

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO TO ESTABLISH
REGULATIONS FOR THE LAND APPLICATION OF BIOSOLIDS**

The Board of Supervisors of the County of San Luis Obispo, State of California, ordains as follows:

Section I: That Chapter 8.13 of the County Code is amended as follows:

8.13.000 Authority.

This chapter is adopted pursuant to the authority granted to the County of San Luis Obispo by Article XI, Section 7 of the California Constitution, Part 503.5 of Title 40 of the Code of Federal Regulations and the California Water Code Section 13274(i) et seq., to enact, as appropriate, more stringent requirements on the land application of treated municipal sewage sludge (hereinafter referred to as biosolids).

8.13.010 Purpose and Intent.

The purpose for enacting these regulations is to prevent negative impacts to public health and the environment from land applied biosolids. With the adoption of this ordinance, Chapter 8.13 will be repealed in its entirety.

This Chapter incorporates by reference the applicable current and future regulatory requirements put forth by Part 503 of Title 40 of the Code of Federal Regulations (entitled "Standards for the Use or Disposal of Sewage Sludge") and the California Water Code 13274, et seq., in addition to establishing more stringent land application of biosolids requirements as determined to be appropriate by the County of San Luis Obispo herein.

Further, it is the intent of this regulation to support the reuse of an available beneficial waste product, rather than have this recyclable waste stream take up needed space at landfills, provided the reuse does not put the public or environment at unreasonable risk.

This chapter specifically recognizes that approved biosolids, properly applied to the land, can provide benefits to the soil and/or plants, such as conditioning poor soils to retain water and nutrients and acting as a fertilizer for plant growth.

8.13.020 Applicability.

This Chapter shall apply to all unincorporated land within the County of San Luis Obispo. This Chapter does not apply to the disposal of biosolids at an approved landfill or the beneficial reuse of biosolids as daily cover at an approved landfill.

Further, any alternative proposals involving biosolids other than conventional land application for agricultural purposes, such as construction of an incinerator to burn biosolids, including proposals to generate power therefrom, or to use biosolids for beneficial land reclamation projects, shall also be subject to a review process involving agencies other than the County of San Luis Obispo Health Agency. This process would involve review by appropriate agencies having regulatory authority. Alternative projects would be required to meet the 40 CFR Part 503 regulations and all applicable state and county regulations. In addition, alternative projects will be subject to a separate environmental review in order to satisfy the requirements of the California Environmental Quality Act.

8.13.030 Definitions.

A. Agricultural Land – Means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range and pasture land used for the grazing of livestock.

B. Agronomic Rate – The agronomic rate for biosolids land application is a rate that is designed to provide the amount of nitrogen, phosphorus, and potassium needed by a crop or vegetation to attain a desired yield while minimizing as much as possible the amount of nitrogen, phosphorus, and potassium that will pass below the root zone of the crop/vegetation to the soil or groundwater. The agronomic rate shall be calculated by a Certified Soil Scientist, a Certified Agronomist or a Registered Agricultural Engineer.

An agronomic application rate would not be applicable to the use of biosolids for land reclamation projects. Such projects would have to develop their own appropriate application rate, subject to the review and approval of the Department.

C. Applicant – Person, group of persons, or company applying to receive a permit from the County of San Luis Obispo Health Agency, Environmental Health Services Division, to land apply biosolids in the unincorporated area of the county.

D. Applier – Person, group of persons, or company that applies biosolids for use as a soil amendment. Appliers have specific legal responsibilities to land apply biosolids pursuant to applicable federal, state and county regulations.

E. Biosolids – Also known as treated sewage sludge, are the solid, semi-solid or liquid residues generated during the treatment of sewage in a private or publicly owned wastewater treatment plant.

For the purposes of this ordinance, septage is not considered biosolids, and cannot be land applied in the County.

