

Farm Technology Review
Commission

2011 Annual Report of the Farm
Technology Review Commission to
Governor Patrick and the
Massachusetts State Legislature

June 2011

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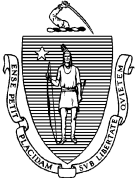
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Department of Agricultural Resources

Farm Technology Review Commission

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Dear Governor Patrick and Members of the General Court:

The Farm Technology Review Commission ("FTRC" or "Commission") respectfully submits this report pursuant to Chapter 310 of the Acts of 2008, the Dairy Farm Preservation Act ("the Act").

The growth in farms in Massachusetts over the past decade has been driven in large part by the increased demand for locally produced food. To meet the demands of the marketplace, our farmers have responded by diversifying their operations and embracing technology and innovation in both their farming practices and their business models. As they innovate and diversify, they regularly find that the regulatory framework at the local and state levels presents significant challenges to their pursuit of these new opportunities. The Commission has served to identify these regulatory barriers and propose pathways towards solutions in the areas of taxation, environmental and public health regulations, and energy.

Over the past year the Commission has been directly engaged in the following activities:

- Letter Rulings on Sales Tax Implications for Wind Turbines and Agricultural Anaerobic Digesters
- Regulatory process at the state and federal level for access to meat and poultry slaughtering and processing
- Regulatory pathway for Waste and Wastewater Management on farms
- Outreach to Boards of Health on innovative and evolving technologies such as anaerobic digesters on farms

I am delighted to be able to present this second report which outlines progress, objectives, and recommendations of the Farm Technology Review Commission

Sincerely,

Scott J. Soares
Commissioner
Department of Agricultural Resources

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Executive Summary

The Farm Technology Review Commission (“FTRC” or “Commission”) was created as a result of the 2008 Dairy Farm Preservation Act¹ (“the Act”) with the recognition that existing regulations and statutes can negatively impact the agricultural industry by preventing the adoption and implementation of new technology, thereby impacting on economic development within the Commonwealth.

Chaired by the Commissioner of the Department of Agricultural Resources, Scott J. Soares, the Commission is comprised of state officials and farming representatives. State agencies participating include the Department of Environmental Protection (“MassDEP”); the Department of Public Health (“MDPH”), the Department of Revenue (“DOR”) and the Clean Energy Center (“CEC”). Three dairy farmers representing the Massachusetts Association of Dairy Farmers, the New England Producer Handler Association, and the Massachusetts Cooperative Milk Producers Federation, respectively, have also been appointed. Each member serves for a term of three (3) years.

In addition to specific requirement to focus on energy issues, a key task of the Commission is to analyze regulations and statutes to ensure that they are not impediments to the adoption of farming technology. To more effectively address these mandates, the Commission has focused its attention on three broad areas:

1. Revenue and Taxation; 2. Regulatory Issues, and 3. Energy

Over the course of 2010-2011, the Commission examined taxation issues as they relate to agricultural equipment; explored the issues of anaerobic digester technology adoption on farms; investigated the issue of access to slaughtering and processing capacity for producers and continued to provide input into MassDEP’s deliberations on the issue of waste and wastewater management on farms.

In its 2010 report the FTRC developed a number of recommendations. Activities around these issues along with any findings of the Commission are outlined in the following pages.

1. REVENUE AND TAXATION

The FTRC identified a need for MDAR to provide guidance to the agricultural community on state taxation implications as they relate to renewable energy installations and net metering. Furthermore, MDAR was directed to work with DOR to review the issue of how taxation relates to other areas of diversification such as composting for farm operations. In addition, discussions also centered around the benefits that could be drawn from classifying agriculture as a manufacturing activity in the tax code.

ACTIVITIES

- **Letter Rulings on Wind Turbines and Anaerobic Digesters:** The Department of Revenue developed Letter Rulings on Wind Turbines (Appendix A) and Anaerobic Digesters (Appendix B). MDAR developed an Administrative Law Memo (ALM) on Sales Tax Implications for Anaerobic Digesters (Appendix C). The rulings concluded that the component parts of both projects were largely exempt from sales tax because they were producing electricity to be sold and/or for exclusive use in agricultural production.

¹ Section 11 of Chapter 310 of the Acts of 2008, The Dairy Farm Preservation Act

- **Taxation Exemptions:** A potentially beneficial approach for the Commission to take may be to propose legislation, or support proposed legislation to secure taxation exemptions for farms involved in agricultural production that are on a par with those for a manufacturing corporation whether the farm is incorporated, or an individual under Chapter 62, the income tax statute.

2. REGULATORY ISSUES

MEAT AND POULTRY SLAUGHTERING AND PROCESSING: The Commission has requested more information about the regulatory process at the state and federal level in order to review the issue of access to slaughtering facilities. Possible options for the Commission to consider include an evaluation of federal and state statutes relative to local meat and poultry processing.

ACTIVITIES

- **Slaughtering and Processing:** FTRC commissioners conducted a field visit to the Adams slaughter facility in Athol in April 2010. In June the FTRC meeting featured a presentation on “Regional Capacity for Animal Slaughtering and Processing” (Appendix D) and included participation from the manager of the Adams facility.

In October, the FTRC again featured the issue of slaughterhouse capacity at its Amherst meeting in which farmers participated. The New England Small Farm Institute (NESFI) Mobile Poultry Processing Unit (MPPU) was present for viewing outside. And in November, the FTRC featured a presentation by staff from the USDA Food Safety and Inspection Service (FSIS).

FINDINGS

- The slaughter industry is highly seasonal with business peaking in the late fall.
- Processing capacity and the types of processing services offered at the MA slaughterhouses, not the actual slaughtering process itself, may be a limiting factor.
- USDA regulations are clear and are not insurmountable for most needs.
- Many existing custom slaughtering operations could serve as a potential answer to the need for slaughtering options at the local level if upgraded to USDA status.
- A different slaughter infrastructure, other than just bricks and mortar facilities, might work to meet the needs of some producers.
- The Commission is in agreement that the needs of some producers are currently not being addressed by the existing slaughtering and processing infrastructure in the state.

WASTE AND WASTEWATER MANAGEMENT: There is continued work with MDAR, MassDEP and agricultural stakeholders such as the Natural Resources Conservation Service (NRCS) to develop a mechanism to ensure that farmers can maximize the resource potential of their operations while complying with environmental regulations. The FTRC Regulatory Subgroup should also continue to support the efforts of the MassDEP intra-agency workgroup.

ACTIVITIES

MassDEP is planning to propose regulatory revisions that will help clarify and streamline regulatory oversight in the following areas:

- Making direct land application of manure exempt from MassDEP permitting requirements. Right now the language is unclear and it was never intended that manure applications would be captured by MassDEP regulations or permitting.
- Allowing wastes that are mixed with manure, or even wastes themselves, that are applied as a nutrient supplement or soil amendment to be exempt from MassDEP's groundwater permitting program if they are managed according to the provisions of a certified nutrient management plan.
- Ensuring that there are provisions which will allow the management of other farm generated waste streams that can be adequately managed through a Nutrient Management Plan rather than through MassDEP permitting.



Figure One: Wastewater Treatment Strip

Once internal reviews and senior management approvals have been obtained, MassDEP will publish proposed draft regulatory changes addressing the above issues for public review and comment.

EDUCATION AND OUTREACH: Additional areas for future consideration include: education and outreach to local officials and Boards of Health in matters pertaining to innovative and evolving technologies such as anaerobic digesters in collaboration with MassDEP and MDPH; alternative mechanisms to fund the Linked Loan Program established under the Dairy Preservation Act and the MA Farm Energy Program; education and outreach to farms in matters pertaining to net metering and Farm Energy Discount program.

ACTIVITIES

- In October 2010 Commission members delivered a presentation at the Massachusetts Health Officers Association (MHOA) on Anaerobic Digesters and the changing approach to waste management on farms.
- Modifications to the Farm Energy Discount Program are underway. In a change to the program for 2011, farms were automatically renewed this year. A brochure is being created to help promote the program. An online application process is under development.
- Continued engagement by the FTRC and MDAR with Boards of Health to ensure that officials at the local level develop an understanding of agricultural issues and that they are supportive of efforts to implement alternative manure management approaches. Regular participation in MHOA meetings for example should be pursued. Distribution of notices of the meetings to MHOA is also recommended.

3. FARM ENERGY ISSUES

The FTRC is also required by legislation to study options for updating farming technology as it pertains to energy practices, including but not limited to:

- ways to promote energy conservation
- collaborative purchasing
- purchasing and selling of energy
- energy saving technology, and
- alternative options for sustainability and growth

Collaborative purchasing was assessed and completed during activities in 2010. For the current year the FTRC recommended a number of activities to further this effort.

ACTIVITIES

- **Furthering through funding assistance, project implementation and regulatory framework the farming technologies associated with anaerobic digesters, “green” farm structures, geothermal, biomass, bio-fuels, biogas, high efficiency heat pumps and solar applications:** Through MDAR’s annual Agricultural Energy Grant Program and the MA Farm Energy Program (MFEP), FTRC will continue to prioritize these technology applications. MDAR and MassCEC will work together to assess additional funding opportunities for these technologies that may be created through the MassCEC.
- **Promotion of energy conservation through working with farms, trade groups and utilities in the formation of their new energy efficiency programs:** MDAR through the MFEP continued promoting and providing the direct technical and financial assistance to help more agricultural businesses implement energy conservation projects. Utility energy efficiency programs will continue to be a financial incentive while trade groups assist in the outreach effort to get farms involved.
- **Furthering and advancing the existing MA Farm Energy Program (MFEP) as a permanent state program:** The MFEP was created as a pilot program in 2007 through federal and state (MDAR) grant funding. Based on the success of the MFEP, it is desirable to now establish this program as a permanently funded annual program. More work is required toward this end, including the identification of possible annual funding sources.
- **Seek alternative mechanisms to fund the Linked Loan Program established under the Dairy Preservation Act:** The Dairy Preservation Act of 2007 established the structure of a Linked Loan Program that would allow participating banks to borrow and lend state funds at a low interest to all farming sectors. The sources for the Linked Loan Program however would be excess state revenues which have not been generated under our current economic challenges. It is desired to find different resources that could contribute to this program as upfront capital to implement farm energy projects

is a barrier to many farms wishing to become more energy efficient and energy sustainable. More work needed toward this effort.

