

October 5, 2020

Jennifer Tucker, Ph.D.
Deputy Administrator
National Organic Program
United States Department of Agriculture
1400 Independence Ave. SW
Room 642 So., Ag Stop 0268
Washington, DC 20250-0268

Submitted via: www.regulations.gov

Re: Comments on USDA Agricultural Marketing Service's Proposed Rule: National Organic Program; Strengthening Organic Enforcement (Document Number: AMS-NOP-17-0065; NOP-17-02)

Dear Dr. Tucker:

The undersigned organizations appreciate the opportunity to comment on the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) proposed rulemaking to strengthen oversight and enforcement of the production, handling, and sale of organic agricultural products that was published in the Federal Register.¹

Our organizations represent publicly owned treatment works (POTWs) of all sizes across the United States, biosolids managers, and primary university researchers of organic residuals. POTWs and all water quality professionals, including soil and agricultural specialists, are tasked each day to manage and treat billions of gallons of wastewater and myriad tons of biosolids in order to ensure the continued protection of public health and the environment.

Our organizations understand that the primary intent behind this rulemaking is to take a closer look at complex supply chains and organic fraud under the National Organic Program (NOP) and less about the National Organic Standards Board's role in evaluating substances² to be considered for inclusion in the National List under the Organic Foods Production Act.³ However, armed with the knowledge gained over the twenty years since the NOP first became effective, AMS has more information to take a holistic look at the organic product industry and framework. As AMS looks to redefine the organic product industry and supply chain to meet the "rapid growth" and "consumer demand"⁴ of organic products over the next twenty years, our organizations urge AMS to consider biosolids as an effective and safe resource in the production of organically grown products. Since the NOP is mimicked across the globe, and localized agricultural production is challenged by changing climactic conditions, it is also vital to include biosolids to maximize crop production to feed an ever-increasing global population.

In fact, over the twenty years AMS has overseen the NOP, the U.S. Environmental Protection Agency (EPA) has also made strides in its regulatory oversight of biosolids. In 1993, EPA published regulations in response to a Congressional mandate that amended the Clean Water Act and required EPA to establish comprehensive risk-based regulations and management practices to protect public health and the

¹ 85 Fed. Reg. 47,536 (August 5, 2020).

² 7 U.S.C. § 6518(m).

³ 7 C.F.R. § 205.600(b).

⁴ 85 Fed. Reg. at 47,538.

⁵environment during the use or disposal of biosolids.⁶ Now, thousands of successful biosolids land application programs operate around the country in accordance with these risk-based regulations.

Not only do the Part 503 regulations and implementation of the land application provisions continue to be carefully scrutinized by a range of stakeholders, but as mandated by Congress, EPA also must regularly conduct reviews of its regulations to determine if the pollutant levels and other requirements remain protective. Year after year for the past three decades, the protectiveness of the Part 503 regulations has been consistently confirmed—that land applied biosolids are a safe and effective method of crop fertilization and improved soil quality.

Further, since the implementation of Part 503 rule, two reports of the National Research Council (NRC) of the National Academy of Sciences have considered whether land application of biosolids is safe and beneficial. In 1996, the NRC published *Use of Reclaimed Water and Sewage Sludge in Food Crop Production*.⁷ Six years later, the NRC published *Biosolids Applied to Land, Advancing Standards and Practices*.⁸ These independent bodies of research demonstrate that the current technology to remove pollutants from wastewater, when coupled with existing regulations and guidelines governing the use of reclaimed wastewater and treated sludge (biosolids) in crop production, can effectively protect human health and the environment. Further, while rigorous scientific research is always necessary for dynamic public health and environmental regulations, the NRC did not call for any specific changes to Part 503.

Since the last NRC report in 2002, additional dedicated university research, field experience, and regulatory scrutiny by state environmental agencies across the country have continued to document the safety and benefits of recycling biosolids to soils. When the Food Safety Modernization Act (FSMA) adopted additional regulations and guidance for growers, the Food and Drug Administration (FDA) adopted pathogen reduction strategies for raw animal manures with waiting periods between application and harvest.⁹ Biosolids, in compliance with the aforementioned regulatory standards, are treated for pathogen control and as such are accepted in the new FSMA produce rules as one of many soil amendment options.¹⁰ Other federal agencies, including USDA, have also supported the use and application of biosolids.¹¹ Further, Natural Resources Conservation Service’s conservation practice

⁵ 40 C.F.R. § 503.

⁶ 33 U.S.C. § 1345(d).

⁷ See NAT’L RSCH. COUNCIL. *USE OF RECLAIMED WATER AND SLUDGE IN FOOD CROP PRODUCTION* [PAGE] (1996) (concluding that “the use of these materials in the production of crops for human consumption, when practiced in accordance with existing federal guidelines and regulations—presents negligible risk to the consumer, to crop production, and to the environment.”).

⁸ See NAT’L RSCH. COUNCIL. *BIOSOLIDS APPLIED TO LAND: ADVANCING STANDARDS AND PRACTICES* 4–5, 267 (2002) (finding “there is no documented scientific evidence that the Part 503 rule has failed to protect public health” and also “[a] causal association between biosolids exposures and adverse health outcomes has not been documented,” along with “there are no scientifically documented outbreaks or excess illnesses that have occurred from microorganisms in treated biosolids.”).

⁹ 22 U.S.C. § 2201 (2011).

¹⁰ E.g., U.S. DEPT. OF HEALTH AND HUMAN SERVICES, *FOOD AND DRUG ADMIN. GUIDE TO MINIMIZE MICROBIAL FOOD SAFETY HAZARDS FOR FRESH FRUITS AND VEGETABLES*, 19 (1998) (stating “properly treated manure or [municipal] biosolids can be an effective and safe fertilizer.”).

