviewed and provided input to current federal and state regulations. The NH DES has 20 years of experience regulating, monitoring, testing, and enforcing its biosolids regulations (Env-Wq 800) and septage regulations (Env-Wq 1600).

Several highly technical regulatory programs run by NH DES discourage additional local regulation, including pesticides and septic system design and installation. Similarly, local biosolids bans and severe restrictions can disrupt efficient wastewater management. Therefore, in the 1990s, the NH Office of Energy and Planning published the following position: “Rather than adopting separate local requirements, we recommend that those municipalities concerned about oversight and enforcement, adopt the State rules by reference,

BIOSOLIDS *from page 15*

as part of a local health ordinance. This approach enables the health officer and board of selectmen to issue a cease and desist order and to initiate enforcement procedures. Any violation can then be reported to DES for enforcement in accordance with their rules." Adoption of state rules by reference also ensures local oversight keeps up with the improved science and best practices that are incorporated into updated DES biosolids regulations about every five years. (The most recent DES biosolids rule update took effect in January 2016.)

Also in the 1990s, Water Resource Recovery Facilities (WRRFs) investing in recycling systems began charging higher prices for disposal of septage from towns that impose severe restrictions or bans on local use of biosolids. For example, Franklin currently charges Gilmanton residents \$85 per 1000 gallons disposed at the Franklin WRRF. If Gilmanton had adopted a local ban on biosolids use, that price would have gone up to \$130.

And while local control is an important part of New Hampshire community life, restrictions that unduly burden landowners' rights can be subject to challenge. To date, there have been no significant legal challenges to any of the existing local bans on biosolids use (e.g., in Belmont, Farmington, Milford, Strafford, Stratford, Tilton, Wakefield, and Windham). But that could change if a farmer decides biosolids fit his or her needs and decides to sue. Compared to 20 years ago, when these bans were put in place in the absence of adequate state regulation, biosolids recycling has become far more commonplace. Since the 1990s, courts have consistently supported biosolids use when farmers and others have challenged local restrictions. For example, in December 2015, the Pennsylvania Supreme Court struck down a local ordinance and upheld biosolids use as a

"We can't choose to not manage biosolids," says Ned Beecher, Executive Director of the North East Biosolids and Residuals Association (www.nebiosolids.org), a professional membership non-profit based in Tamworth. "They are a part of wastewater treatment. They can be put in a landfill, incinerated, or recycled to soils. Those are the options, and all have some environmental impacts. Landfilling organic matter and nutrients wastes resources and generates methane, a powerful greenhouse gas. Incineration uses fossil fuel energy and causes air emissions. In many cases, use of biosolids on land is the best environmental choice. It is also a good economic choice, benefitting the rate-payers of the WRRFs and farmers, supporting local jobs."

"normal agricultural operation" under that state's Right-To-Farm Act. Similar rulings annulling local ordinances have been handed down in New York, Quebec, and other jurisdictions.

Concerns about biosolids are not new. It is rational to question the concept of taking something derived from our most objectionable waste stream and recycling it to soils. This is why biosolids are the most researched material used on farms. Since the 1970s, independent scientists at the U.S. Dept. of Agriculture, U.S. EPA, and land grant universities across the nation have studied biosolids benefits and risks. Thousands of peer-reviewed papers and two National Academy of Sciences reviews support protective regulations and practices and the current widespread recycling. Every state in the nation allows biosolids use. More than 60% of U.S. sewage sludges are used on land, including 100% from San Francisco, Seattle, Denver,

Chicago, Boston, Nashua, Merrimack, Concord, and Franklin.

Wastewater treatment (sanitation) is considered the most important advance in public health in the past 150 years, according to a 2007 British Medical Journal (BMJ) survey. As part of our sanitation systems, thousands of public employees around the continent – and hundreds here in New Hampshire – responsibly manage biosolids and septage 365 days a year – for the benefit of all. Biosolids and septage recycling return local nutrients and organic matter to local soils, reduce landfill disposal and resulting greenhouse gas emissions, and support local farms and local jobs.

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