- **Education of local officials:** As described above the Commission has actively reached out to Boards of Health and presented at the Massachusetts Health Officers Association on innovative technologies on farms. As importantly, the initiation of agricultural anaerobic digester (AD) projects has contributed to the surge of interest for more and larger commercial scale projects. As well, EEA and the Secretariat have prioritized the increase of organic capacity in our recycling efforts and have created a Task Force devoted to fully understand the barriers and challenges to further this effort. This wider realm and larger scale effort will significantly complement the FTTC's efforts to educate local officials regarding the environmental and economic benefits of this technology.



Figure Two: Visit to Jordan Farm Anaerobic Digester

Similar efforts have been conducted by DOER, MassCEC and MDAR by presenting and speaking at town building commission and zoning board meetings with regard to proposed agricultural wind projects.

- **Criteria Developed to Identify Agricultural Business for Purpose of Net Metering:** MDAR has developed criteria to provide the Commissioner with the information he needs to identify a business operation as an agricultural net metering facility. MDAR has also educated the farming community on the concept and application of net metering in general and agricultural net metering in specifics through a variety of energy related workshops and training sessions.
- **Sustainable Revenue Source:** MDAR and CEC have been exploring the possibility of a sustainable revenue source to support the development of agricultural renewable energy projects. One concept would be to work with an electrical utility (ies) where ratepayers would have an option of selecting a green energy mix for their energy supply that would include agriculturally generated renewable energy. Initial investigations have begun though more time and work is required to better understand the feasibility of accomplishing such, including any regulatory needs.
- **Database to be created by MDAR staff of farms interested in being nominated for excess net metering credits:** Based on criteria established by the Green Communities Act, there are seven net metering zones served by the four utilities required to provide net metering in MA and it would be valuable to farmers to be able to identify other agricultural operations willing to receive the credits. A

database of interested farms within each net metering zone would be the product. Net metering credits can play a role in financing projects with investors and banks. MDAR will continue to work toward development of this database.

- **SREC Aggregator:** MDAR is tasked to identify an approach for farms to aggregate RECs and SRECs. There are currently seventeen businesses that are aggregating SRECS and three providing marketing/brokerage services for RECs, all found and listed as such on DOER's website. Creating relationships with existing aggregators for agricultural projects and/or helping to establish an agricultural aggregator may have merit as an option to pursue. A cooperative approach may also be productive given the significant commissions that some of the aggregators and marketing/brokerage firms are taking. This work continues.

Revenue and Taxation

In its first year the Commission resolved a number of taxation related issues that had been identified for attention by the Dairy Task Force. In its 2010 report, the FTRC identified a need for MDAR to provide guidance to the agricultural community on state taxation implications as they relate to renewable energy installations and net metering. The Commission also explored the value of classifying agriculture as a manufacturing activity.

State Taxation and Renewable Energy Systems

General uncertainty around the application of sales tax to renewable energy systems, including anaerobic digesters and wind turbines, resulted in the development of Department of Revenue (DOR) Letter Rulings on wind turbines (Appendix A) and anaerobic digesters (Appendix B) and an MDAR Administrative Law Memo (ALM) on Sales Tax Implications for Anaerobic Digesters (Appendix C), respectively.

Letter rulings are issued by DOR upon request of an individual taxpayer and apply only to that taxpayer. However, they tend to set a precedent for future decisions around similar projects. In the letter ruling on wind turbines, the owners of the turbine were planning to send all the energy generated from a wind turbine to the grid. DOR concluded that, in cases where electricity is produced **to be sold**, the component parts of the wind turbine are exempt from sales tax. This exemption is found in M.G.L. Chapter 64H Sec. 6.

The second letter ruling related to the AGreenEnergy 5 Farm Anaerobic Digester (AD) project. In this scenario organic waste materials are used to supplement manure generated on the farm to produce electricity. One of the key issues was the fact that the energy being produced was in excess of the farm's energy needs for agricultural production and that the farm would be selling the excess. If the energy produced was just for farm use, the farm would enjoy an exemption from the sales tax because the energy would be for **agricultural production**. As discussed in the previous paragraph, if electricity is produced **to be sold**, the equipment is also exempt from sales tax. The AD enjoys an exemption from sales tax because all of the wind turbine components are either exclusively used in **agricultural production** or produce electricity **to be sold**.



Figure Three: AGE Anaerobic Digester

Targeted Tax Credits: Classification of Agriculture as “Manufacturing”

The Commission discussed the potential for the classification of agriculture as a manufacturing activity. Manufacturing businesses enjoy different types of credits, usually through a manufacturing corporation. A manufacturing corporation receives three tax benefits:

- (i)** An exemption from sales tax under M.G.L. Chapter 64H Sec. 6 subsections R and S when buying machinery and equipment
- (ii)** An investment tax credit, and
- (iii)** An exemption from local personal property tax on equipment and machinery.

If an agricultural operation buys tangible personal property such as machinery or equipment (that has a useful life of over 5 years among other criteria) the operation may be exempt from the sales tax because it is used in agricultural production. A manufacturing corporation may receive a tax credit when filing a corporate return. The credit is 3% of whatever the expenditure on the equipment was.

The Commission concluded that instead of classifying agriculture as manufacturing, a more productive approach would be to seek the same exemption for farmers who pay a personal income tax. Under this scenario a farmer will not have to pay the sales tax and may get a 3% credit of whatever the cost is for the equipment. The credit is not a refundable tax credit but one which can be carried over.

RECOMMENDATIONS

- Identify appropriate targeted tax credits for agriculture example e.g. Open Space Preservation or Renewable Energy System Installations on farms.
- Propose legislation, or support proposed legislation to secure taxation exemptions for farms involved in agricultural production that are on a par with those for a manufacturing corporation whether the farm is incorporated, or an individual under Chapter 62, the income tax statute. Broaden the exemption so that agricultural production includes farm stands, as defined under M.G.L. Chapter 40A Section 3 for renewable or sustainable energy.

Regulatory Issues

With increasing demand for locally produced food, the need to address barriers to growth in local food systems, particularly as they relate to processing has grown. As farms diversify into other areas of agricultural production they can find that the existing regulatory framework at the state and local level may lack the flexibility to allow them to pursue new opportunities.

For example, some producers claim that there is a lack of access to slaughtering facilities for red meat. Others find that waste management becomes an issue when they diversify their operation into value-added products such as cheese making or wine production. In recognizing these issues both the state Department of Public Health (DPH) and the Department of Environmental Protection (MassDEP) have developed pilot program mechanisms to facilitate the implementation of new approaches that do not fit well within existing regulations. Pilot programs are in various stages of operation for shellfish at farmers markets; mobile poultry processing units; and vegetated treatment strips for wastewater management. The principal issues that the Commission explored within the context of regulation in 2010 were:

- Access to slaughtering and processing facilities
- Proposed changes to MassDEP regulations regarding waste and wastewater management, and
- Outreach and Education

Access to Slaughtering and Processing Facilities

In its first report the Commission requested more information about the regulatory process at the state and federal level in order to review the issue of access to slaughtering facilities. To better understand the issues, several Commission members conducted a field visit to the Adams slaughter facility in Athol in April 2010. This was followed, at the June meeting, by a presentation from Tufts Graduate student Chelsea Bardot Lewis of her graduate paper on “Regional Capacity for Animal Slaughtering and Processing”.

Her report set out to answer the following questions:

- At what percent of maximum capacity are New England’s large animal slaughter facilities operating?
- What percentage of the total number of livestock produced in New England could be slaughtered in existing New England facilities?

Among her findings were that the slaughter industry is highly seasonal with business peaking in the late fall. This is due to the standard timeframe for raising



Figure Four: Mobile Poultry Processing Unit (Open Unit)

animals to slaughter of 18 months. Some USDA inspected facilities also provide custom slaughtering services² for hunters which can compound the scheduling problem. As such there is a lack of year-round demand for slaughter and producers need to schedule their animals for slaughter several months in advance. Lack of skilled labor is also a significant challenge.

On October 6, 2010, the FTRC again featured the issue of slaughterhouse capacity at its Amherst meeting in which many farmers participated. Some producers claim that the market for locally produced organic or grass fed beef is growing to the extent that many cannot meet the demand. Many of the producers are serving a high end, niche or specialty market. The needs of these producers are currently not being addressed by the existing slaughtering and processing infrastructure in the state. These needs relate to concerns about distance for transporting animals to slaughter, limited services that are currently offered, the necessity of having to schedule slaughtering far in advance of appointment, some dissatisfaction with the quality of the work, or bottlenecks that develop every year at the peak of the season.

Among the concerns which have been expressed directly to the Commission in writing at this meeting are:

“Larger growers wish to produce for the growing locavore and farmers’ market trade. While most seem able to adjust somewhat to current conditions because of their size the lack of timely high quality USDA or even State inspected facilities in our area hampers expansion into these very profitable markets” (David Brownell, Dartmouth)

“I strongly advocate that your Commission support local, USDA options with state of the art facilities. My own belief is that the mobile facilities offer the best opportunity for achieving this objective, rather than on-farm facilities” (Andy Burnes, South Dartmouth)

The nearest USDA approved slaughter house is located two hours away in Groton, MA. This distance is difficult when we truck our animals to the slaughter house and difficult again when we pick up the meat for our customers. We make our reservations six months in advance, for the fall season; which does not allow for the vagaries of agriculture.” (Paul Schmid, Westport)

“It would be very helpful to have more options in Eastern Massachusetts; with all the Locals popping up, competition for a good butcher will only continue to increase. In my part of the state there already are the Bolton Local, Harvard Local and the Groton Local, all promoting growing and eating local produce and meat. This could be a real boost to local farmers, who will need a quicker turn-around on meat processing than currently exists.” (Patricia Huckery, Bolton)

In November, the Commission featured a presentation by staff from the USDA Food Safety and Inspection Service (FSIS). The latter meeting proved especially valuable and the question and answer dialog from the session is presented in Appendix D.