¹¹ See Interagency Policy on Beneficial Use of Municipal Sewage Sludge on Federal Land, 56 Fed. Reg. 33,186 (July 18, 1991) (supporting a consistent federal policy “reaffirm[ing] and supplement[ing] the existing Federal policy to advocate those municipal sludge management practices that provide for the beneficial use of sludges while maintaining environmental quality and protecting public health” on applying municipal sewage sludge on federal land.).

standards routinely and periodically updates its conservation practice standards and includes biosolids as a source of nutrients within their nutrient management program.¹²

For the past twenty years, more than half of the biosolids generated in this country have been beneficially used through land application, mostly on farms. As such, municipal utilities throughout the country have produced and safely recycled biosolids, which has helped communities and farmers achieve sustainability and resiliency goals. Biosolids recycling is very much in line with the philosophy and practices of certified organic agriculture—they are a natural material—similar to food waste. As the USDA organic program has acknowledged in its evaluations of allowable inputs to certified production, the mere presence of a contaminant is not enough to disallow the use of a material. Biosolids have trace contaminants, but risk assessments and bioassays of biosolids impacts to soil ecosystems have not found cause for concern, just as with certified organic inputs (*e.g.*, manures). Most recently, concerns raised by an EPA Office of Inspector General review of the EPA biosolids regulatory program¹³ triggered a response from EPA’s Office of Water itself¹⁴ and from the USDA’s own W4170 research group,¹⁵ both reaffirming the benefits to soil health and crop yields associated with the use of biosolids in agricultural production.

Biosolids, like soil amendments championed by the principles of organic agriculture, provide the following significant benefits:

- Enhanced soil health and improved crop yields (including drought resistance and reduced need for irrigation),
- Recycled nutrients (including macro-nutrients such as nitrogen and phosphorus along with micro-nutrients such as calcium, copper, iron, magnesium, sulfur, zinc that are released slowly over the growing season as the nutrient is mineralized and made available for plant uptake),
- Carbon sequestration (mitigating atmospheric carbon dioxide and reducing global climate change impacts),
- Increased organic matter in soils,
- Reduced use of chemical fertilizers and pesticides,
- Increased and strengthened local farm and landscape economies, *and*
- Restored vitality to degraded or marginal lands.

As the past two decades of research and experience have furthered the understanding of biosolids safety and efficacy, states have reaffirmed their commitments supporting use of biosolids. The Pennsylvania Supreme Court declared that biosolids use on farms is a “normal agricultural activity” protected by the

¹² USDA NRCS, NUTRIENT MANAGEMENT CODE 590 (2019), *available at* https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1046896.pdf.

¹³ EPA UNABLE TO ASSESS THE IMPACT OF HUNDREDS OF UNREGULATED POLLUTANTS IN LAND-APPLIED BIOSOLIDS ON HUMAN HEALTH AND THE ENVIRONMENT, EPA OIG General Report No. 19-P-0002 (Nov. 15, 2018), https://www.epa.gov/sites/production/files/2018-11/documents/_epaoig_20181115-19-p-0002.pdf.

¹⁴ *But see*, Memorandum from David P. Ross, Asst. Admin. of the EPA Office of Water, David P. Ross to Charles Sheehan, Acting Asst. Inspector Gen., (May 30, 2019), https://www.epa.gov/sites/production/files/2019-07/documents/_epaoig_19-p-0002_agency_response.pdf (recognizing that “[b]iosolids are an important resource for this country” but emphasizing that “the presence of a pollutant in biosolids alone does not equate to scientific risk.”).

¹⁵ *See also*, USDA NIFA RESEARCH COMMITTEE W4170, RESPONSE TO USEPA OIG REPORT NO. 19-P-0002 (June 2020), [https://www.nacwa.org/docs/default-source/resources/w4170-response-to-oig-report-july-23-2020-final-\(1\).pdf?sfvrsn=db55fe61_2](https://www.nacwa.org/docs/default-source/resources/w4170-response-to-oig-report-july-23-2020-final-(1).pdf?sfvrsn=db55fe61_2) (highlighting the OIG Report “did not consider the concentrations of chemicals found in biosolids” and “sufficient data and research are available to conclude that current biosolids regulations are protective of human health and the environment.”).

state's Right to Farm law.¹⁶ New York's Department of Agriculture and Markets has taken a similar stance along with other states, like Washington and California, that recognize biosolids recycling as an integral part of maintaining soil health implementing climate change initiatives.

As indicated in the FR notice, one of AMS's intentions in proposing this rulemaking is to "protect the integrity in the organic supply chain and build consumer and industry trust in the USDA organic label by strengthening organic control systems, improving farm to market traceability, and providing robust enforcement of the USDA organic regulations."

Our organizations stand behind biosolids as a valuable, sustainable, and renewable resource that provides a sound and sustainable alternative to chemical fertilizers and other soil amendments. Because biosolids offer an efficient and effective way to both capture value from waste while generating significant economic benefits to farmers fertilizing their crops, without any demonstrated adverse human health or environmental risk, our organizations urge AMS to consider biosolids that are land applied as an allowable substance under the National List.

We, again, appreciate USDA AMS's proposal and the opportunity to provide comments. If AMS has questions, please do not hesitate to contact Emily Rimmel, Director of Regulatory Affairs with the National Association of Clean Water Agencies at 202/533-1839 or erimmel@nacwa.org.

Sincerely,

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¹⁶ *Gilbert v. Synagro Cent.* 131 A.3d 1 (Pa. 2015).