

ORDINANCE NO. C.S. 1028

**AN ORDINANCE RELATING THE REGULATION OF
FOOD PROCESSING BY-PRODUCTS**

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1. Chapter 9.88, attached hereto and incorporated herein by reference, is added to the Stanislaus County Code.

Section 2. Ordinance No. C.S. 964 (ORD-55-2) adopted August 22, 2006, is repealed.

Section 3. This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor Monteith, seconded by Supervisor Grover, the foregoing resolution was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, the 26th day of February, 2008, by the following called vote:

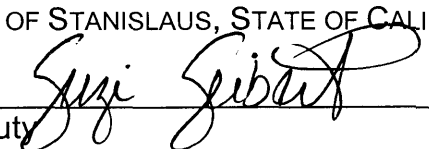
AYES: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

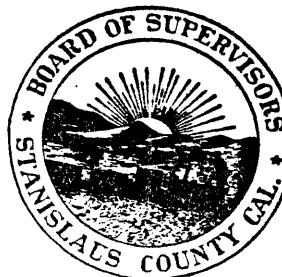
NOES: Supervisors: None

ABSENT: Supervisors: None

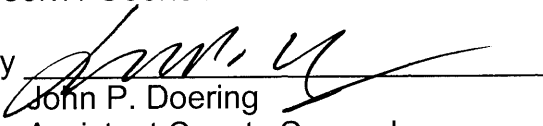

Thomas W. Mayfield, Chair of the Board
of Supervisors of the County of
Stanislaus, State of California

ATTEST:
CHRISTINE FERRARO TALLMAN
CLERK OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

By 
Deputy



APPROVED AS TO FORM:
MICHAEL H. KRAUSNICK
COUNTY COUNSEL

By 
John P. Doering
Assistant County Counsel

**TITLE 9
HEALTH AND SAFETY**

**CHAPTER 9.88
FOOD PROCESSING BY-PRODUCTS**

SECTIONS:

9.88.010	Definitions
9.88.020	General Prohibition, Permit Required
9.88.030	Term of Permits and Renewals
9.88.040	Application, Renewal and Revocation Procedures
9.88.050	Fees, Financial Guarantee, Insurance
9.88.060	Plan of Operation Information
9.88.070	General Permit Terms and Conditions
9.88.080	Administrative Appeal
9.88.090	Appeal to Board of Supervisors
9.88.100	Suspension and Revocation
9.88.110	Transfer of the Permit
9.86.120	Establishment of Regulations
9.88.130	Misdemeanor Violation
9.88.140	Civil Injunction
9.88.150	Severability
9.88.160	Judicial Review

Section 9.88.010 Definitions

The following words and phrases shall have the following meanings when used in this Chapter for the Stanislaus County Food Processing By-Product Program:

A. "Composting" means the process of the controlled biological decomposition of organic material into a humus-rich soil amendment. US Composting Council defines "Compost is the product resulting from the controlled biological decomposition of organic material that has been sanitized through the generation of heat and processed to further reduce pathogens (PFRP), as defined by the U.S. EPA (Code of Federal Regulations Title 40, Part 503, Appendix B, Section B), and stabilized to the point that it is beneficial to plant growth. Compost bears little physical resemblance to the raw material from which it originated. Compost is an organic matter source that has the unique ability to improve the chemical, physical, and biological characteristics of soils or growing media. It contains plant nutrients but is typically not characterized as a fertilizer."

B. "Department" means the Stanislaus County Department of Environmental Resources.

C. "Direct Feed" means receiving, processing and feeding food processing by-products to livestock.

D. "Dehydration" means receiving food processing by-products and drying the material so that it may be further processed into any beneficially used material.

E. "Food Processing By-Product" means the by-products of food processing that are solid or semisolid substances derived from agricultural plant material delivered to a food processor for processing that are not utilized in the final product. Food processing by-products includes culls, peelings, seeds, under or over ripe food, skins, cores, pomace, puree, hulls, shells, pits, stems, leaves and any substance including soil washed from plant produce.

F. "Food processor" means a processor of fruit, nut or vegetable raw products which may include but are not limited to tomato, peaches, almonds, walnuts, pears, grapes, grain products or other raw plant material, and that includes, i.e., canneries, nut processors, vegetable processors, frozen food processing, etc.

G. "Land Application" means the spreading, discing, and incorporating of food processing by-products onto agricultural fields for any beneficial use.