² A custom slaughter facility is a slaughter and processing facility that does **not** have a federal inspector on duty and therefore the meats produced from these facilities are **not** considered USDA inspected meats. Custom slaughter operations offer services for people who want an animal slaughtered for their own personal use. The meat is cut, packaged, and labeled “not for sale.” These meats are returned to the owner of the animal and cannot be sold.

The Commission understands from its exploration of this issue the following:

-Processing capacity and the types of processing services offered at the MA slaughterhouses, not the actual slaughtering process itself, may be a limiting factor. However there are processing services available locally that include artisanal cutting, high end cutting, aged beef, specific cuts of veal and so on. USDA Inspected

Processors and Slaughterhouses are [listed on the USDA FSIS website](#)



Figure Five: Mobile Poultry Processing Unit
(Closed Version)

-USDA regulations are clear and are not insurmountable for most needs. It is possible to implement a Mobile Processing Unit for Red Meat under the current USDA regulations, for example. The existing regulatory framework should be reviewed and possibly modified to reflect the shift towards smaller scale local production and new approaches to food delivery such as Community Supported Agriculture.

-Many existing custom slaughtering operations could serve as a potential answer to the need for slaughtering options at the local level. A clear process exists for this and is outlined in an easily accessible federal guide.

-A different slaughter infrastructure, other than just bricks and mortar facilities, might work to meet the needs of some producers. Mobile slaughtering units have been implemented in several states through a collective effort. For example, The Island Grown Farmers Cooperative in Washington State has successfully implemented a USDA inspected mobile unit for slaughtering four legged animals on-farm. Note that the processing is conducted at a bricks and mortar facility. Storage and transport to the USDA facility would need to meet USDA requirements. Mobile units appear to lend themselves well to processing poultry as shown by the continued interest in the New England Small Farm Institute (NESFI) unit in Belchertown and the success of the Island Grown Institute (IGI) approach on Martha's Vineyard.

-The Commission is in agreement that the needs of some producers are currently not being addressed by the existing slaughtering and processing infrastructure in the state. Some producers expressed concerns about the distance required for transporting animals to slaughter, limited services that are currently offered, the necessity of having to schedule slaughtering far in advance of an appointment, some dissatisfaction with the quality of the work, or bottlenecks that develop every year at the peak of the season, usually around October - December.

Recommendations

- Within the current regulatory framework there are ways to address the needs of producers but there may have to be a collective, or cooperative, effort on the part of the farmers. Cooperative approaches have a proven track record of success in other states. Mobile units may be an option.
- Clear guidance on the state and federal regulations as they pertain to slaughtering and processing should be developed. Education of agricultural community stakeholders on slaughtering issues by USDA, in cooperation with state agencies, is recommended.
- Develop a program – coordinated through a cooperative approach or at the state level- to identify and help upgrade custom slaughterhouses to a USDA inspected slaughtering and processing facility.
- A review of the existing regulations is recommended to ensure that they do not serve as a barrier to local food productions.
- Community Colleges or Agricultural Tech Schools should consider offering high end artisanal butchery classes
- Processing bottlenecks could be met by slaughtering animals at one USDA facility and processing at another USDA facility

Waste and Wastewater Management on Farms

Another key issue identified by the FTRC for attention is the need to clarify uncertainties around the regulation of standard agricultural practices, such as the application of waste materials generated by farms to the land for their resource value. Typical agricultural activities which could potentially trigger MassDEP regulations include the application of livestock waste; washing of vegetable produce, fruits, berries and eggs; maple sugaring; wineries; greenhouses; manure slurry management; dairy wastewater management from milking and bottling operations.

The 2010 report recommended that the Commission continue to work with MDAR, MassDEP and agricultural



Figure Six: Vegetated Treatment Area and Bark Bed System, Great Brook Farm

stakeholders such as the Natural Resources Conservation Service (NRCS) to develop a mechanism to ensure that farmers can maximize the resource potential of their operations while complying with environmental regulations. Indeed in March of 2010, NRCS staff presented a detailed overview of the approach taken to conservation planning and nutrient management planning.

MassDEP has committed considerable resources to investigate the development of a streamlined permitting process to allow waste that is generated on farms to be recycled or reused as nutrient

supplements or soil amendments for farming practices. The NRCS process, particularly as it relates to the design of conservation practices and the development of nutrient management plans, is viewed as highly significant to help facilitate a change in MassDEP regulations.

Currently farms put together Comprehensive Nutrient Management Plans (CNMP) with NRCS or with contracted Technical Service Providers (TSP). MassDEP is planning to propose regulatory revisions that will help clarify and streamline regulatory oversight in the following areas:

1. Making direct land application of manure exempt from MassDEP permitting requirements. Right now the language is unclear and it was never intended that manure applications would be captured by MassDEP regulations or permitting.
2. Allowing wastes that are mixed with manure, or even wastes themselves, that are applied as a nutrient supplement or soil amendment to be exempt from MassDEP's groundwater permitting program if they are managed according to the provisions of a certified nutrient management plan.
3. Ensuring that there are provisions which will allow the management of other farm generated waste streams that can be adequately managed through a Nutrient Management Plan rather than through MassDEP permitting.

Once internal reviews and senior management approvals have been obtained, MassDEP will publish proposed draft regulatory changes addressing the above issues for public review and comment.

Education and Outreach

Considering the increasingly important interface and role of health officials relative to agricultural activities, the Commission recommended that MDAR engage local officials and Boards of Health in a dialogue on matters pertaining to innovative and evolving technologies on farms such as anaerobic digesters.

The Commission presented a panel discussion at the annual Massachusetts Health Officers Association (MHOA) conference on evolving and innovative agriculture practices in the areas of sustainable waste management and renewable energy (Appendix F). Participants included MDAR, MassDEP, NRCS, Edgartown Board of Health agent Matt Poole and Peter Melnik, a dairy farmer and FTRC commissioner. The goal of the discussion was to highlight these new approaches and their benefits in helping to address the state's renewable energy and waste management goals but also to understand any challenges and concerns that may exist at the local level.

The outreach effort has proven productive leading most recently to participation by the Commissioner of Agricultural Resources at a recent MHOA meeting. The outcome of the meeting is to explore opportunities for continued dialog among local boards of health and the MDAR. Potential for participation in regular meetings of the Massachusetts Health Officers Association is recommended

Farm Energy

The second major task assigned by the legislation to the Commission is to study options for updating farming technology including, but not limited to:

- ways to promote energy conservation
- collaborative purchasing
- purchasing and selling of energy
- energy saving technology, and
- alternative options for sustainability and growth



Figure Seven: 10KW PV System Red Fire Farm Granby

To implement this task the FTRC recommended furthering (through funding assistance), project implementation and regulatory framework the farming technologies associated with anaerobic digesters, “green” farm structures, geothermal, biomass and bio-fuels; promotion of energy conservation through working with farms, trade groups and utilities in the formation of their new energy efficiency programs as well as furthering and advancing the existing MA Farm Energy Program; and collaborative purchasing through identification of potential net metering nominees, SREC aggregation, and a voluntary REC program for renewable farm projects.

In addition the FTRC recommended several additional areas for future consideration including education and outreach to local officials and Boards of Health in matters pertaining to innovative and evolving technologies such as anaerobic digesters in collaboration with sister agencies MassDEP and MDPH; to seek alternative mechanisms to fund the Linked Loan Program established under the Dairy Preservation Act and the MA Farm Energy Program; education and outreach to farms in matters pertaining to net metering and Farm Energy Discount program.

ACTIVITIES

Furthering (through funding assistance), project implementation and regulatory framework the farming technologies associated with anaerobic digesters, “green” farm structures geothermal, biomass, bio-fuels, biogas, high efficiency heat pumps and solar applications: MDAR’s annual Agricultural Energy Grant Program, (AgEnergy Grant), will continue to prioritize these technology applications as long as funding remains in place. As well, through MFEP, MDAR will continue to try to leverage other state and federal funds and educate the farming community with regard to policy incentive initiatives such as Section 1603 Cash Grant option, net



Figure Eight: 15KW Wind Turbine, Red Apple Farm, Phillipston

metering and RECs/SRECs. At the same time MDAR and CEC will work together to assess additional funding opportunities for these technologies that may be created through the MassCEC.

Promotion of energy conservation through working with farms, trade groups and utilities in the formation of their new energy efficiency programs: MDAR through the MFEP continued promoting and providing the direct technical and financial assistance to help more agricultural businesses implement energy conservation projects. Utility energy efficiency programs continue to be a financial incentive while trade groups assist in the outreach effort to get farms involved.

Furthering and advancing the existing MA Farm Energy Program (MFEP) as a permanent state program: The MFEP was created as a pilot program in 2007 through federal and state (MDAR) grant funding. Based on the success of the MFEP, it is desirable to now establish this program as a permanently funded annual program. More work is required toward this end, including the identification of possible annual funding sources.

Seek alternative mechanisms to fund the Linked Loan Program established under the Dairy Preservation Act: The Dairy Preservation Act of 2007 established the structure of a Linked Loan Program that would allow participating banks to borrow and lend state funds at a low interest to all farming sectors. The sources for the Linked Loan Program however would be excess state revenues which have not been generated under our current economic challenges. It is desired to find different resources that could contribute to this program as upfront capital to implement farm energy projects is a barrier to many farms wishing to become more energy efficient and energy sustainable. More work needed toward this effort.

