

August 8, 2024

Mr. Tom Phillips, State Chemist
Maryland Department of Agriculture
State Chemist Section
50 Harry S. Truman Parkway
Annapolis, MD 21401



RE: MDA Emergency Soil Conditioner Regulation

Dear Mr. Phillips:

I am writing on behalf of the Mulch & Soil Council (MSC), the national non-profit trade association that represents producers of horticultural mulches, consumer potting soils, and commercial growing media. Since its founding in 1972, the MSC has been committed to defining quality standards, promoting a fair and open marketplace, and advocating for reasonable regulations that protect our industry and our customers. Our efforts include the development of industry standards, establishment of certification programs, and providing educational resources to both ensure compliance and promote best practices within the industry.

The Council supports the passage of HB991 on permitting for utilization of food processing waste; however, we became very concerned when we learned of the Maryland Department of Agriculture's (MDA) response to the chicken DAF sludge incident, which led to the proposal of significant contaminant level limits on soil amendment products. We acknowledge that public nuisance complaints can sometimes trigger political action and emergency regulations, but we find it difficult to understand why the MDA has chosen this incident and this emergency action to impose such new and extreme limits on soil amendments.

The proposed limits would affect a wide range of products, including traditional soil amendments like peat and pine bark fines (bark-based soil conditioners), in addition to recycled organic materials such as biosolids, compost, and household food waste. If the intent of the MDA or the Maryland Department of the Environment (MDE) is to codify more effective control of soil contamination, then there are existing and universally accepted risk-based limits created by U.S. EPA under 40 CFR §503.13. The "503" limits on 9 heavy metals have been engrained in most federal, state, and local government regulations and most non-government organization standards (including the mulch & soil industry) for decades. This fact raises concerns about the origin and rationale behind the proposed limits in the emergency soil conditioner regulation which we would like to understand and discuss.

We do understand and appreciate the MDA's response to industry concerns and its caution to temporarily delay the implementation of this emergency regulation. Had it been enforced, it would have had devastating effects on various industries in Maryland, including agriculture, landscaping, organics recycling, and composting, not to mention the economic harm it would cause the lawn & garden industry (nursery growers, garden centers, and mass merchants) throughout the state and the garden public as a whole.

As you know, Maryland regulations define a "Soil Conditioner"—commonly referred to as a soil additive or amendment—to encompass any substance or mixture of substances intended to improve soil quality, stimulate plant growth, or produce any chemical or physical change in the soil. This definition excludes commercial fertilizers, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum. The materials typically classified as soil conditioners, such as compost, peat, digestate from anaerobic digestion and manufactured products containing bark, bark fines, rice hulls, cotton bur, and a variety of other carbon-based soil amending and conditioning ingredients, are essential for maintaining healthy and productive soils.

The heavy metal limits proposed by the MDA appear to be a quantum level less than universally accepted existing contaminant limits, which were established through rigorous risk assessment by the USDA and the USEPA. The origin for these new limits is unclear, and existing industry experience suggests that they may be unattainable for most soil conditioning products, including benign materials like peat moss and pine bark. Some of the proposed limits are so low that they may be less than current laboratory detection limits, and they are even lower than the natural heavy metal concentrations typically found in native Maryland soils.

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If implemented as proposed, these regulations would effectively prohibit the registration and use of soil amendments in Maryland. We don't believe that is the intended outcome of MDA's proposed soil conditioner regulation since it would be counterproductive to the state's environmental goals, including promoting home gardening, urban farming, regenerative agriculture, carbon sequestration, soil protection, crop establishment, organics recycling, and the development of more climate-resilient soils. Additionally, it would have severe economic consequences for many soil amendment producers, farmers, consumers and retailers across Maryland.

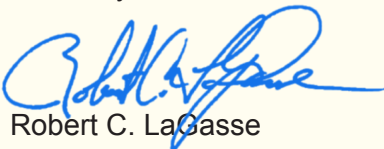
On another matter, the MDA has also added that all soil amendments be tested for polycyclic aromatic hydrocarbons (PAHs) content, while not requiring the same for fertilizer products. Research indicates that carbon-based soil amendments can degrade PAH's and other petroleum-based contaminants, while certain fertilizers are created from by-products of the petroleum industry. This appears to be inconsistent.

Frankly, PAH testing can be costly, and we are not aware of any problems with the industry regarding the findings of the PAH testing thus far or the overall reasoning behind the real or perceived reason for the testing requirement to justify the burden of the costs. We request an update on this issue because we question the necessity of PAH testing for most carbon-based soil amendment products, as well as the inclusion of related limits in the proposed regulation. Also, we are unaware of any other state that requires PAH testing to register soil amendments.

We urge the MDA and MDE to reconsider these proposed limits and engage in a collaborative approach with industry stakeholders to develop regulations that are scientifically sound, economically viable and practically achievable. The MSC is committed to working with regulators to ensure that any new regulations support Maryland's environmental goals and economic sustainability while allowing our industry to continue contributing to these important objectives.

Thank you for your attention to this critical issue. The MSC remains available for further discussion and collaboration to ensure that future regulations are balanced, feasible, and aligned with both environmental and economic interests.

Sincerely,



Robert C. LaGasse
Executive Director
Mulch & Soil Council

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