Classes of biosolids include the following (in order of highest treatment):

- a. Exceptional Quality (EQ) Biosolids** – Are biosolids which meet metals standards, Class A pathogen reduction standards and vector attraction reduction standards

contained in Title 40 Code of Federal Regulations (CFR) Part 503.13 (Table 3), Title 40 CFR Part 503.32 and Title 40 CFR 503.33, et seq.

- b. Class A Biosolids – Are biosolids which meet the pathogen reduction requirements in Part 503.32(a) of Title 40 CFR or revisions thereof.
- c. Class B Biosolids – Are biosolids which meet the pathogen reduction requirements in Part 503.32(b) of Title 40 CFR.

F. Composted Biosolids – This is the process in which biosolids are mixed with organic green waste material which then decomposes in the presence of oxygen through the action of bacteria and other microorganisms (e.g., dewatered biosolids are mixed with woodchips, or green waste vegetation that act as a bulking agent by absorbing water and increasing the porosity of the compost mixture, which is then composted for several weeks). Bulk Form Composted Biosolids are composted biosolids provided by a generator or preparer in bulk form, meaning the material is not provided in a package, bag or container. Bulk form composted biosolids are normally provided by the truckload. Biosolids or composted biosolids sold in stores in bags or other containers are not regulated by this ordinance.

G. County – Means the unincorporated areas of the County of San Luis Obispo.

H. Department – Means the County of San Luis Obispo Health Agency, Environmental Health Services Division.

I. Director – Means the Director of Environmental Health Services.

J. Disposal – Means any method of final biosolids disposition that does not provide a beneficial use, such as landfilling (where not used as a daily cover), incineration (without power generation), and dumping (where no agronomic benefit or land reclamation is realized).

K. General Order – Refers to the State of California Water Resources Control Board, Water Quality Order No. 2004 – 0012 – DWQ, et seq., entitled “General Waste Discharge Requirements for the Discharge of Biosolids to Land for Use as a Soil Amendment in Agricultural, Silvicultural, Horticultural, and Land Reclamation Activities.”

L. Generator – Means any private or public entity that produces biosolids as an end result of its wastewater treatment process. Generators of biosolids have specific legal responsibilities before, during and after land application of biosolids pursuant to the applicable federal, state and county regulations.

M. Land Application – Means the calculated distribution of biosolids material onto an approved receiver site location.

N. Land Reclamation – The practice of revitalizing or restoring lands that are damaged from past or present human land use practices (e.g., mine reclamation, rock quarries, etc.).

Reclamation of lands damaged from natural processes may be eligible for land application on a case-by-case basis.

O. Nutrient/Heavy Metals Management Plan – Means a written report detailing the management strategy for nitrogen, phosphorous, potassium, and heavy metals developed for a specific site based on the nutrient and metal concentrations in the biosolids material to be applied, the background levels of nutrients and heavy metals in the native soil of the receiver site, the nutrient requirements of the crop or pasture/grazing land, taking into account any other soil amendments or fertilizers. The purpose of the plan is to ensure that land application of biosolids or bulk form composted biosolids on a specific site is applied at a calculated agronomic rate and will not violate applicable county, state or federal regulations. The Nutrient/Heavy Metals Management Plan shall be written by a Certified Soil Scientist, Certified Agronomist, or Registered Agricultural Engineer.

P. Parcel – The legally described land where the biosolids receiver site is located.

Q. Pathogens – Organisms that cause disease in humans including bacteria, helminths, protozoa, and viruses.

R. Preparer – Any person who either generates biosolids during the treatment of sewage in a treatment works, or who derives a material from biosolids (i.e., changes the quality of the biosolids prepared by a generator such as composting, or drying). Preparers of biosolids have specific legal responsibilities to meet in order to comply with the requirements set forth in federal, state, and county regulations.

S. Receiver Site – The specific location on a parcel that has been reviewed and approved by the Department to receive biosolids.

T. Responsible Person – Means any individual or entity who:

- (1) Owns, occupies or has a right of control over the property upon which the violation exists;
- (2) Causes, maintains, or is otherwise responsible for a condition, activity, or use of property which constitutes a violation.

