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## Campbell County Sewage Sludge Ordinance

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Campbell County, Virginia (December 30, 2006)

Ordinance No. \_\_\_\_\_ of 2007

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF CAMPBELL COUNTY BY BANNING CORPORATIONS FROM ENGAGING IN THE LAND APPLICATION OF SEWAGE SLUDGE; BY BANNING PERSONS FROM USING CORPORATIONS TO ENGAGE IN LAND APPLICATION OF SEWAGE SLUDGE; BY PROVIDING FOR THE TESTING OF SEWAGE SLUDGE PRIOR TO LAND APPLICATION IN THE COUNTY BY PERSONS; BY REMOVING CONSTITUTIONAL POWERS FROM CORPORATIONS WITHIN THE COUNTY; BY RECOGNIZING AND ENFORCING THE RIGHTS OF RESIDENTS TO DEFEND THE RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS; AND BY OTHERWISE ADOPTING THE VIRGINIA REGULATIONS CONCERNING THE LAND APPLICATION OF SEWAGE SLUDGE

### Section 1—Name

This Ordinance shall be known and may be cited as the “Campbell County Sewage Sludge Ordinance.”

### Section 2—Authority

This Ordinance is enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the County of Campbell to democratic self-governance, and their right to be free from anti-democratic private governments, and by authority granted to the municipal government of Campbell County by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The Declaration of Independence, which declares that the people are born with “certain unalienable rights” and that governments are instituted among people to secure those rights;

The Ninth Amendment to the United States Constitution, which declares, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”;

The Fourteenth Amendment to the United States Constitution, which declares in part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”;

The Virginia Constitution, Article 1, Section 1, which declares that all people "are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety",

The Virginia Constitution, Article 1, Section 2, which does not declare that corporations have any rights, but does declare that "all power is vested in, and consequently derived from, the people";

The Virginia Constitution, Article 1, Section 3, which declares that "government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. . . and whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it";

The Virginia Constitution, Article 1, Section 4, which declares that "no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community," and thus, corporations, as sets of men, shall not enjoy special legal privileges under the law;

The Virginia Constitution, Article XI, Section 1, which declares that "it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth";

The Virginia Code, Section 15.2-1200, which declares that "any county may adopt such measures as it deems expedient to secure and promote the health, safety, and general welfare of its inhabitants."

### Section 3—Findings and Purpose

In support of enactment of this Ordinance, the Board of Supervisors of Campbell County finds and declares that:

The land application of sewage sludge in Campbell County poses a significant threat to the health, safety, and welfare of the residents and natural environment of Campbell County.

In April 2002, the Inspector General of the Environmental Protection Agency (EPA), which oversees state sewage sludge regulations, issued a report in which it concluded, "EPA cannot assure the public that current land application [of sewage sludge] practices are protective of human health and the environment." Among the Inspector General's concerns were the following: "failure to properly manage sludge may have adverse effects on human health and the environment"; "EPA does not have an effective program of ensuring compliance with land application requirements"; and state officials have criticized the lack of EPA oversight, staffing, and commitment toward ensuring the safety of land applied sludge.

In 1994, eleven-year-old Tony Behun from Rush Township, Centre County, Pennsylvania, died from a staph infection shortly after being exposed to sewage sludge. The following year, seventeen-year-old Daniel Pennock from Reading, Pennsylvania, died from a staph infection shortly after being exposed to sewage sludge. The U.S. Environmental Protection Agency (EPA) recognizes staph as a potential pathogenic component of sewage sludge.

In spite of these risks, Campbell County has been rendered powerless by the state and federal government to prohibit the land application of sewage sludge by persons that comply with all applicable laws and regulations.

In order to protect the health, safety, and welfare of the residents of Campbell County, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, the County finds it necessary to ban corporations and other limited liability entities from engaging in the land application of sewage sludge. It is recognized that a small number of waste management corporations control the vast majority of sludge hauling and land application, and that corporate concentration enables those corporations to define waste management practices at the State and County level to the detriment of municipal communities. It is also recognized that limited liability shields prevent financial recovery (and accountability) for damages caused by business entities because limited liability insulates the persons managing the corporation from harms caused by their decisions. Finally, the County recognizes that corporations wielding government-conferred constitutional powers against the municipal governments renders the Board of Supervisors unable to guarantee to its citizens a republican form of government in the County.