Education of local officials: The FTRC has expressed that the farming community needs to educate officials about innovative technologies on farms. It is important for the agricultural community to define the issues. For example, the Commission early on identified the advancement of Anaerobic Digester technology on farms as an area in which the Commission could make a contribution. The capital intensive nature of these technologies, along with potential resistance at the local level, serves as barriers to their widespread adoption. As described above the Commission has actively reached out to Boards of Health and presented at the Massachusetts Health Officers Association on innovative technologies on farms. A recommended approach is to create a Guidebook to Municipal Government on locating Renewable Energy Systems for local building

inspectors. As importantly, the initiation of agricultural anaerobic digester (AD) projects has contributed to the surge of interest for more and larger commercial scale projects. As well, The Executive Office of Energy and Environmental Affairs and the Secretariat have prioritized the increase of organic capacity in our recycling efforts and have created a Task Force devoted to fully understand the barriers and challenges to further this effort. This wider realm and larger scale effort will significantly compliment the FTRC's efforts to educate local officials regarding the environmental and economic benefits of this technology.

Similar efforts have been conducted by DOER, MassCEC and MDAR by presenting and speaking at town building commission and zoning board meetings with regard to proposed agricultural wind projects.

Criteria Developed to Identify Agricultural Business for Purpose of Net Metering: Among the classes of net metering facilities is "agricultural net metering facility." Such a facility is defined in G.L. c. 164, §138, as a renewable energy generating facility that is operated as part of an agricultural business, generates electricity with a capacity of no more than two megawatts, is located on land owned or controlled by an agricultural business, and is used to provide energy to metered accounts of the business. MDAR has developed criteria to provide the Commissioner with the information he needs to identify a business operation as an agricultural net metering facility. The details and application are found at:

www.mass.gov/agr/programs/energy/agbusiness.htm,

MDAR has also educated the farming community on the concept and application of net metering in general and agricultural net metering in specifics through a variety of energy related workshops and training sessions.

Sustainable Revenue Source: MDAR and CEC have been exploring the possibility of a sustainable revenue source to support the development of agricultural renewable energy projects. One concept would be to work with an electrical utility(ies) where ratepayers would have an option of selecting a green energy mix for their energy supply that would include agriculturally generated renewable energy. It could take the form of a check off box on the utility bill. Initial investigations have begun though more time and work is required to better understand the feasibility of accomplishing such, including any regulatory needs

Net Metering Excess Credit Database: Another need is to identify farms which could be interested in being nominated for excess net metering credits from local agricultural renewable energy projects. Based on criteria established by the Green Communities Act, there are seven net metering zones served by the four utilities required to provide net metering in MA and it would be valuable to farmers to be able to identify other agricultural operations willing to receive the credits. A database of interested farms within each net metering zone would be the product. Net metering credits can play a role in financing projects with investors and banks. MDAR will continue to work toward development of this data base.

SREC Aggregator: MDAR is tasked to identify an approach for farms to aggregate RECs and SRECs. There are currently seventeen businesses that are aggregating SRECs and three providing marketing/brokerage services for RECs, all found and listed as such on DOER's website. Creating relationships with existing aggregators for agricultural projects and/or helping to establish an agricultural aggregator may have merit as an option to pursue. A cooperative approach may also be productive given the significant commissions that some of the aggregators and marketing/brokerage firms are taking. This work continues.

Farm Energy Discount Program: In an effort to further reach out to the farming community in regard to the state mandated 10% electric and natural gas rate reductions for agricultural businesses, modifications to Farm Energy Discount Program are underway. Existing farms enrolled are now automatically renewed beginning in 2011. The creation of Farm Energy Discount Brochure is in progress. And online applications are under development. As well, MDAR continues to educate the farming community at all relevant workshops and training sessions.

Appendix A: Department of Revenue Letter Ruling on Wind Turbines

Letter Ruling 10-3: Sales Tax on Machinery Used to Construct a Wind Turbine

July 7, 2010

I. INTRODUCTION

You ask for a letter ruling regarding the application of Massachusetts sales and use taxes to purchases of machinery used in the construction of a wind turbine project known as ***** (the Project) by ***** ("Taxpayer") in *****, Massachusetts. In support of your request, you state the following facts.

II. FACTS

The Project began in 2004 and has since gained all necessary permits to install one wind turbine, located on a remote hilltop site in ***** ("Technology Park") to generate electricity. Taxpayer has executed contracts to purchase a turbine (**** Model ****), which will have a rated capacity (i.e., maximum output) of 1,650,000 Watts, or 1.65MW, from Massachusetts Clean Energy Center (former Massachusetts Renewable Energy Trust), a quasi-public agency.

As required by the bylaws of the Town of ***** ("Town"), the turbine is an accessory to a business. It will be connected "behind the meter" at a 17,000 square foot commercial building located at *****, MA. This building and land is owned by *****, ("Realty Trust"). The building is leased to an unrelated third party. Taxpayer will lease the turbine site from Realty Trust.

Realty Trust will purchase electricity from Taxpayer. Some of this electricity will be resold to the unrelated third party, an industrial publicly traded company which employs 40 persons. On an annual basis, approximately 5% of the turbine output will be consumed on-site by the industrial tenant. The remainder of the electricity will be purchased by ***** (Local Utility) for use by other consumers [\[1\]](#). All of the transfers will take place over electrical lines.

Pursuant to a Purchase and Sale Agreement entered into between the Massachusetts Clean Energy Technology Center (CEC), a corporation organized under G.L. c. 23J, and the administrator of the Massachusetts Renewable Energy Trust Fund (the Fund) and Taxpayer, Taxpayer will purchase, among other items that are not the subject of this ruling request, the following:

1. Turbine and related items

(a) One (1) Model X 1,650-kW WTG turbine with the following:

- (1) rotor blades, rotor hub and fastening hardware;
- (2) internal nacelle crane to hoist tools, gear oils, etc.;
- (3) base (ground) and nacelle control panels;
- (4) electrical power, grounding and communication cables for connection between ground control panel and nacelle equipment (all exposed "not-in cabinet" power cables to be labeled and marked as rated for 600 V or higher);
- (5) 115-V convenience outlets in ground and nacelle control panels with ground-fault-interrupter (GFI) breakers for safety (meeting NEC codes or UL approved); and
- (6) WTG electrical equipment suitable for 60Hz.

2. Tower and related items

(a) One (1) eighty (80) meter hub height three section tubular steel Tower including the following items:

- (1) Tower fasteners (nuts, bolts, washers) for connection of internal Tower flanges (excluding Tower foundation bolts) and Tower-to-nacelle flange;
- (2) U.S. standard 115-V rated internal lighting system and rubber mounted anti-vibration pads (UL approved);

- (3) Tower protection coating system (paint)
- (4) internal ladder and safety cables with anti cable-slap hooks which are all pre-installed in Tower;
- (5) Tower internal mounting and ladder hardware fastened with ny-lock nuts;
- (6) rubber anti-vibration pads for Tower hatches;
- (7) Tower name plate with manufacturing details such as manufacturing date, material types, weights, reference documents, serial number, etc.;
- (8) Tower doorway equipped with positive latch-open device, door handle and padlock latches;

3. Supporting foundation

A supporting foundation must be built in order to secure the turbine and the electrical works. The foundation provides a secure, level base to anchor a structure, ensuring the structure will remain immobile and not move or topple when exposed to wind, frost heaves, etc.

III. ISSUE

Are sales of machinery used to construct the wind turbine, the tower and its components and the supporting foundation exempt from Massachusetts sales tax under G.L. c. 64H, § 6(s)?

IV. RULING

For reasons discussed below, we rule that for purposes of G.L. c. 64H, § 6(s), the wind turbine, the tower and its components, as well as its supporting foundation qualify as machinery that is used directly and exclusively in furnishing electricity that is delivered to consumers through mains, lines or pipes. Accordingly, Taxpayer's purchase of the turbine and related items described in section 1 are exempt from sales tax. With respect to the tower and related items listed in section 2, we rule that with the exception of the tower name plate described in section 2(a)(7), the purchase of items described in section (2) above, are exempt under G.L. c. 64H, § 6(s). Sales of any other machinery used in the construction of the wind turbine, tower, or foundation are not exempt from sales tax under G.L. c. 64H, § 6(s) unless such machinery becomes a part of the integrated and synchronized system that furnishes the electricity to consumers.

V. DISCUSSION

Massachusetts imposes a 6.25% sales tax on all retail sales, which include rentals of tangible personal property, in Massachusetts, unless otherwise exempt. See G.L. c. 64H, § 2. A complementary use tax is imposed on tangible personal property purchased for storage, use or consumption in Massachusetts, unless otherwise exempt. See G.L. c. 64I, § 2.

The exemptions from sales tax are found in G.L. c. 64H, § 6. Under G.L. c. 64H, § 6(s), sales of machinery or replacement parts used directly and exclusively in ". . . the furnishing of power to an industrial manufacturing plant; or in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes" are exempt from sales tax. For purposes of G.L. c. 64H, § 6(s), the Massachusetts Supreme Judicial Court has defined "machinery" as "any combination of mechanical means designed to work together so as to effect a given end." *Warner Amex Cable v. Broad of Assessors*, 396 Mass. 239, 242 (1985). The Massachusetts Appellate Tax Board has defined "machinery" as:

A mechanical, electrical or electronic device designed to be used and which is used in manufacturing, converting or processing tangible personal property to be sold. It includes not only the basic unit but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. It also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used exclusively for the purposes mentioned.

Western Electric Co., Inc. v. Commissioner of Revenue, A.T.B. Docket No. 113779 (1984).

The Commissioner has not ruled specifically on the Massachusetts sales and use tax treatment of machinery purchased to build a wind turbine used to generate and furnish electricity under the facts you present. However, the Commissioner has issued a number of letter rulings that have examined various clauses of § 6(s) to determine whether purchases of certain items of tangible personal property and machinery qualified for exemption under somewhat similar scenarios. See, e.g., Letter Rulings 05-2 (Water Desalination Plant); 84-85 (Waste Processing Plant); 79-6 (Machinery Used to Furnish Electricity).

