

WAC Easement Program Guidelines the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes

The following guidelines are established by WAC to create standards for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes on properties encumbered by a Watershed Agricultural Council (WAC) Conservation Easement (CE). The Deed of Conservation Easement is the controlling legal document. These guidelines represent WAC's interpretation of the CE's terms and conditions related to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.

A. The Deed of Conservation Easement's General Definitions and Clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.

1. WAC's current model Deed of Conservation Easement contains the following definitions and clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes . If other versions of WAC's Deed of Conservation Easement have different definitions and clauses pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes, that version's definitions and clauses serve as the controlling legal language:
 - a. **DUMPING, STORAGE AND APPLICATION OF WASTE:** Except as permitted herein, the dumping, storage, application, land filling, or accumulation of any kind of Waste in, on or upon the Property is prohibited. The application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes is prohibited without the prior written approval of Grantee. Any approved application shall be undertaken only if compliant with applicable law and consistent with the Whole Farm Plan.
 - b. **Best Management Practices (BMP):** Practices that prevent or reduce the availability, release or transport of substances which adversely affect surface and ground waters. These management practices may have standards associated with their installation, operation or maintenance, but do not impose effluent limits for specific substances.
 - c. **Waste** The term Waste includes trash, refuse, debris, domestic septic effluent, sewage, sewage sludge or liquid, garbage, discarded chemicals, radioactive materials, and hazardous or toxic substances as defined by Federal, State or Local law.

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- d. **Whole Farm Plan** : A Watershed Agricultural Council (WAC) Whole Farm Plan (WFP) is a document that identifies, addresses and mitigates environmental concerns to protect the water resources of the New York City watershed without negatively impacting the economic viability of the agriculture enterprise while integrating farm business objectives into the decision making process.

The Whole Farm Planning Process - A WFP is developed by agricultural/conservation professionals and the participating landowner/producer following WAC policy, guidelines and standard operating procedures. The WFP gives specific consideration to aspects of the farm business that relate to water quality objectives and landowner/producer goals. The WFP addresses water quality issues identified through environmental assessments (Environmental Review/Problem Diagnosis (ERPD) and Agricultural Environmental Management (AEM)). The mitigation of these water quality concerns is achieved through the implementation of Best Management Practices (BMPs) consistent with NRCS and/or WAC Standards. The landowner/producer agrees to implement BMPs according to the WFP schedule and shall maintain and operate BMPs for their designated life span. The plan may periodically be updated or otherwise revised and shall remain in effect for any period when WAC either funds or otherwise ensures that funding is secured for Grantor for construction of BMPs. Grantor must maintain such BMPs in accordance with the Whole Farm Plan and any related contractual obligations.

Funding Restrictions - In the event that the Whole Farm Plan ceases to be funded and all contractual obligations the Grantor may have with respect to BMPs have expired, agricultural uses and activities on the Property shall be consistent with the New York State Environmental Conservation Law (ECL) including, but not limited to, requirements applicable to Concentrated Animal Feeding Operations (CAFOs) under ECL Article 17, Title 7, and with the federal Clean Water Act, 33 U.S.C. § 1251 et seq.

A WFP document can include the following documents, but not limited to:

1. Environmental Assessment using the Environmental Review/Problem Diagnosis (ERPD) or Agricultural Environmental Management (AEM)
2. RUSLE2 Soil Erosion Assessment, WINPST Pesticide Leaching and Run-off Assessment and other NRCS assessments as required
3. Plan narrative and photo documentation (pre and post planning and implementation)
4. Nutrient Management Plan
5. WFP Summary (Farm Mission, Vision and goals)
6. WFP-2 Funding and Scheduling Agreement
7. All WAC BMP procurement documentation, i.e. BMP Funding Agreement (WFP-1)
8. BMP Operations and Maintenance Agreements (O&M)
9. Record of communication with the Landowner/Participant
10. BMP designs and completed "as built"
11. Annual Status Reviews

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2. Any contractual obligations that will affect the development and implementation of new and/or revised WFP, i.e. federal programs, easements.

3. WAC further defines the meaning of the following definitions found in the Deed of Conservation Easement pertaining to the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production. Definitions are based on NYS Law pertaining to Regulated Waste.

- a. **Septage:** Is the contents of a septic tank, cesspool, or other individual sewage treatment facility which receives domestic sewage waste.
- b. **Sludge:** Is any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. "Sludge" does not include the treated effluent from a wastewater treatment plant.
- c. **Raw Sewage:** Is any untreated sanitary waste.
- d. **Regulated Waste:** Is a solid waste which is raw sewage, septage, sludge from a sewage or water supply treatment plant, [waste tires]*, waste oil or industrial-commercial waste including hazardous waste.

B. General Restrictions for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes.

1. Prior to undertaking the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production, a landowner must comply with the applicable requirements of the New York State Environmental Conservation Law including, but not limited to: (i) ECL Section 27-0303 (waste transporter); (ii) 6 NYCRR Part 364 (waste transporter); (iii) ECL Section 27, Title 7 (Solid Waste Management); (iv) 6 NYCRR Part 360 (including Sections 360-1.7, 360-1.15, 360-4).
2. Prior to undertaking the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production, the proposed Application must be incorporated as a Best Management

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Practices in the landowner's and /or producer's Whole Farm Plan. The BMP must be reviewed and approved by the WAC Agricultural Committee and incorporated into the landowner's Whole Farm Plan prior to implementation.