H. "Permit" means a permit for use of food processing by-products issued by the County to a person under this Chapter.

I. "Permit holder" means a person or legally recognized entity that holds an effective and current permit under this Chapter.

J. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the State.

Section 9.88.020 General Prohibition; Permit Required

A. It shall be unlawful for any person to conduct, engage in or allow to be conducted or engaged in the land application, direct feed, composting and/or dehydration of food processing by-products in the unincorporated area of Stanislaus County except if authorized by permit issued pursuant to this Chapter, and conducted in accordance with specific permit terms and conditions, the provisions of this Chapter, and all applicable federal, State and local laws, regulations and ordinances.

B. The owner, managing partner, officer of a corporation or such other person who shall be primarily responsible for activities involving use of food processing by-products shall apply to the Department of Environmental Resources for a permit under this Chapter and, if granted, shall maintain operations authorized by the permit in conformity with the terms of this Chapter and of the permit.

C. The fact that an applicant for permit possesses other types of federal, State or county permits or licenses shall not exempt the applicant from obtaining a permit under this Chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this Chapter.

D. This program prohibits the land application of food processing rinse water, saline waste streams such as boiler blow-down, and ion exchange reject.

Section 9.88.030 Term of Permits and Renewals

A. Each permit shall expire one year after the date of its issuance. Any permit may be renewed by the Department for successive one-year periods upon the submission of an application by the permit holder. At the time of consideration of a renewal application, the Department shall consider the applicant's compliance with permit conditions during the prior term.

B. Notwithstanding subsection A of this Section, all permits issued pursuant to this Chapter shall expire upon the effective date of an ordinance to repeal the provisions of this Chapter.

C. Any application for renewal shall be filed at least fifteen (15) calendar days before expiration of the permit.

D. Any application for renewal may be rejected if:

1. The application is filed less than fifteen (15) calendar days before its expiration.

2. The permit is suspended or revoked at the time of the application; provided, however, that an application for renewal may be filed within ten days after the granting of a permit holders appeal of the suspension or revocation of a permit.

E. Wherever this Chapter requires the County to give notice to an applicant, appellant or permit holder, such notice shall be given by the Department, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested.

Section 9.88.040 Application for Permit

A. The Department may grant a permit for food processing by-products use, upon application therefore whenever in the opinion of the Department the granting of such permit is in the public interest and welfare and complies with all applicable federal, State and local laws, regulations and ordinances, including the California Environmental Quality Act or other environmental reviews required by law. The Department will inspect the site(s) prior to issuing a permit to assure that permit requirements can be met. During the period when by-products are received and for 60 days following the end of a season or termination of the program the Department may inspect the site(s) to assure that the permit holder is adhering to conditions of the permit and Plan of Operation. Inspections will occur weekly or at other frequencies as determined by the Department.

B. Each application shall be submitted on a standard form adopted by the Department, which sets forth or incorporates by reference the information as set forth in the Regulations for the Use of Food Processing By-Products in Stanislaus County by Permitted Use Sites.

C. The filing of an application shall be deemed complete upon the submission of an application and Plan of Operation in conformance with this Chapter and payment of any application fees required by this Chapter.

D. The Department shall provide written notice of the application for permit to operate a Food Processing By-Product Use Site to members of the Food Processing By-Product Committee, Central Valley Regional Water Quality Control Board, the California Department of Food and Agriculture and property owners, as shown on the latest Assessor's Roll, located within one-quarter mile (1320 feet) and/or two parcels in each direction of the subject site.

E. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act; provided, however, the Department shall keep confidential, to the extent reasonable and authorized by law, any information revealed during the application process that is protected under privacy laws of the State, or when requested by the applicant, any proprietary project and program information.

Section 9.88.050 Fees, Financial Guarantee, Insurance

A. Permit Administration. The permit holder shall reimburse the Department for all costs incurred by it in administering the permit, including, but not limited to, processing the permit application, enforcing the permit terms, and monitoring permitted activity at the permit location. All costs will be based on the current weighted labor rates of the appropriate Department staff member. The Department shall issue an invoice itemizing all costs incurred by the Department and the permit holder shall remit payment as shown in the invoice within 30-days of the invoice date. Fees under this paragraph are due and payable on or before the thirtieth day after the date an invoice is issued and, thereafter, are deemed to be delinquent until paid.