In order to protect the health, safety, and welfare of the residents of Campbell County, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, it is necessary to test each load of sewage sludge to be applied by persons before it is land applied within the County to determine if the level of pollutants, pathogens, or vector attractants exceed the levels allowed under applicable laws and regulations.

The Virginia Department of Health does not possess sufficient funding or personnel to ensure that persons land applying sewage sludge in Campbell County are doing so in compliance with state laws and regulations, so Campbell County must

have the option of enforcing those laws and regulations itself.

Campbell County's cost of testing sewage sludge prior to land application shall be borne by those persons land applying sewage sludge in the County.

#### Section 4—Interpretation

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Sections 2 and 3 over such considerations as economy, efficiency, and scheduling factors.

#### Section 5—Definitions

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance.

**Beneficial Use:** Use or reuse of residual waste or material derived from residual waste for commercial, industrial, or governmental purposes where the use or reuse does not harm or threaten public health, safety, welfare, or the environment; or the use or reuse of processed municipal waste for any purpose where the use or reuse does not harm or threaten public health, safety, welfare, or the environment.

**Corporation:** Any corporation organized under the laws of any state of the United States or under the laws of any country. The term shall also include any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. The term shall also include a municipality or municipal authority. The term shall also include any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes.

**County:** Campbell County, Virginia, its Board of Supervisors, or its representatives or agents.

**Laboratory or Qualified Laboratory:** A facility that tests sewage sludge samples for pollutants, pathogens, and vector attractants in compliance with Virginia regulations, including, without limitation, those regulations that dictate approved methodologies for conducting such tests.

**Land Applicant or Sewage Sludge Applicant:** Any person responsible for complying with all Federal, State, and local laws and regulations concerning the land application of sewage sludge.

**Land Application or Land Apply:** The spraying or spreading of sewage sludge onto the land surface for beneficial use; the injection of sewage sludge below the land surface for beneficial use; the storage of sewage sludge; or the incorporation of sewage sludge into the soil for beneficial use so that the sewage sludge can either condition the soil or fertilize crops for vegetation grown in the soil. The term shall also include the spraying, spreading, injection, or incorporation of sewage sludge onto, into, or below the land surface for reclamation of previously mined lands.

**Ordinance:** The Campbell County Sewage Sludge Ordinance.

**Person:** A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

**Sewage Sludge or Sludge:** Liquid or solid sludge and other residue from a municipal sewage collection and treatment system, and liquid or solid sludge and other residue from septic and holding tank pumpings from commercial, industrial, or residential establishments. The term includes material derived from sewage sludge. The term does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screenings generated during preliminary treatment of sewage sludge at a municipal sewage collection and treatment system, or grit, screenings, or inorganic objects from septic and holding tank pumpings.

**Sewage Sludge Applicant:** See Land Applicant

**SOUR:** Specific oxygen uptake rate, which is the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

**Storage:** The containment, impoundment, or mounding of sewage sludge on a temporary basis. It shall be presumed that the containment, impoundment, or mounding of sludge in excess of two days shall constitute storage of sludge.

**Substantially Owned or Controlled:** A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent and prohibitions contained within this Ordinance by using that person, corporation, or other entity to land apply sewage sludge in Campbell County.

**Truckload:** A load containing a maximum of approximately 23 (twenty-three) tons of sewage sludge, based upon Campbell

County's understanding that sewage sludge for land application typically is delivered in tri-axle trucks that can hold approximately that amount of sewage sludge.

#### Section 6—Adoption of State Regulations

Campbell County hereby adopts as local law the Virginia regulations concerning the land application of sewage sludge, to the extent that those regulations permit persons, but not corporations, to engage in land application of sewage sludge under those regulations.