In Letter Ruling 05-2, the Commissioner ruled that exemptions in G.L. c. 64H, §§ 6(r) and (s) for materials, tools, fuel, machinery and replacement parts in the context of furnishing water extend to all items that operate harmoniously to make an integrated and synchronized system. *Id.*, citing *Lowell Gas Co. v. Commissioner of Corporations and Taxation*, 377 Mass. 255, 260 (1979). There, the Court held that pipes, meters, production, storage and pressure regulating equipment were all integral components required in the company's system, and were all exempt from sales and use tax as machinery used directly and exclusively in the furnishing of gas. The Court also held that certain "meter installations" (structures of wood and metal

which supported a gas meter or by means of which a gas meter is attached to a wall) were included in the definition of machinery used in furnishing gas to consumers.

In evaluating the part of G.L. c. 64H, § 6(r), (s) that exempts items that “are consumed and used directly and exclusively in the furnishing of gas, water, steam or electricity when delivered to consumers through main, lines or pipes. . . .”, we also noted in Letter Ruling 05-2 that this part of the exemption is less restrictive than the exemption for items used “in an industrial plant in the actual manufacture of tangible personal property to be sold.” *Compare Lowell Gas Co. v. Commissioner of Corporations and Taxations*, 377 Mass. 255, 259 (1979) (finding that the furnishing of gas denotes operations that are distinct from such terms as “manufacturing” and “production”, used elsewhere in the same exemptions; the term “furnishing” includes the distribution function) with *Associated Testing Laboratories, Inc. v. Commissioner of Revenue*, 429 Mass. 628, 630 (1999) (delineating the five elements of the “manufacturing” piece of the exemption, including that the exempt items must be used in actual manufacture, conversion, or processing).

We find, under the rationale of Letter Ruling 05-2, that the § 6(r) and (s) exemptions extend to many of the components of the turbine, tower, and foundation at issue. We base this, in part, on the decision in *Niagara Mohawk Power Corp. v. Wanamaker*, 286 App. Div. (N.Y.) 446, 449 Judicial Court^[2]. There, the Supreme Court of New York addressed the application of New York sales tax and use tax to various pieces of equipment, as well as various structures comprising a steam generating plant. It found, in pertinent part, that transformers, substations, towers, conductors and similar equipment were used in the transmission of electricity. It also found that various structures at the steam plant, including foundations and superstructure, which supported and braced the machinery contributed continuously and vitally to the production of electricity and were therefore exempt from New York sales and use taxes.

Like the meter installation structure in *Lowell Gas*, we find that the tower here operates harmoniously with the exempt turbine to form an integrated and synchronized electricity furnishing system. To the extent that the tower and its component parts are adjuncts or attachments necessary for the turbine to furnish the electricity to consumers through electrical lines, or to the extent that they are used or required to control, regulate or operate the turbine, the tower and its components qualify as machinery consumed and used directly and exclusively in furnishing electricity to consumers through mains, lines, or pipes under G.L. c. 64H, § 6(s). Here, 5% of the electricity will be sold directly to a particular consumer, while the remainder will be sold to a local utility for use by other consumers. This does not alter the fact that all of the electricity is furnished directly and exclusively to consumers through mains, lines, or pipes”. The phrase “when delivered to consumers through mains, lines or pipes” is intended to distinguish entities that employ main, pipe, or line delivery systems from those that use bottling or other delivery systems. See *Letter Ruling 05-2, citing Lowell Gas Company et al. v. Commissioner of Corporations and Taxation*, 377 Mass. 255, 259 (1979) and *Tennessee Gas Pipeline Co. v. Commissioner of Revenue*, Appellate Tax Board (Docket Nos. 171876-171879 and 194866-194869) (1998). We conclude that the items described in section 2(a), 2(a)(1), (2), (4), (5), (6), and (8) meet these requirements. The other items do not.

With respect to the foundation, we conclude that like the foundation at issue in *Niagara Mohawk Power Corp.*, the foundation also qualifies as machinery, since it is an adjunct necessary for the exempt turbine and tower to accomplish their intended function.

Significantly, however, items that are used by a contractor or its subcontractors in fulfilling their obligations under the contract that do not become part of the electricity furnishing apparatus are not exempt from tax; a contractor and its subcontractors are considered the users of such materials, tools, fuel, machinery and replacement parts, and are liable for the tax on such items. See *Letter Ruling 05-2; Ace Heating Service, Inc. v. State Tax Commission*, 371 Mass. 254, 256 (1976). See also G.L. c. 64H, § 6(r), (s). Such items would include machinery and replacement parts, materials, tools and fuels that are not physically incorporated in the plant or are not used in the actual furnishing of electricity, or that are consumed and used before the project begins furnishing electricity to consumers. See *Letter Ruling 05-2*. For example, a contractor will be liable for sales tax on erection cranes, support cranes, bulldozers, motor vehicles and other machinery used during the construction phase of the wind turbine, tower, and foundation before the apparatus is actually generating and furnishing electricity.

In *Letter Ruling 79-6*, the Department examined whether purchases of certain machinery by a contractor who was engaged by the purchaser to build a hydro-electric plant were subject to tax. Upon completion of the project, the entire electrical output was to be sold by the purchaser to a power company. The power company resold the electricity to retail utilities which, in turn, delivered it to ultimate consumers. Based on those facts, the Commissioner ruled that the sale of machinery used in the furnishing of electricity was exempt from sales tax under the clause exempting sales of machinery used in the furnishing of electricity when delivered to consumers through mains, lines, or pipes, and was also exempt from use tax under G.L. c. 64I, § 7(b).

In *Letter Ruling 84-85*, in the Commissioner examined whether a contractor’s purchase of certain items that were incorporated into or used in connection with a waste-processing plant and a steam and electricity generating plant were subject to tax. The Commissioner concluded that purchases of ancillary and miscellaneous equipment were exempt “provided that such equipment was an adjunct or attachment necessary for the exempt machinery to accomplish its intended function, or a device used or required to control, regulate or operate exempt machinery and directly connected with or an integral part of such machinery.” *Id.* On the other hand, the contractor’s purchases of an oil tank and the building materials from which a receiving shed and the enclosure for a boiler were to be built (including the structural steel and supports) were subject to the sales or use tax.

VI. CONCLUSION

Based on the facts presented and the analysis set forth in the authorities cited in this ruling we conclude that the wind turbine qualifies as “machinery” used directly and exclusively in the furnishing of electricity to consumers through mains, lines or pipes. We further conclude that the tower, its components and the foundation also qualify for exemption since they are either adjuncts or attachments necessary for the wind turbine to accomplish its intended function or, alternatively, are used to control, regulate or operate the wind turbine.

With respect to any other machinery required to build the wind turbine, tower or foundation, such machinery is exempt only if it becomes a part of the integrated and synchronized system that furnishes the electricity to consumers. To be eligible for exemption, machinery and replacement parts must also satisfy the test of being used directly and exclusively in the furnishing of electricity. To the extent the machinery used to construct the wind turbine, tower, or the supporting foundation does not meet these requirements, it is not exempt under G.L. c. 64H, § 6(s). For example, machinery such as erection cranes, support cranes, and bulldozers are subject to tax.

Very truly yours,

/s/Navjeet K. Bal

Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:wrđ

LR 10-3

[1] The legal basis for this “net metering” is the Green Communities Act. St. 2008, c. 169. The Massachusetts Department of Public Utilities (DPU) implements this legislation, specifically per their tariffs nos. ***** and ***** . Per the DPU tariffs, Taxpayer has executed an Interconnection Service Agreement with Local Utility and Local Utility has approved Taxpayer’s “Schedule Z” for net metering status. Competitive grant support is provided by the Massachusetts Renewable Energy Trust (MRET) and U.S. Department of Agriculture (USDA).

[2] See e.g. *Courier Citizen v. Commissioner of Corporations and Taxation*, 358 Mass. 563, 571 (1971); *Rowe Contracting Company v. State Tax Commission*, 361 Mass. 158 (1972); *Commissioner of Revenue v. V.H. Blakinton & Co.*, 420 Mass. 259 (1995). See also Letter

Appendix B Letter Ruling on Anaerobic Digester and Sales Tax

Letter Ruling 10-4: Sales Tax Exemption for Anaerobic Digestion Systems

August 13, 2010

Dear:

You request a letter ruling on the application of the Massachusetts sales tax, G.L. c. 64H, to purchases by ***** (Taxpayer) of five “complete mix anaerobic digestion systems” (Digesters) from ***** (Vendor) for use on dairy farms located in Massachusetts. In particular, you ask whether the purchase of the Digesters by Taxpayer are exempt from Massachusetts sales tax under G.L. c. 64H, 6(s) as “equipment used directly and exclusively in agricultural operations.” In support of your request, you state the facts as follows:

FACTS

Taxpayer will purchase and install five turn-key Digesters from Vendor. These Digesters will be installed on five small dairy farms in Massachusetts. The five participating farms own 60% of Taxpayer, with the remaining 40% owned by an entity that manages the farms.

The Digesters will process dairy manure and recycled feedstock from food processing entities in order to produce methane gas from which electricity is generated for use on the farms; excess electricity not used on the farm is sold back to the power grid.^[1] Additionally, Taxpayer uses the Digesters to produce a fertilizer product that meets the Natural Resource Conservation Services standards for nutrient management and is licensed by the Massachusetts Department of Agricultural Resources for reuse on the farms. All five digesters will operate in the same manner, have the same inputs, produce the same outputs, and will be used for agricultural purposes.

The processes described above take place on land owned by dairy farmers. You have provided a letter from the Massachusetts Department of Agricultural Resources (MDAR) indicating that the above activities fall within the definition of “farming or agriculture” as defined in G.L. c. 128, § 1A.^[2] MDAR has further determined that the Digesters as designed and operated by Taxpayer are a “part of the agricultural operations of the farm business”.