U. Septage – Is defined as liquid, solid, or semi-solid material removed from a septic tank, portable toilet, cesspool, type III marine sanitation holding tank or similar facility that receives only non-commercial septage. For the purposes of this ordinance, septage is not considered biosolids, and cannot be land applied in the County.

V. Staging Area – Means a specific approved location(s) on a receiver site where biosolids material is deposited on the ground and held until the land application process begins.

W. Transporter – Means any person or company that transports biosolids material in regulated quantities (five or more cubic yards).

X. Treatment – Is an approved process which modifies, alters, or changes the biological, physical, and/or chemical characteristics of municipal sewage or biosolids.

Y. USEPA – The United States Environmental Protection Agency.

Z. 40 CFR 503 – Refers to Title 40, Code of Federal Regulations, Part 503 – “Standards for the Use or Disposal of Sewage Sludge” and any future revisions or updates thereof.

8.13.040 General Requirements.

1. To protect public health and the environment, it is the intent of this county ordinance to be more stringent, where appropriate, than the applicable federal and state regulations governing the land application of biosolids.
2. Any person or company who proposes to land apply biosolids or composted biosolids in a quantity equaling five (5) or more cubic yards is first required to obtain a permit from the Department.
3. The Department will have the authority to place conditions on all land application of biosolids approval permits. Further, land reclamation projects proposing to land apply biosolids will also be subject to conditions set forth by other agencies having project review authority.
4. The land application of regulated biosolids in the unincorporated area of the county shall comply with the applicable United States Environmental Protection Agency’s 40 CFR Part 503 regulations, the State of California’s State Water Resources Control Board Water Quality Order No.2004 - 0012 - DWQ, et seq., and this ordinance. Where the individual regulations overlap or are duplicative, the most stringent requirements or standard will prevail.
5. Only Exceptional Quality biosolids or Exceptional Quality composted biosolids may be land applied in the unincorporated areas of the county. Official documentation, including laboratory testing results, will be required from the generator/preparer certifying the material meets all of the exceptional quality biosolids standards. Said documentation shall be reviewed and approved by the Department prior to transport to the application site or temporary holding area.
6. Regulated amounts of Exceptional Quality biosolids or Exceptional Quality composted biosolids shall be land applied in areas zoned for agriculture as determined by the County Planning and Building Department zoning maps.
7. Regulated amounts of Exceptional Quality biosolids or Exceptional Quality composted biosolids shall be applied at the appropriate agronomic rate for the intended agricultural use and shall meet the requirements of the Nutrient/Heavy Metals Management Plan contained in this ordinance, and other applicable regulations.

8. Where the land application of Exceptional Quality biosolids or Exceptional Quality composted biosolids is intended to be used for land reclamation projects, approval for such a use shall be made via a discretionary land use project, processed through the County of San Luis Obispo Planning and Building Department. A Human Health Risk Assessment may be required for such projects, at the discretion of the Department. Pollutant limits for such projects will be more stringent than the 40 CFR Part 503 and state regulations. Waste Discharge Requirements may be required by the Regional Water Quality Control Board.

9. The total amount of Exceptional Quality biosolids or Exceptional Quality composted biosolids that can be land applied to any one receiver site will be limited to a maximum of ten (10) tons per acre over any three (3) year period. Adequate soil testing shall be conducted following application of ten (10) tons per acre to establish the pollutant concentrations in the receiver site soils to determine if additional land applications are appropriate. Pollutant levels in receiver site soils cannot exceed limits established in the 40 CFR Part 503 Table 3.