B. Research Project Surcharge. Each permit holder shall also pay a surcharge fee equal to \$0.10 per ton of by-products received at each of the permitted reuse sites to be used for research required by the Regional Water Quality Control Board, and assessed for the period or periods when such research is required to maintain State approval of the Food Processing By-Product Program. Each permit holder shall report to the Department within 10-days after the end of each month the amount of by-products received by the permit holder during the reporting period. The Department shall issue an invoice based upon the reported amount of by-products received, and the permit holder shall remit payment as shown in invoice within 30-days of the invoice date. The surcharge fee shall be delinquent if unpaid within thirty days after the due date.

C. Fee Delinquency. All fees referred to in this ordinance shall be promptly paid in lawful money of the United States on or before the date such fees are due and payable. A late payment charge equal to 1.5 percent of the unpaid invoice amount shall accrue and shall be added to the total amount each month that an invoice is past due. In addition to late payment charges, persons that have not promptly paid fees when due and payable shall be subject to any or all of the following actions as imposed at the discretion of the Department: (1) the temporary suspension or permanent revocation of a permit to receive and use food by-products, or (2) the posting of security in an amount determined by the Department to be necessary and reasonable to offset additional delinquencies plus estimated collection costs, including reasonable attorney fees.

D. Performance Bond. Before or at the time a permit is issued under this Chapter, the permit holder shall submit a cash bond, certificate of deposit, irrevocable

letter of credit, or a faithful performance bond in favor of the County of Stanislaus, in an amount reasonably determined by the Department to be sufficient for clean-up and remediation at the permit location.

E. Insurance. No permit shall be issued under the provisions of this chapter, nor shall any such permit be valid after issuance, unless there is at all times in force and effect a policy or policies of insurance for comprehensive general liability and automobile liability with limits in an amount approved by the Department, and issued by a company approved by the Department. Insurance policies shall waive any exclusion for pollution coverage, and shall provide a specific endorsement, except Worker's Compensation insurance, if any, naming the County and its officers, officials and employees as additional named insureds. The Department may require additional types or increased amounts of insurance coverage and may adopt such other requirements as may be necessary to protect the County. Satisfactory evidence in the form of a certificate of liability insurance as required by this section shall be furnished to the Department by each permit holder.

Section 9.88.060 Plan of Operation

An application will not be accepted or approved unless the applicant submits a Plan of Operation that provides the information set forth in the Regulations for the Use of Food Processing By-Products in Stanislaus County by Permitted Use Sites, and additional information deemed necessary by the Department to determine the potential effect of the proposed operations on the health, safety and welfare of the public.

Section 9.88.070 General Permit Terms and Conditions

Throughout the term of the permit, each holder of a permit issued under this Chapter shall not violate any provision of this Chapter and shall comply with the standard terms and conditions set forth in the Regulations for the Use of Food Processing By-Products in Stanislaus County by Permitted Use Sites. Permit holders shall also comply with the following additional terms and conditions:

A. The permit holder grants to the Department the right of access, during normal business hours, to the permit location for all reasons and purposes reasonably related to the administration of this permit by the Department, including, but not limited to the right to enter upon the permit location to remediate any problem related to the permitted activity.

B. The permit application and Plan of Operation and supplements or amendments thereto submitted by the permit holder to obtain a permit are incorporated herein by reference. The permitted activity shall be operated in conformance with the above documents, these permit conditions and all applicable state and local laws, ordinances, regulations and codes. In the event of any conflict between the permit

application or the Plan of Operation and the permit conditions, the permit conditions shall take precedence. All supplements, amendments or changes to the Plan of Operation must be submitted in writing to the Department for review and approval prior to initiating said changes in the permitted activity. The issuance of this permit does not release the permit holder from responsibility to comply with any other requirements regulating activities on the site.

C. The Department will modify the conditions of a permit for cause, after prior notification to the permit holder, to eliminate, reduce or ameliorate any condition or nuisance that adversely affects the public health, safety or welfare, or does not fully protect surface and groundwater quality. The Department will notify the Central Valley Regional Water Quality Control Board of changes in permit conditions.

D. The provisions of a permit are intended to be severable, and if any individual condition or provision hereof is held to be invalid by the order of the Board of Supervisors, by order of any court of competent jurisdiction or for any other reason, the remaining terms of this permit shall not be affected thereby; provided, however, the Department, in its sole discretion, may terminate this permit if it determines that the permit, as modified by the severance, no longer achieves the objectives of the Department or adequately protects the public health, safety and welfare.