You have provided documentation indicating the location of the equipment on the farms, the process for converting the dairy manure into energy that powers the farm, and a list of the actual equipment purchased in connection with the Digesters.

An anaerobic digester is a combination of agricultural equipment that involves many aspects dairy farm operation. It produces heat for farm buildings, electricity for buildings, outdoor lighting, and milking equipment, digested fiber for use as an animal bedding replacement, and recycled fertilizer for crop production - all while reducing the nuisance inherent in current manure handling and disposal practices.

According to the information you supplied, dairy farms generate significant amounts of organic material in the form of animal manure. This material is stored during the winter months and spread on fields as a fertilizer source during warmer months. By processing the manure in an anaerobic digester the pathogen load in the manure is reduced, and the weed seeds and other invasive organisms are de-activated, the odor and the viscosity of the manure is reduced (allowing it to be used in field sprayers and reducing blockage concerns).

An anaerobic digester takes organic material like manure and decomposes it in a controlled environment. The organic material is mixed and heated in a large sealed tank without the presence of oxygen (the 'anaerobic' part of the process) until the material is degraded into a stable product. It then leaves the anaerobic digester and is stored until it is used as a fertilizer. In contrast to composting - composting is a relatively dry process that requires constant aeration of the compost pile (adding oxygen), anaerobic digestion is more suited for wet material and requires the absence of oxygen.

The following is a simplified overall description of the process:

- 1.a Manure is pumped from a receiving pit into the biomass equalization tank.
- 1.b Source Separated Organics (SSOs) arrives on site in a tanker truck and is pumped into the biomass equalization tank. Without the SSO the manure alone would only produce around 40-50kW, compared to almost 300kW with SSO added. The SSO also represents a closed nutrient cycle - food products that remove nutrients from the soil are returned to the soil through anaerobic digestion and field application.
2. Manure and SSO are mixed, becoming 'digestate' and brought up to temperature in the biomass equalization tank.
3. Digestate is fed into the main digestion tank from the biomass equalization tank on an automated feeding schedule.
4. Digestate is continuously mixed and heated inside the digestion tank for approx. 30 days while microorganisms degrade the material.
5. During the digestion process the microorganisms in the tank produce a methane heavy gas called 'biogas'.
6. This biogas is collected at the top of the tank and combusted in a Combined Heat and Power unit to produce heat and power for digester operation and the farm.

7. Digestate, now stabilized, is pumped from the digestion tank and through a screw press to remove digested fiber (mostly fiber from the cow feed).
8. The remaining stabilized liquid exits the screw press and enters storage tanks to be spread as a recycled fertilizer during the growing season.

Issue

Are purchases of the Digesters by Taxpayer exempt from sales tax under G.L. c. 64H, §(s)?

RULING

For reasons discussed below, we rule that Taxpayer's purchases of the Digesters are exempt from sales tax under the clauses in G.L. c. 64H, § 6(s) exempting machinery used directly and exclusively in 1) agricultural production and 2) furnishing electricity when delivered to consumers through mains, lines, or pipes.

DISCUSSION

Massachusetts imposes a 6.25% sales tax on all retail sales in Massachusetts, unless such sales are exempt under a particular provision of law. G.L. c. 64H, § 2. The exemptions from sales tax are found in G.L. c. 64H, § 6. There are two exemption provisions that are potentially relevant to your inquiry.

Section 6(s) of chapter 64H exempts sales of machinery, or replacement parts thereof, used directly and exclusively in a number of activities, including, in pertinent part, "agricultural production" and "furnishing of...electricity . . . when delivered to consumers through mains, lines, or pipes." Since the Digesters perform two functions, each of which is potentially exempt under these clauses, we examine each provision separately, below. First, however, we must determine whether the Digesters qualify as "machinery".

1. "Machinery"

The Massachusetts Supreme Judicial Court defines "machinery" as "any combination of mechanical means designed to work together so as to effect a given end." *Warner Amex Cable v. Board of Assessors*, 396 Mass. 239, 242 (1985). For purposes of the § 6(s) exemption, the Appellate Tax Board has also defined "machinery" as:

A mechanical, electrical or electronic device designed to be used and which is used in manufacturing, converting or processing tangible personal property to be sold. It includes not only the basic unit but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. It also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used exclusively for the purposes mentioned.

Western Electric Co., Inc. v. Commissioner of Revenue, A.T.B. Docket No. 113779 (1984).

The Commissioner recently issued a letter ruling addressing the "machinery" requirement of this exemption. In Letter Ruling 10-3 (Machinery Used to Construct a Wind Turbine), we ruled that a wind turbine qualified as "machinery" used directly and exclusively in the furnishing of electricity to consumers through mains, lines or pipes. We further concluded that the tower, its components and supporting foundation also qualified for exemption as machinery since they were either adjuncts or attachments necessary for the wind turbine to accomplish its intended function or, alternatively, were used to control, regulate or operate the wind turbine. With respect to any other machinery required to build the wind turbine, tower or foundation, we ruled that such machinery was exempt only if it becomes a part of the integrated and synchronized system that furnishes the electricity to consumers.

Similarly, in examining the items at issue here, all of the items comprising the Digester system are either adjuncts or attachments necessary for the system to accomplish its intended functions, or, alternatively, are used to control, regulate or operate the system. Accordingly, they collectively fall within the definition of "machinery" under the rationale discussed above.

2. "Used directly and exclusively in agricultural production"

In order for the Digesters to fall within the "agricultural production" clause of the § 6(s) exemption, they must qualify as [1] machinery [2] used directly and exclusively in .

. . . [3] agricultural production.

The Commissioner has issued a number of public written statements interpreting the phrase "agricultural production". See, e.g., DD 99-8 (Cranberry Growers: Sales and Use Taxes on Equipment Used in Production); DD 92-2 (Farm Machinery Used in Agricultural Production); Letter Ruling 81-62 (Materials and Machinery Used in Agricultural Production).^[3]

In DD 92-2, the Commissioner interpreted the phrase "directly and exclusively in agricultural production" to include the preparation of land for cultivation, harvesting, and storage, and all the intermediate steps of growing crops and raising livestock. We further stated that "agricultural production" also encompasses certain incidental agricultural operations, including the storage of crops and preparation for market, to the extent that such storage and preparation activities occur on the agricultural premises.

In DD 99-8, we pointed out that the term "used directly," in G.L. c. 64H, § 6(r) and (s), also has no specialized meaning in the case law. The term is therefore also interpreted in accordance with its usual and natural meaning. *Commissioner of Revenue v. AMI Woodbroke, Inc.*, 418 Mass. 92, 95 (1994).

The word “directly” is defined as “in a direct manner.” “Direct” is “proceeding from one point to another in time or space without deviation or interruption: straight; characterized by close logical, causal, or consequential relationship.” DD 99-8, *citing* Webster’s Ninth New Collegiate Dictionary, 358 (1987). The term “used directly” is thus a use without an intervening step. *Id.*

In Letter Ruling 81-62, the Commissioner examined the taxability of the components of a livestock feeding and somewhat analogous manure-handling system, and whether leases of the components of the systems were exempt from sales tax under the “agricultural production” clauses of G.L. c. 64H, § 6(s). The system at issue was a livestock-feeding system which included a top-filling, bottom-unloading silo in which feed for livestock was stored in an oxygen-limited atmosphere to prevent spoilage and preserve nutritional value, together with equipment for loading and unloading the silage and for feeding livestock. The manure-handling system comprised equipment for collecting and blending manure so that it could be stored in a condition that limits loss of nutrients, a storage structure, equipment for transferring the liquid manure to and from the structure, and equipment for spreading the manure on or injecting it into the soil as fertilizer for growing crops. With the exception of the bases upon which the silos and manure-storage structures were built, the systems were designed to be movable from location to location as desired; each system was removed at the end of the lease term by the lessor, unless the lessee purchased the system at its fair market value at the termination of the lease.

Under those facts, the Commissioner ruled that leases of the components of the livestock-feeding and manure-handling systems constituting machinery were exempt from the sales tax under the “agricultural production” clause of G.L. c. 64H, § 6(s), and that leases of the components constituting materials were exempt from the sales tax under G.L. c. 64H, § 6(r) if their normal useful life is less than one year or if the lease payments are allowable as an ordinary and necessary business expense for federal income tax purposes.

In evaluating the Digesters’ function relating to the blending and production of a fertilizer product for reuse on the farm, we conclude that this function is akin to the manure handling system at issue in Letter Ruling 81-62. As in Letter Ruling 81-62, we determine that this function likewise falls within the definition of “agricultural production” within the meaning of G.L. c. 64H, § 6(s). If the Digesters were used directly and exclusively in this process, they would be exempt.

As noted above, the Digesters are not used solely in this manner. They also process dairy manure and recycled feedstock into methane gas, which, in turn, is used to generate electricity for use on the farm. The Commissioner has not ruled on whether this process falls within the definition of “agricultural production” under G.L. c. 64H, § 6(s). If it does not, the Digesters cannot be said to be used exclusively in that particular exempt activity. We observe, however, that the use of the Digesters in performing this activity may be exempt under a separate clause in section 6(s) exempting machinery... used directly and exclusively in “. . . furnishing . . . electricity when delivered to consumers through mains, lines, or pipes” (the “furnishing electricity” clause). We now examine this clause in further detail.

3. The “furnishing electricity” clause

The Commissioner has previously examined the “furnishing electricity” clause in a number of Letter Rulings. *See, e.g.*, Letter Rulings 84-85 (Waste Processing Plant); 05-2 (Water Desalination Plant); 10-3 (Machinery Used to Construct a Wind Turbine). In Letter Ruling 84-85, the Commissioner examined whether a contractor’s purchase of certain items that were incorporated into or used in connection with a waste-processing plant and a steam and electricity generating plant were subject to tax. The Commissioner concluded that purchases of ancillary and miscellaneous equipment were exempt “provided that such equipment was an adjunct or attachment necessary for the exempt machinery to accomplish its intended function, or a device used or required to control, regulate or operate exempt machinery and directly connected with or an integral part of such machinery.” *Id.* On the other hand, the contractor’s purchases of an oil tank and the building materials from which a receiving shed and the enclosure for a boiler were to be built (including the structural steel and supports) were subject to the sales or use tax.