10. The Department shall develop policies and procedures to implement the requirements of the ordinance.

8.13.050 Prohibitions.

The County shall prohibit any land application of biosolids or composted biosolids under the following conditions:

1. Where any person is applying biosolids without a permit to do so issued by the Department.
2. Where the permit applicant, generator, preparer, or applier is not complying with all the applicable federal, state and county land application of biosolids regulations, ordinances and codes.
3. The biosolids material fails to meet the 40 CFR Part 503 Exceptional Quality Biosolids standards, or any other state or county regulations.
4. The applicant does not provide adequate written documentation suitable to the Department that specific biosolids meet current 40 CFR Part 503 Exceptional Quality biosolids standards for pollutants, vector attraction, or pathogen reduction.
5. Exceptional Quality biosolids or Exceptional Quality composted biosolids cannot be land applied on crops intended for human consumption where the edible portion of the plant is in direct contact with Exceptional Quality biosolids or Exceptional Quality composted biosolids.
6. Exceptional Quality biosolids or Exceptional Quality composted biosolids shall not be applied on lands subject to flooding with a 25 year or more chance of occurrence.
7. Biosolids material shall not be land applied or incorporated into soil during wind speeds greater than 5 MPH.

8.13.060 Site Restrictions.

The following site restrictions will apply to all biosolids land application projects:

1. The land application of Exceptional Quality biosolids or Exceptional Quality composted biosolids is prohibited between October 15th and April 15th, due to the likelihood of rain during this period. This is to preclude surface water runoff from a newly land applied receiver site.
2. Exceptional Quality biosolids and Exceptional Quality composted biosolids shall not be land applied where weather or other artificial irrigation conditions could result in surface water runoff.
3. Exceptional Quality biosolids or Exceptional Quality composted biosolids shall be land applied within twenty-four (24) hours after being delivered to the receiver site. Stockpiling of biosolids for more than eight (8) hours is discouraged.
4. Exceptional Quality biosolids shall be incorporated into the soil via plowing or tilling as soon as possible, but not later than twenty-four (24) hours following land application to preclude fugitive odors, dust and to prevent any other nuisance conditions.

Note: Thermophilically digested biosolids shall be incorporated into the soil as soon as possible, but not later than two (2) hours following land application.

5. Exceptional Quality biosolids or Exceptional Quality composted biosolids shall not be applied to land if it is likely to adversely affect endangered or threatened species or their designated critical habitat.
6. Staging and land application areas for Exceptional Quality biosolids or Exceptional Quality composted biosolids shall meet minimum setback distance requirements (staging areas that are paved asphalt or concrete can reduce distancing requirements on a case-by-case basis with prior approval in writing from the Department):

- A. Twenty-five (25) feet from property lines
- B. Five hundred (500) feet from all wells (including domestic wells, irrigation wells, monitoring wells, test wells, etc.)
- C. One hundred (100) feet from surface waters, including wetlands, creeks, rivers, ponds, lakes, underground aqueducts, marshes
- D. Thirty-three (33) feet from primary agricultural drainage ways
- E. Four hundred (400) feet from a domestic water supply reservoir
- F. Two hundred (200) feet from a primary tributary to a domestic water supply
- G. Twenty-five hundred (2,500) feet from any domestic surface water supply intake

H. Five hundred (500) feet from occupied non-agricultural buildings and off-site residences

8.13.070 Site Suitability.

Each receiver site will be required to conduct baseline soils analyses representative of the site, to include soil pH, applicable heavy metals, nitrogen, phosphorus, and potassium. Additional analyses may be required by the Department on a case-by-case basis in writing.

Physical characteristics of receiver sites that influence the land application of Exceptional Quality biosolids or Exceptional Quality composted biosolids best management practices include:

1. Topography/Slope: Exceptional Quality biosolids or Exceptional Quality composted biosolids shall not be land applied on slopes exceeding twenty-five percent (25%); proposed application to slopes greater than ten percent (10%) will require the applicant to submit an Erosion Control Plan that shall specify best management practices to assure containment of the biosolids on the receiver site and to prevent erosion and runoff. The Erosion Control Plan shall be prepared by a Certified Professional Erosion and Sediment Control Specialist, a Certified Soil Scientist, a Registered Agricultural Engineer, or a Registered Civil Engineer.
2. Soil permeability shall be calculated that is representative of the receiver site (this is especially important where there is high groundwater).
3. Drainage patterns and contours shall be designated on a scaled plot plan.
4. Depth to groundwater: Groundwater elevations of the receiver site shall be measured by a third party registered or certified professional. For large parcels of land, the number of test holes will be determined in consultation with the Department.
5. The distance to surface waters shall be accurately measured (e.g., creeks, lakes, ponds, including ephemeral watercourses, ditches, etc.). All watercourses/water bodies shall be clearly designated on a scaled plot plan.
6. The distance to all wells, including monitoring wells and irrigation wells, shall be measured and shown on a scaled plot plan.
7. Distances to vulnerable non-agricultural land uses on and off-site will be calculated (e.g., residences, businesses, schools, recreational areas, etc.).