3. Producer's operating on an easement landowner's property must have the landowner submit the reserved right request and other materials required under these guidelines, for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production.

C. Process and Standard of Approval for Requests for the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes

The Deed of Conservation Easement defines the process and standard of approval for requests for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes as follows :

The Deed of Conservation Easement defines the process and standard of approval as follows:

1. Grantor may engage in the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes only with prior approval from the Grantee.
2. Prior to commencing any proposed action, including Commercial Forestry, where Grantor is required to obtain Grantee's approval hereunder, Grantor shall request such approval in writing and shall provide Grantee with information and plans as may be necessary for Grantee to evaluate such request
3. Grantee reserves the right to request additional information as may be required for the evaluation.
4. Grantor's request shall be deemed approved if no written response is provided by Grantee within 45 days of the receipt of the request for approval.
5. Written response from the Grantee may include, but is not limited to, a requirement that Grantor submits to Grantee additional information to evaluate the request.
6. Grantee may approve the request, approve with conditions, or deny the request.

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7. Grantee's approval shall be conditioned so that the approval is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.

D. Requests by Landowners for the Application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes.

1. Landowner requests for the application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes must include the following:
 - a. Written request to activate a reserved right from the landowner stating need for the application .
 - b. Map depicting size and location of the affected area. Map should include Use Area boundaries, slope, water courses.
 - c. Memorandum describing size of application, contents of application, terms and conditions of any regulatory approval applicable to the storage, transport and disposal of regulated waste, and description of the Whole Farm Best Management Practice specifications designs as approved by the Agricultural Committee.

E. Standard of Review for Requests for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes.

1. Plans submitted by landowners for The application in, on or upon the Property of domestic septic effluent and/or municipal, commercial, or industrial sewage sludge or liquid for agricultural production purposes be reviewed by the Easement Committee against the following standards as defined in the Deed of Conservation Easement and require unanimous consent by the Easement Committee for approval:
2. Standard of Approval: Grantee's approval shall be conditioned so that the approval is consistent with the Conservation Purposes of this Easement and will not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.
3. Conservation Purposes: This Conservation Easement is intended to protect the water quality of the New York City watersheds, and to protect agricultural and forestry lands by limiting the form, location, and density of development and promoting good stewardship by the implementation of Whole Farm Plans.

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4. WAC has agreed that its interpretation of the Standard of Approval and Conservation Purposes clauses must be consistent with Sections 9c of the December 2010 "Agreement Among the New York City Department of Environmental Protection (NYCDEP) and the 1997 New York City Memorandum of Agreement Signatories Concerning NYCDEP's continuation of its Land Acquisition Program (the "Agreement").
5. Section 9c of the Agreement states that "guidance documents will specify, for each reserved right, what constitutes consistency with the conservation purposes of the easement, with reference to and consistent with the laws and polices identified in paragraphs C through H of the recitals in the Model Conservation Easement
6. The recitals in the Model Deed of Conservation Easement are as follows:
 - a. Article 14, Section 4 of the New York State Constitution states that "The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products".
 - b. Article 25-AA of the New York Agriculture and Markets Law authorizes the establishment of agricultural districts and states: "The socio economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the State as a whole. It is, therefore, the declared policy of the State to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the State to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.
 - c. The New York Environmental Conservation Law, Article 49, Title 3, authorizes conservation easements which are intended to: "implement the state policy of conserving, preserving and protecting environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands".
 - d. The Ad Hoc Task Force of Agriculture and New York City Watershed Regulations Policy Group issued recommendations which resulted in the formation of the Watershed Agricultural Council and the development of the Whole Farm Planning / Best Management Practices Program designed to meet the watershed's water quality objectives and sustain and improve the economic viability of watershed farms.

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- e. The Constitution and By-Laws of The Watershed Agricultural Council of the New York City Watersheds, Inc., as amended, includes among its objectives and guiding principles the protection of the New York City water supply, the maintenance of the economic viability of agricultural and forest enterprises and the acquisition of easements to protect sensitive lands, provide economic incentives to farmers for pollution prevention and allow for inter-generational transfer of farmlands and operations.
 - f. The New York City Watershed Memorandum of Agreement dated January 21, 1997 authorizes an agricultural easement program and provides "funding for the acquisition of Watershed Agricultural Easements and for Watershed Conservation Easements on non-agricultural lands under common ownership with farms from Property owners who have Whole Farm Plans approved by WAC".
7. Consistency with the Standard of Approval, Conservation Purposes and Section 9c of the "Agreement" as interpreted and applied by WAC (grantee) to requests by landowners (grantors) for the Application of Domestic Septic Effluent and/or Municipal, Commercial, or Industrial Sewage Sludge or Liquid for Agricultural Production Purposes require review and approval by WAC of the following:
- a. Review of NYS regulatory terms and conditions for the, storage, transport and application of Regulated Waste to determine if the proposed application is consistent with the Conservation Purposes and does not substantially diminish or impair the agricultural, forestry, or the water quality values of the Property.
 - b. Review of Whole Farm Plan Best Management Practice as approved by the WAC Agricultural Committee.

F. Notification to Landowner of Approval or Denial of Grantor Request by Easement Committee

1. WAC staff shall submit a letter to Grantor no later than 5 business days after Committee motion is rendered notifying Grantor of Committee's decision regarding such request.
2. Letter to Grantor shall include a copy of the motion and vote on motion.
3. Letter to Grantor shall outline any additional requirements if motion is approved with contingencies or conditions or if denied, set forth in detail a site specific basis for such denial.

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