In Letter Ruling 05-2, the Commissioner ruled that exemptions in G.L. c. 64H, §§ 6(r) and (s) for materials, tools, fuel, machinery and replacement parts in the context of furnishing water extend to all items that operate harmoniously to make an integrated and synchronized system. *Id., citing Lowell Gas Co. v. Commissioner of Corporations and Taxation*, 377 Mass. 255, 260 (1979). There, the Court held that pipes, meters, production, storage and pressure regulating equipment were all integral components required in the company’s system, and were all exempt from sales and use tax as machinery used directly and exclusively in the furnishing of gas. The Court also held that certain “meter installations” (structures of wood and metal which supported a gas meter or by means of which a gas meter is attached to a wall) were included in the definition of machinery used in furnishing gas to consumers.

In evaluating the part of G.L. c. 64H, § 6(r), (s) that exempts items that “are consumed and used directly and exclusively in the furnishing of gas, water, steam or electricity when delivered to consumers through main, lines or pipes. . . .”, we also noted in Letter Ruling 05-2 that this part of the exemption is less restrictive than the exemption for items used “in an industrial plant in the actual manufacture of tangible personal property to be sold.” *Compare Lowell Gas Co. v. Commissioner of Corporations and Taxations*, 377 Mass. 255, 259 (1979) (finding that the furnishing of gas denotes operations that are distinct from such terms as “manufacturing” and “production”, used elsewhere in the same exemptions; the term “furnishing” includes the distribution function) *with Associated Testing Laboratories, Inc. v. Commissioner of Revenue*, 429 Mass. 628, 630 (1999) (delineating the five elements of the “manufacturing” piece

of the exemption, including that the exempt items must be used in actual manufacture, conversion, or processing). In the case at hand, the Taxpayer qualifies for the exemption because a portion of the electricity generated is sold to the power grid which delivers it to consumers other than the Taxpayer.

CONCLUSION

Under the facts presented, the Digesters are not used exclusively in either furnishing electricity or in agricultural production. Rather, they perform two functions, each of which is independently exempt under two separate clauses of sections 6(s). This does not alter the fact that they are used directly and exclusively only in activities that are exempt by statute.

The Commissioner has the general authority to interpret the taxing statutes. G.L. c. 62C, § 3; DD 99-2. Under this general authority and under the rationale of the authorities cited above, we conclude that the Digesters qualify as machinery used directly and exclusively in activities that are exempt under G.L. c. 64H, § 6(r) and (s). Accordingly, Taxpayer's purchases of the Digesters are exempt from sales tax.

Very truly yours,

/s/ Navjeet K. Bal

Commissioner of Revenue

NKB:MTF:wrđ

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[1] Under the Massachusetts Green Communities Act, the farm receives a credit for any power over the amount used on the farm. These credits can then be used by other rate payers inside the load zone to pay for their utility bills, up to 2MW of power generated on an agricultural property.

[2] The Commissioner has expressly declined to adopt the definitions of "farming or agriculture" found G.L. c. 128, § 1A for purposes of applying sales tax exemptions applicable to "agricultural production", as defined in G.L. c. 64H, §§ 6(r) and (s). *See, e.g.*, DOR Directive 92-2 (Farm Machinery Used in Agricultural Production).

[3] A host of statutes define terms similar to "agricultural production." Among them are: G.L. c. 40A, § 3, the zoning enabling statute; G.L. c. 40L, § 1, defining "agricultural land," as part of the Agricultural Incentive Areas Act; G.L. c. 61A, which deals with the assessment and taxation of agricultural and horticultural land; G.L. c. 111, the chapter on Public Health; G.L. c. 128, § 1A, which regulates farming; G.L. c. 150A, § 5A, defining "agriculture," in the Labor Relations chapter.

Appendix C Administrative Law Memo from MDAR

ALM 11-01 Agricultural Law Memo 8 March 2011

TOPIC: DOR Letter Ruling on Sales Tax Exemption on Equipment for Anaerobic Digesters

ISSUE: Anaerobic digesters represent an alternative energy generating technology consisting of equipment that takes organic material such as manure from dairy and livestock farms or other organic feedstocks and decomposes it in a manner that creates methane gas and a composted soil amendment. The methane gas fires an electric generating facility to supply electricity for use on the farm and to sell to customers on the electricity grid. The Department of Revenue issued Letter Ruling 10-04 that concludes that anaerobic digesters are equipment for the purposes of the sales tax exemption under G.L. c. 64H, §§ 6(s) and 6 (r). The purpose of this ALM is to describe Letter Ruling 10-04.

The Massachusetts Department of Revenue (“DOR”) has issued a [Letter Ruling 10-04](#) which holds that purchases of agricultural anaerobic digestion systems for dairy farms are exempt from the Massachusetts sales tax under two specific statutory exemptions: Exemption 1 – as machinery used directly and exclusively in agricultural production, and Exemption 2 – as machinery furnishing electricity when delivered to consumers through mains, lines, or pipes. The Letter Ruling cites with approval a letter from the Massachusetts Department of Agricultural Resources in which the MDAR Commissioner determined agricultural anaerobic digestion systems to be equipment designed and operated as part of the agricultural operations of the farm business.

DOR’s Letter Ruling describes an agricultural anaerobic digester as a combination of equipment that takes organic material such as manure and recycled feedstock and decomposes it in a controlled environment. Organic materials are then mixed and heated in a large sealed tank without the presence of oxygen resulting in a stable fertilizer product as well as methane gas from which electricity is generated for use on the farm and for sale of excess energy to the grid. In short, both the “inputs” and the “outputs” are agricultural in both their operation and purposes, including production of heat and electricity for farm buildings, outdoor lighting, milking equipment, as well as fiber for animal bedding and fertilizer for crop production. At the same time, anaerobic digesters reduce the potential nuisance often encountered in manure handling and disposal.

In concluding that agricultural anaerobic digesters are exempt from the sales tax, DOR relied on prior interpretations of the sales tax statute defining “machinery” as any combination of mechanical means designed to work together so as to affect a given end. Further, not only the basic mechanical unit falls within this definition, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function.

For Exemption 1 – machinery used directly and exclusively in agricultural production – DOR interprets the phrase very broadly as including preparation of land for cultivation, harvesting, storage, all intermediate steps of growing crops and raising livestock, and preparation for market.

For Exemption 2 – machinery furnishing electricity when delivered to consumers – DOR interprets this phrase also very broadly as including the purchase of ancillary and miscellaneous equipment, provided that such equipment is an adjunct or attachment necessary for the exempt machinery to accomplish its intended function, or a device used or required to control, regulate, or operate exempt machinery and directly connect with or an integral part of such machinery. In short, all items that operate harmoniously to make integrated and synchronized systems of agricultural production and energy generation and distribution.

The Letter Ruling observed that agricultural anaerobic digestion systems of the sort considered, while not used exclusively in either furnishing electricity or in agricultural production, have dual purposes, each of which is exempt independently under two separate clauses of the statute.

The Letter Ruling is not narrow in its implications for agriculture in Massachusetts, equipping farm businesses to advance into the 21st Century with new technologies to deal with old problems, with cost-effective means to make agricultural enterprises more profitable, and with operational options that make our farms good neighbors.

Appendix D

Questions and Answers on Slaughtering and Processing From FTRC Meeting November, 2010

If the state decided to purchase a mobile unit and make it available to farms, is that inspected by USDA ?

Everything that is intended to be re-sold needs to be federally inspected.

Who actually runs these mobile units, for example the units in Washington or New York ? There are different approaches. The unit in Washington is completely run by a cooperative. A couple of other co-ops have taken a single facility and are bringing their animals there for slaughtering. The co-ops can offer specific services to meet the needs of their cooperative members. This can be a cost effective approach to operating a slaughterhouse.

Co-ops build their own facility and they can design it to meet their immediate needs. A group of farmers might be able to come up with the funds to build a facility that can meet all of their needs.

Would there be an inspector available for a new slaughtering facility and could an inspector be provided on a part-time basis? Some units only operate once or twice a week. USDA indicated that it should not be a problem and that if the operation is up and running USDA would do what they can to provide an inspector.

Are inspectors required to have their own bathroom and office? A desk, a file cabinet and adequate heat and light are required but bathrooms and offices can be shared.

Does a plant which conducts both custom slaughtering and USDA Inspected slaughtering have to meet the same federal requirements ? Their standards are more or less the same.

What is involved in getting a custom slaughterhouses upgraded to a USDA inspected slaughtering and processing facility? USDA stated that some custom slaughterhouses are fairly high quality and need a grant of inspection and the proper paperwork. Much of the equipment and tools are the same in a custom facility as for a USDA facility. On the USDA website there is a [guidance on the USDA inspection process](#). The application is simple and is processed through USDA Albany.

Can animals be slaughtered in one part of the state and processed elsewhere? USDA replied that this was possible and happens regularly.

Is it more economical to separate slaughtering from processing? In general, probably not because it is usually more cost effective to build a single facility instead of two facilities to accommodate both services. It is also not ideal for a farmer to drop off an animal for slaughtering and then have to pick the carcass up and transport it to a processor and then pick up the processed meat.

If a meat shop wants to take a USDA stamped and slaughtered carcass to resell within their store, what requirements must they follow in order to be able to sell the meat? They can take in federally inspected and packed animal, cut it up and sell it within the confines of their retail market directly to their customers – the ultimate consumer. Selling it to a restaurant or a retail establishment would constitute retail-to-retail sale of non-federally inspected product which is not allowed, *unless* the facility is under federal inspection. For example, a farmer would not be able to bring an animal carcass to a butcher and take back the cut meat to sell it through a farmers market unless the meat shop is federally inspected.