8.13.080 Vehicles and Transportation.

Trucks transporting Exceptional Quality biosolids or Exceptional Quality composted biosolids shall be plainly labeled with contact information denoting the responsible party. All trucks will be covered during transport. Trucks and trailers shall be constructed such that no material can

leak out of the container. No material will be allowed to be tracked onto roadways during transport.

A truck route plan will be submitted for approval and will be a component of the land application permit.

8.13.090 Notification.

Notification of adjacent property owners is required at least fourteen (14) days prior to the scheduled land application. Notification shall be made in such a way that written proof is available documenting notification was made of adjacent property owners. Public notifications may be necessary depending on the location of the receiver site, such as signage alerting the public of scheduled land application. Post land application access to receiver sites shall be limited to authorized personnel until biosolids material is incorporated into the soil.

Land applications of Exceptional Quality biosolids and Exceptional Quality composted biosolids shall be noted on County property records, so that potential buyers of property will be aware of such applications. Recording of this information to county records will be conducted by the property owner, with a certified copy of the completed recording provided to the Department within thirty (30) days following land application.

8.13.100 Monitoring.

All land applications of Exceptional Quality biosolids or Exceptional Quality composted biosolids will be supervised by the professional person who prepared the Nutrient/Heavy Metals Management Plan. The purpose of this supervision is to ensure that the land application meets the requirements and limits set forth in the approved management plan.

A Water Quality Management Plan will be submitted prior to permit approval. The specifics of the plan will be determined by the Department on a case-by-case basis. Such plans will be prepared and certified by a third party professional (e.g., certified engineering geologist, certified hydrogeologist, etc.).

An Odor Management Plan will be submitted prior to permit approval. The specifics of the plan will be determined by the Department on a case-by-case basis. Such plans will be prepared and certified by a third party professional (e.g., certified soil scientist, certified agricultural engineer, etc.).

8.13.110 Recordkeeping and Reporting.

Recordkeeping and reporting of land applied Exceptional Quality biosolids or Exceptional Quality composted biosolids will be required for each permitted project pursuant to the 40 CFR Part 503 regulations, the State of California General Order, and as required by the Department.

Generators/preparers of biosolids for land application shall provide written documentation to land appliers/property owners/leaseholders and the Department to demonstrate compliance with

all the applicable regulations. Records shall be kept by preparers, generators, applicers, and receiver site property owners and leaseholders detailing the quantity and quality of biosolids material applied (including specific pollutant concentrations), and where, when and by whom it was applied.

Documentation will be provided to the Department detailing certification and description of pollutant concentrations, pathogen reduction, and vector attraction reduction. Biosolids preparers and applicers will be required to submit signed and dated Certification Statements to the Department. Certification Statement signors acknowledge that there are significant penalties for false certification, including the possibility of fines of up to twenty-five thousand (\$25,000) per day per violation and/or imprisonment of up to six (6) months.

The Department will be provided copies of all paperwork documenting biosolids land applications. Such documentation shall be kept by all parties, so that a record is available to track and document all land application projects. This record keeping is designed to assist in the tracking of any negative outcomes related to land application impacts to public health and the environment.

Landowners will be required to obtain and retain information on the cumulative totals of pollutants that have been added to each parcel of land.

8.13.120 Right of Entry.

The permittee of a land application project shall agree, as a requirement of being issued a permit, to allow Department personnel to enter onto the project property at any reasonable time in order to perform necessary duties associated with the requirements of the permit.