#### Section 7—Statements of Law

Section 7.1: It shall be unlawful for any person, corporation, or other entity to violate in Campbell County the Virginia regulations concerning the land application of sewage sludge.

Section 7.2: It shall be unlawful for any corporation to engage in the land application of sludge within the County of Campbell. It shall be unlawful for any person to assist a corporation to engage in the land application of sewage sludge within the County of Campbell.

Section 7.3: It shall be unlawful for any person to land apply sewage sludge in Campbell County without first complying with the requirements in section 8 of this Ordinance.

Section 7.4: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in the land application of sludge within Campbell County.

Section 7.5: Within Campbell County, corporations engaged in the land application of sludge, or any other type of waste as defined by State regulations, shall not be "persons" under the United States or Virginia Constitutions, or under the laws of the United States, Virginia, or Campbell County, and so shall not have the rights of persons under those constitutions and laws. In addition, within the County of Campbell, no corporation engaged in the land application of sludge, dredged material, or any other type of waste as defined by State regulations, shall be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the Virginia Constitution. In addition, no corporation shall be entitled to assert potentially preemptive provisions of State law or regulations in an attempt to nullify this Ordinance.

Section 7.6: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the County of Campbell. It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The County of Campbell, along with any resident of the County, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the County, regardless of the relation of those natural communities and ecosystems to County residents or the County itself. County residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 7.7: All residents of Campbell County possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the County possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants.

#### Section 8—Application and Testing Requirements

Before each and every truckload of sewage sludge is land applied in Campbell County by a person, the sewage sludge applicant must do the following:

Section 8.1: Complete and submit to the County a written application in form and number provided by the County and containing the name and address of the sewage sludge applicant, the name and address of the landowner on whose land the sewage sludge is to be land applied, the location of the land on which the sewage sludge is to be land applied, and a copy of all applicable state and federal permits pertaining to the land application.

Section 8.2: Provide Campbell County with written proof of the Class of sewage sludge to be land applied. If the sludge is Class A, provide Campbell County with written proof and data asserting that the sludge qualifies as Class A. If the sludge is Class B, provide Campbell County with written proof and data asserting that the sludge qualifies as Class B. For all Classes of sludge, provide Campbell County with written proof under which the sludge purportedly satisfies vector attraction requirements. The purpose of this subsection is to confirm the Class of sludge to be applied and to identify the testing that Campbell County must conduct on the sewage sludge and the requisite testing and collection fees under Section 8.4 of this Ordinance.

Section 8.3: Arrange for and allow Campbell County to collect the necessary sewage sludge samples from the truckload to be

land applied to have a qualified laboratory test the sludge for pollutants, pathogens, and vector attractants regulated by the Commonwealth of Virginia, and under all other applicable state and federal regulations, as amended.

Section 8.4: Pay Campbell County the testing and collection fees identified below and, when indicated, provide Campbell County with the written proof requested below.

Pollutants: For all classes of sewage sludge, the testing fee for pollutants will be determined based upon quotes from one or more qualified laboratories at the time of testing.

Pathogens: For Class B sludge, the testing fee to test seven samples for fecal coliform will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For Class B sludge, the sewage sludge applicant shall submit written proof that the sludge to be land applied has been treated as required under the applicable Alternative.

Vector Attractants: For sewage sludge that purportedly satisfies vector attraction requirements, the testing fee for mass of volatile solids will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For sewage sludge that purportedly satisfies vector attraction requirements under other requirements, the testing fee for SOUR will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For sewage sludge that purportedly satisfies vector attraction requirements under other requirements than those listed above, the sewage sludge applicant shall submit written proof that the sludge to be land applied satisfies the requirements under the applicable Alternative.

Collection: For all classes of sewage sludge, the administrative fee for collection and transportation of the sewage sludge samples for testing, and for handling the application, is \$50.00 per truckload of sewage sludge to be land applied.