E. A permit may be suspended or revoked by the Department for cause. Permitted operations shall comply with all applicable federal, State and local laws, ordinances and regulations, including without limitation, County building, zoning and health codes, and shall allow inspections to ensure conformance with such regulations.

F. The permit holder shall not be delinquent in the payment of fees required by this Chapter.

G. The Department may, in its discretion, add, delete, or modify general permit conditions as necessary to protect the health, safety and welfare of the public.

H. Where applicable, the site operator shall demonstrate compliance with the Central Valley Regional Water Quality Control Board's Irrigated Lands Regulatory Program (Resolution No. R5-2003-0105).

Section 9.88.080 Administrative Appeal

A. Any applicant, permit holder, or other interested person or entity that is dissatisfied with a decision resulting from the application, interpretation or enforcement of the provisions of this Chapter by the Department may appeal any administrative determination related to any of the following actions:

1. Finding that an application is complete or incomplete.

2. Determination that an application is not in the interest of the public health and welfare.

3. Establishment or modification of operating conditions.

4. Grant or denial of permit.

5. Suspension or revocation of a permit.

B. Administrative appeals under this Section must be made in writing, must clearly set forth the reasons why the appeal ought to be granted, and must be received by the Director of the Department within fifteen (15) days of the postmark date on the envelope that transmits the administrative determination. When the last day of the appeal period would fall upon a non-workday or a holiday, the appeal period shall be extended to include the next subsequent regular working day.

C. Within thirty (30) days after the filing of an appeal of an administrative determination, the Department shall set the matter for hearing before a hearing officer or panel, at which time the appeal shall be heard in public session. The Department shall provide written notice of the appeal hearing to the appellant and all interested parties as provided in Section 9.88.040 D. The appellant and any interested parties will be allowed to address the panel regarding the appeal.

D. Within thirty (30) days after conclusion of the administrative hearing on the appeal, the hearing officer or panel shall issue a decision on the appeal, and the Department shall mail a copy of the decision on appeal to all interested parties that participated in the hearing. The decision on appeal shall be final and binding upon all parties to the appeal unless that decision is appealed to the Board of Supervisors as provided in Section 9.88.090.

Section 9.88.090 Appeal to Board of Supervisors

A. Any applicant, permit holder, or other interested person or entity that is dissatisfied with a decision after administrative appeal may appeal to the Board of Supervisors. The appeal must be made in writing and must be received by the Clerk of the Board of Supervisors within fifteen (15) days of the postmark date on the envelope within which the notice of the decision of appeal was sent. When the last day of the appeal period would fall upon a non-workday or a holiday, the appeal period shall be extended to include the next subsequent regular working day. Appeals filed shall be accompanied with a fee in an amount set by resolution of the Board.

B. Decisions appealed to the Board of Supervisors shall be set for specific time and place of public hearing at the next regular meeting and considered not later than forty-five days from the date on which the appeal is filed. The hearing date may be extended beyond forty-five days upon request or consent of the appellant.

C. Written notice of the appeal hearing shall be mailed to the appellant and all interested parties as provided in Section 9.88.040 D., and shall set forth the grounds for the appeal, the method of submitting comments to the County regarding the appeal, and the date and location of the hearing of the appeal.

D. Any appeal that is not timely filed, or that is not accompanied by the required fee, will be deemed ineffective and the administrative determination that is being appealed will become final.

E. The Board of Supervisors may take any appropriate action upon the original administrative action that was appealed pursuant to Section 9.88.080, including granting or denying the appeal or imposing, deleting or modifying operating conditions of the permit. The decision of the Board of Supervisors shall be final.

Section 9.88.100 Suspension and Revocation

A. The Department may initiate the revocation or suspension of a permit when it shall appear that the permit holder violates the terms and conditions of the permit or the requirements of federal, State or local laws, ordinances or regulations.

B. No permit shall be revoked or suspended by virtue of this Section until a hearing has been held in the same manner as described in Sections 9.88.130 and 9.86.140. Notice of the hearing shall contain a brief statement of the grounds for revoking or suspending the permit and the time and date for the hearing.

C. The decision of the administrative panel may include suspension, revocation or the modification of the permit by adding conditions that are designed to reduce or remove the problems that caused the proposed revocation or suspension of the permit.

D. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the Department shall give notice of the decision of the panel.

E. Any interested party may appeal the determination of the administrative panel to the Board of Supervisors within ten days after the date of the notice of the decision of the administrative panel. The Board of Supervisors shall act upon the appeal in accordance with Section 9.88.140.