8.13.130 Fees.

Cost of permit review, processing and project oversight shall be determined by the Department and paid for by the applicant.

The permit shall not be issued until permit fees are paid. After the permit is issued, any follow-up activities by the Department needed to ensure compliance with applicable regulations shall be charged to the permittee at the currently approved hourly rate, where time spent on the project exceeds the initial permit fees.

The permit shall be valid for a period of up to three (3) years.

8.13.140 Liability.

The generator/preparer of the biosolids is liable for the material if its land application results in a public health or environmental problem. Landowners (including their lenders) and leaseholders who use biosolids beneficially as a fertilizer substitute or soil conditioner in accordance with the EPA Part 503 regulations are protected from liability under Superfund legislation, as well as any enforcement action from EPA under the Part 503 rule. Where the federal requirements are not

followed, applicers of biosolids are vulnerable to enforcement actions and can be required to remediate any problems for which they are liable.

The receiver site landowner/leaseholder shall obtain assurances from the generator/preparer via an agreement that any biosolids being land applied are of the appropriate quality and have been sufficiently prepared and that the application procedures used meet the requirements of the federal, state and county land application regulations. A copy of this agreement will be provided to the Department as a condition of approval for permit issuance.

On a case-by-case basis, the Department may require pollution liability insurance be obtained by the property owner or leaseholder.

8.13.150 Abatement.

As dictated by the applicable regulations, responsible persons shall be required to abate or remediate any violations arising from the land application of biosolids.

In the event the Department determines that land applied biosolids constitute a public health hazard, or a threat to the environment, the Department shall have the public health hazard or threat abated pursuant to the provisions of the County Code.

If the Department finds that immediate action is necessary to prevent a threat to the health and safety of the public, or to prevent impairment of the environment (including groundwater), the Department may immediately abate the threat without complying with the provisions of Sections 22.10.100 et seq. of the County Code.

Any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be, by the county, summarily abated as such, and each day such condition continues shall be regarded as a new and separate offense.

8.13.160 Enforcement.

It shall be the responsibility of the Director to enforce the provisions contained in this ordinance.

8.13.170 Revising and Updating of Ordinance.

As deemed necessary, this ordinance may be periodically revised to reflect changes in federal and state laws or regulations or policies of the county. In addition, the ordinance may be updated as new studies, technology, or best management practices warrant revisions.

8.13.180 Appeals.

Any applicant aggrieved by the refusal of the Department to issue a permit or by the terms of a permit, may appeal the action to the County Health Officer by filing a written notice of appeal to the Department. The County Health Officer's decision can also be appealed to the County Board

of Supervisors. Such an appeal would be subject to the appeal procedures set forth by the County Board of Supervisors. The Department will recover the costs of an appeal.

8.13.190 Penalties.

Any person who violates any provisions of this ordinance shall be guilty of a misdemeanor pursuant to Chapters 1.04 and 1.05 of the County of San Luis Obispo Code of Regulations. Violators will be subject to all of the following penalties including permit revocation, fines, imprisonment, remediation costs (including costs by the Department to abate a nuisance), and costs incurred by the Department to enforce the regulations.

SECTION II: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of the remaining portions of this ordinance. The Board of Supervisors hereby declares it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION III: Before the passage of fifteen (15) days after adoption of this ordinance, it shall be published with the names of the Board of Supervisors members voting for and against same, once in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

Introduced at a regular meeting of the Board of Supervisors held on the ____ day of _____, 2013, and passed and adopted by the Board of Supervisors of the County of San Luis Obispo, State of California, on the ____ day of _____, 2013, by the following roll call vote, to-wit:

AYES:
NOES:
ABSENT:

Chairman of the Board of Supervisors of the
County of San Luis Obispo, State of
California

ATTEST:

County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San
Luis Obispo, State of California

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

Rita Neal, County Counsel

By: _____
Tim McNulty, Deputy County Counsel

Dated: _____ 2013

DRAFT

DRAFT