Section 8.5: Store the sewage sludge pursuant to all applicable County, federal, and state regulations until the County notifies the sewage sludge applicant whether it may land apply the sewage sludge in Campbell County. The sewage sludge applicant shall notify the Campbell County Board of Supervisors of the location of the stored sludge and the identity of the container storing the sludge, in a manner sufficient to enable the County to verify that the stored sludge is the same sludge being considered for land application.

Section 8.6: If the land applicant does not receive permission to land apply the sewage sludge in Campbell County, it shall follow all applicable state and federal regulations for handling and disposing of sewage sludge that may not be land applied.

Section 8.7: If the land applicant receives notice that it is allowed to land apply the sewage sludge in Campbell County, it shall do so in compliance with all applicable federal, state, and local laws and regulations.

#### Section 9—Testing Procedures

When the Campbell County Board of Supervisors receives all of the following—a complete application pursuant to section 8.1 of this Ordinance; all information required under Section 8.2 of this Ordinance; and all testing and collection fees and written proofs required under Section 8.4 of this Ordinance—it shall do the following:

Section 9.1: Collect the necessary sewage sludge samples for testing by a qualified laboratory for compliance with Virginia regulations, pathogen regulations for Class B sludge, vector attractant regulations, and all other applicable state and federal regulations, as amended. Campbell County shall instruct the laboratory to conduct the tests in compliance with all Virginia regulations for testing sewage sludge to be land applied under the land application program.

Section 9.2: Inform the sewage sludge applicant of the results of testing conducted pursuant to Section 9.1 within seventy-two (72) hours after receiving the results.

Section 9.3: If the testing reveals that the sewage sludge contains levels of pollutants, pathogens, or vector attractants that violate Commonwealth of Virginia regulations or any other County, federal or state laws or regulations, as amended, the County shall deny permission for the sewage sludge to be land applied in Campbell County. Otherwise, the County shall grant permission for the land application.

#### Section 10—Administration

This Ordinance shall be administered by Campbell County. The County may, but is not required to, administer and enforce, at County expense (except as provided in section 8.4 of this Ordinance), any and all regulations that it has adopted pursuant to Section 6 of this Ordinance.

## Section 11—Enforcement

Section 11.1: Campbell County shall enforce this Ordinance by an action brought in the same manner as provided in the Code of Virginia, section 18.2-11 for the punishment of a Class 3 Misdemeanor.

Section 11.2: Any person, Director, or other entity that violates any provision of this Ordinance shall, upon conviction, be imprisoned to the extent allowed by law for the punishment of a class 3 Misdemeanor.

Section 11.3: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated.

Section 11.4. Campbell County may also enforce this Ordinance through an action in equity brought in the appropriate Circuit Court. In such an action, Campbell County shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees. Such an action to enforce this Ordinance may also be brought by any resident of Campbell County, and that resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 11.5. All monies collected for violation of this Ordinance shall be paid to the Treasurer of Campbell County.

Section 11.6. Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance two or more times, shall be permanently prohibited from doing business within the County of Campbell. This prohibition applies to that person's, corporation's, or other entity's owner (either partial or complete), successor companies, subsidiaries, and alter egos; and to any other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

## Section 12—Civil Rights Enforcement

Section 12.1: Any person acting under the authority of a permit issued by the Virginia Department of Health or any other regulatory agency, any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, who deprives any County resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Virginia Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to Campbell County for restoration of those natural communities and ecosystems.

Section 12.2: Any County resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and County residents, as recognized by sections 7.6, 7.7, and other sections of this Ordinance.

## Section 13—Effective Date and Existing Permitholders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all land applications of sewage sludge in Campbell County regardless of the date of any applicable state or federal permits.

## Section 14—People's Right to Self-Government

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the County Board of Supervisors to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. Those other measures shall include, but not be limited to, separation from the level of government wielded in an attempt to overturn or nullify this Ordinance.

## Section 15—Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Board of Supervisors of Campbell County hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 16—Repealer

All inconsistent provisions of prior Ordinances adopted by Campbell County are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this \_\_\_ day of \_\_\_\_\_, 2007, by the Board of Supervisors of Campbell County.

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

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