The process for a meat shop to become federally inspected varies depending on the existing condition and size of the facility. However processing cut and wrap facilities do not require an inspector on site. Inspectors are on patrol assignments and a butcher cutting that day may or may not see an inspector. Processing services available locally include artisinal cutting, high end cutting, aged beef, specific cuts of veal and so on.

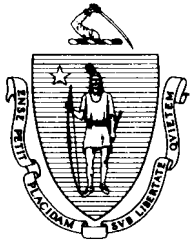
Of the meat processors in Newmarket Square in Boston, are there processors which would provide this service? There are but they have their own HACCP system, a part of which is the type or condition of meat that they will receive. While there may be slaughtering/ processing bottlenecks at slaughtering facilities, there might be not be the same constrictions for processing elsewhere, in which case a producer could have the animal slaughtered at one of the USDA slaughter facilities and then transported elsewhere for processing. USDA Inspected Processors and Slaughterhouses are [listed on the USDA FSIS website](#)

What are the processing needs of producers in the South Eastern part of the state who were concerned about the stress on their animals from transportation ? Southeastern farms have expressed a variety of needs from on-farm to mobile to local access for slaughtering. There are different concerns expressed by producers all over the state – the concern is distance, quality, the cuts.

How does a CSA which owns the animal before it is slaughtered would a custom slaughtering operation be appropriate for slaughtering and processing ?

See Appendix E

Appendix E: MDPH Summary of Action Items Related to Slaughtering of Red Meat



The Commonwealth of Massachusetts

Executive Office of Health and Human Services
Department of Public Health
Bureau of Environmental Health
Food Protection Program
305 South Street, Jamaica Plain, MA 02130-3597
(617) 983-6712 (617) 524-8062 - Fax

February 7, 2011

Summary of action items related to slaughtering of red meats in Massachusetts and USDA regulations

In response to questions for clarification regarding USDA/MA state regulations for slaughter options for red meats and producers of red meats (including farmers and CSA situations), this summary document outlines regulatory parameters. This summary is not intended to provide guidance on processing and slaughtering of poultry.

Red meat (ex. beef, pork, sheep, goats) slaughtered for sale requires USDA inspection. Farmers raising red meat animals for the intention of selling the meat must have the animals slaughtered at USDA inspected facilities. The meat must be packaged and stamped with the USDA seal of inspection at the USDA facility. This meat can enter commerce and be sold both in state and across state lines. This requirement for USDA inspection of red meats would also apply to meat being sold on the farm, at farmer's markets, and through Community Supported Agricultural groups when the meats are offered as part of members weekly pick ups or offered for sale per pound of meat by a farmer.

Farms offering meat for sale, through the web, direct on farm, through CSAs, markets, or any other means, must have the meat slaughtered and prepared in USDA inspected facilities. If meat is offered by the pound, by the cut, etc. the meat must be processed under USDA inspection. CSAs taking memberships from consumers who order "meat" as part of their CSA membership are not considered owners of animals. Paying a membership for a season for food is not considered "purchasing" an animal. It may allow the farmer to anticipate numbers of animals to raise for the season but these animals, at slaughter time, need to be processed at USDA facilities.

USDA regulation 9 CFR 303.1 discusses the situation in which custom exempt slaughtering facilities (not under USDA inspection) may slaughter red meat. 9 CFR 303.1 applies to an individual owner of an animal who requests of the custom facility, preparation of his livestock at the custom facility. The meat prepared in a custom facility can never be offered for sale. It is only allowed for personal consumption.

USDA further explains that farmers may sell an animal to one or a few individuals before slaughter thereby allowing the new owners of the animal to have that animal slaughtered at a custom facility. Generally speaking, an animal may be "purchased" live by up to four individuals, each buying a quarter of the animal, without triggering USDA slaughtering requirements. This situation, of up to four individuals purchasing a live animal before slaughter, would allow for the

slaughter of the animal at a state licensed custom processing facility rather than a USDA inspected facility with the resultant meat being for personal consumption only. MA Food Protection Program agrees with this provision of up to four individuals purchasing a live animal for personal consumption being outside the requirements of USDA slaughtering.

There are several conditions that need to be maintained if custom facilities are slaughtering red meat animals for up to four individuals:

- 1) *After purchase, the farmer may deliver the animal to the custom facility for a fee as a service for the new owners.*
- 2) *The custom facility must discuss with the owners/customers of the animal how they desire the animal to be processed*
- 3) *The meat must be marked not for sale and records must be kept by the custom slaughterer of the owner's names, records of meats received, the source of the meat/animal, date of production, and contact information for the owners/customers. The owners/customers of the meat must pay for slaughtering fees. In addition, the custom slaughtering facility must be aware of USDA requirements for handling of specified risk materials (SRMs) and be employing proper and approved waste disposal options as required by MA Department of Environmental Protection and local ordinances.*
- 4) *After processing, the meat should be paid for and picked up by the new owner/customer.*

USDA will monitor custom slaughter facilities in Massachusetts for compliance to USDA regulations. MA DPH Food Protection Program inspectors will routinely request record review for all animals slaughtered at MA licensed custom facilities. USDA would be notified for follow up in the event that any inconsistencies with record keeping, sanitation, or waste disposal are noted.

Therefore, the only situation in which a farmer could opt to have an animal processed at a state inspected custom slaughtering facility would be if up to four specific individuals, through a contractual arrangement with the farmer, purchased a specific animal from the farmer while the animal was alive. Calculating herd numbers to raise and slaughter based upon numbers of CSA members associated with a farm would not be considered appropriate to allow the animals to be processed without USDA inspection.

This summary information is supported by the attached letter dated December 7, 2010 from the USDA FSIS District Office. Further questions regarding USDA policy can be addressed to USDA directly at:

The following is the link to ask FSIS. The answers provided in ask FSIS are statements of official policy.

<http://askfsis.custhelp.com/>

If specific farms or farmers have questions regarding their operations and how they manage their CSA red meat sales and would like clarification on which type of slaughtering facilities should be used, the Food Protection Program would like to evaluate the situation to give the best advice.

Our contact information is as follows:

Food Processing supervisor: Scott Allen 617-983-6755 scott.allen@state.ma.us

Acting Director: Kim Foley 617-983-6747 kim.foley@state.ma.us

General office line: 617-983-6712 FAX line: 617-983-6770



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Field Operations

Albany District Office
230 Washington Ave Ext
Albany, NY 12203
Phone: (518) 452-6870

December 07, 2010

FACSIMILE

Ms. Kim K. Foley, Acting Director
The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
Bureau of Environmental Health
Food Protection Program
305 South Street
Jamaica Plain, MA 02130-3597

Dear Ms. Foley:

Thank you for your request dated November 29, 2010, which was received in the District Office on December 03, 2010. You are requesting clarification on the Food Safety and Inspection Service's (FSIS) regulation/policy on red meat slaughtering and processing within the scope of Community Supported Agriculture Programs (CSA).

We have carefully reviewed the information provided in your letter for the sale and purchase of the meat in this CSA program. Agency policy is clear that the livestock slaughter and processing of the Community Supported Agriculture Programs is subject to USDA inspection. The custom exempt provisions in 9 CFR 303.1 apply to an individual owner who requests the preparation service of his livestock (not for sale), not to Community Supported Agriculture Programs where they pay money to receive meat during their weekly pick up.

If you have any questions concerning this letter, you may contact me or Dr. Mounira Naguib, Deputy District Manager, at (518) 452-6870.

Sincerely,

Mr. Haroon Mian
District Manager
Albany, New York

Appendix F: FTRC Proposal for Presentation at MHOA Annual Conference

PROPOSAL/REQUEST FOR SESSION AT THE 2010 ANNUAL MHOA CONFERENCE

“A dialogue on evolving and innovative agriculture practices in the areas of sustainable waste management and renewable energy.”

BACKGROUND: As the original stewards of sustainable land and resource management, farmers are continuing to adopt more innovative strategies and technologies to manage agriculture waste streams and incorporate renewable energy technologies into farming operations. These new and evolving measures can create some new challenges that need to be managed correctly and also raise some questions and concerns among local officials and neighbors. A dialogue on these issues will create an understanding of the use of new technologies for sustainable waste management among local officials, state agencies and the farming community.

PROPOSAL: The Farm Technology Review Commission is chaired by the Commissioner of Agriculture and is comprised of farming representatives and state officials, including MDAR, MassDEP and DPH. As part of its work and in an effort to fulfill its statutory obligations, the Commission is reviewing the challenges associated with the adoption of new technologies for sustainable waste management on farms. Considering the increasingly important interface and role of health officials relative to agricultural activities, the Commission is requesting an opportunity to present a panel discussion at the annual MHOA conference on evolving and innovative agriculture practices in the areas of sustainable waste management and renewable energy. The goal of the discussion will be to highlight these new approaches and their benefits in helping to address the state’s renewable energy and waste management goals but also to understand any challenges and concerns that may exist at the local level.

The session will focus on the following areas:

- Review some of the more common renewable energy and waste recycling/reuse projects at farming operations, including traditional as well as the newer and evolving practices,
- Review some of the key Best Management Practices (BMP's), particularly those prepared by NRCS, as well as regulatory requirements for these types of operations,
(TOM AKIN OR DAVE NELSON)
- Highlight some of the emerging technologies that may see broader use in the Massachusetts farming community,
- Review a case study involving renewable energy, organics recycling and land application.
(PETER MELNIK)

A discussion facilitated by the Commission chairman in a panel format is being recommended with up to four panelists: 1) Regulatory representative (DEP); 2) Farming Representative (local farmer involved in Anaerobic Digester project); 3) Academic or NRCS representative (to understand the science behind the management of effluents or other wastes generated for land application; and 4) Local government representative (e.g. local health department to be identified).