F. Notwithstanding any other provision of this Chapter, the Department may suspend, or temporarily amend a permit without notice or a hearing whenever an emergency exists that threatens the public health, safety or welfare. In such cases, the Department shall notify the permit holder prior to the action. The Board of Supervisors shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the emergency condition or situation

ceases to exist, or shall set the matter for hearing to revoke the permit in accordance with the provisions of this Chapter.

Section 9.88.110 Transfer of the Permit

A. A permit issued under this Chapter does not grant any interest in real property or create any interest of value. A permit is not transferable, and automatically terminates upon transfer of ownership of the property.

B. A transferee of an existing permit may apply for a new permit by submitting an application, Plan of Operation and fees that comply with this Chapter. The Department shall verify information in the application and Plan of Operation and shall approve the new permit unless it fails to comply with the standards set forth in this Chapter. The new permit holder must qualify and agree to comply with and be bound by the terms and conditions of the authorization, and the new authorization shall contain any new conditions or stipulations, which circumstances may warrant. A new permit issued pursuant to this Chapter shall be effective on either the date of transfer of ownership of the property or facilities subject to the permit, or the date of approval and issuance of a permit by the Department, whichever occurs last.

Section 9.88.120 Establishment of Regulations

The Board of Supervisors may establish, by resolution, regulations for the administration and implementation of this Chapter. Such regulations, when adopted, shall become and thereafter be a part of Chapter 9.88. A copy of the regulations established by resolution of the Board shall be filed with the Clerk of the Board and with the Department.

Section 9.88.130 Misdemeanor Violation

Any person violating any of the provisions or failing to comply with this Chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as set forth in Section 1.36.010. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter or the permit is committed, continued or allowed in conjunction with the operations and shall be punishable accordingly.

Section 9.88.140 Civil Injunction

In addition to the penalties provided in this Chapter, any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for injunctive relief, and which may be enforced pursuant to Chapter 2.92.

Section 9.88.150 Severability

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this Chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.

Section 9.88.160 Judicial Review

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any other action seeking judicial review shall be filed within ninety (90) days after the day the decision becomes final.

ORDINANCE C.S. 1028

Upon motion of Supervisor Monteith, seconded by Supervisor Grover, Ordinance C.S. 1028 was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this 26th day of February 2008, by the following called vote:

AYES: SUPERVISORS:	O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield
NOES:	None
ABSENT:	None
ABSTAINING:	None

Ordinance C.S. 1028 is an ordinance adding Chapter 9.88 "Food Processing By-Products" to the Stanislaus County Code.

A full copy of the ordinance is available for review at the Clerk of the Board's Office, 1010 10th Street, Suite 6700, Modesto, California. For further information, call the Stanislaus County Counsel's Office at 525-6376, 1010 10th Street, Suite 6400, Modesto, California.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: February 26, 2008

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY: Suzi Seibert, Deputy Clerk of the Board

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

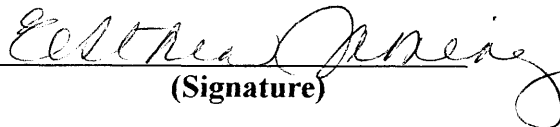
**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident
Of the County aforesaid; I am over the age of
Eighteen years, and not a party to or interested
In the above entitle matter. I am a printer and
Principal clerk of the publisher
of **THE MODESTO BEE**, printed in the City
of **MODESTO**, County of **STANISLAUS**,
State of California, daily, for which said
newspaper has been adjudged a newspaper of
general circulation by the Superior Court of the
County of **STANISLAUS**, State of California,
Under the date of **February 25, 1951, Action
No. 46453**; that the notice of which the annexed is
a printed copy, has been published in each issue
there of on the following dates, to wit:

MARCH 2, 2008

I certify (or declare) under penalty of perjury
That the foregoing is true and correct and that
This declaration was executed at
MODESTO, California on

MARCH 2, 2008


(Signature)

ORDINANCE C.S. 1028
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California.
BY ORDER OF THE BOARD OF SUPERVISORS
DATED: February 26, 2008
ATTEST: CHRISTINE FERRARO TALLMAN,
Clerk of the Board of Supervisors of
the County of Stanislaus, State of California
BY: Suzi Seibert, Deputy Clerk of the Board
MARCH 2, 2008

ORD-55-G-1