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East Brunswick Township Sewage Sludge Ordinance

East Brunswick Township, Schuylkill County, Pennsylvania
Ordinance No. _____ of 2006

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF EAST BRUNSWICK TOWNSHIP 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 TOWNSHIP; BY REMOVING CONSTITUTIONAL POWERS FROM CORPORATIONS WITHIN THE TOWNSHIP; BY RECOGNIZING AND ENFORCING THE RIGHTS OF RESIDENTS TO DEFEND THE RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS; AND BY OTHERWISE ADOPTING THE PENNSYLVANIA REGULATIONS CONCERNING THE LAND APPLICATION OF SEWAGE SLUDGE

Section 1—Name

This Ordinance shall be known and may be cited as the “East Brunswick Township Sewage Sludge Ordinance.”

Section 2—Authority

This Ordinance is enacted pursuant to the authority granted to East Brunswick Township by all relevant Federal and State laws and their corresponding regulations, and by the inherent right of the citizens of the Township of East Brunswick to self-government, including, without limitation, the following:

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

The Pennsylvania Constitution, Article 1, Section 2, which declares that “all power is inherent in the people and all free governments are instituted for their peace, safety, and happiness;”

The Pennsylvania Constitution, Article 1, Section 26, which declares that “neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right;”

The Pennsylvania Constitution, Article I, Section 27, which provides for the “preservation of the natural, scenic, historic, and esthetic values of the environment;”

The provisions of The Second Class Township Code, as codified at 53 P.S. § 65101 et seq., which authorizes East Brunswick Township to provide for the protection and preservation of natural and human resources, to promote, protect, and facilitate public health, safety, and general welfare, and to preserve and protect farmland, woodland, and the recreational uses of land within the Township;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66506, which authorizes East Brunswick Township to enact ordinances necessary for the proper management, care, and control of the township and its finances and the maintenance of peace, good government, health, and welfare of the township and its citizens, trade, commerce, and manufacturers;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66521, which empowers East Brunswick Township to appropriate moneys toward insect, pest, and vector programs;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66527, which empowers East Brunswick Township to adopt ordinances to secure the safety of persons or property within the township;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66529, which empowers East Brunswick Township to prohibit nuisances on private and public property and the carrying on of any offensive manufacture or business;

The provisions of The Second Class Township Code, Article XVI, as codified at 53 P.S. § 66601(e), which empowers East Brunswick Township to adopt by reference all or any portion of a standard code as an ordinance of the Township;

The Solid Waste Management Act, 35 P.S. § 6018.101 et seq., which preserves the rights and remedies of municipalities concerning solid waste within their borders;

Municipal Waste Regulations, 25 Pa. Code §§ 271 and 275, et seq.; and

Land Application of Sewage Sludge, 40 C.F.R. Part 503.

Section 3—Findings and Purpose

In support of enactment of this Ordinance, the Board of Supervisors of East Brunswick Township finds and declares that:

The land application of sewage sludge in East Brunswick Township poses a significant threat to the health, safety, and welfare of the citizens and environment of East Brunswick Township.

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, East Brunswick Township 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 East Brunswick Township, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, the Township 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 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 Township recognizes that corporations wielding government-conferred constitutional powers against the municipal government renders the Board of Supervisors unable to guarantee to its citizens a republican form of government in the Township.

In order to protect the health, safety, and welfare of the residents of East Brunswick Township, 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 Township to determine if the level of pollutants, pathogens, or vector attractants exceed the levels allowed under applicable laws and regulations.

DEP does not possess sufficient funding or personnel to ensure that persons land applying sewage sludge in East Brunswick Township are doing so in compliance with state laws and regulations, so East Brunswick Township must have the option of enforcing those laws and regulations itself.

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

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. (See 25 Pa. Code Chapter 271, Subchapter A, § 271.1.)

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 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.

DEP: The Pennsylvania Department of Environmental Protection.

Laboratory or Qualified Laboratory: A facility that tests sewage sludge samples for pollutants, pathogens, and vector attractants in compliance with DEP regulations, including, without limitation, those regulations (see 25 Pa. Code § 271.906) 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; 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. (See 25 Pa. Code Chapter 271, Subchapter J, § 271.907.) 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 East Brunswick Township 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. (See 25 Pa. Code Chapter 271, Subchapter A, § 271.1.)

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.

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 of Section 11.6 of this Ordinance by using that person, corporation, or other entity to land apply sewage sludge in East Brunswick Township.

Township: East Brunswick Township in Schuylkill County, Pennsylvania, its Board of Supervisors, or its representatives or agents.

Truckload: A load containing a maximum of approximately 23 (twenty-three) tons of sewage sludge, based upon East Brunswick Township'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

East Brunswick Township hereby adopts as local law the Pennsylvania regulations concerning the land application of sewage sludge, including without limitation those codified at 25 Pa. Code §§ 271 and 275, et seq., as amended, 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 East Brunswick Township the Pennsylvania regulations concerning the land application of sewage sludge, including without limitation those codified at 25 Pa. Code §§ 271 and 275, et seq., as amended.

Section 7.2: It shall be unlawful for any person to haul or land apply sewage sludge in East Brunswick Township without first complying with the requirements in section 8 of this Ordinance.

Section 7.3: It shall be unlawful for any corporation to engage in the hauling or land application of sludge within the Township of East Brunswick. It shall be unlawful for any person to assist a corporation to engage in the hauling or land application of sewage sludge within East Brunswick Township.

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 East Brunswick Township.

Section 7.5: Within the Township of East Brunswick, corporations engaged in the land application of sludge, dredged material, or any other type of waste as defined under Title 25, §271.1 of the Pennsylvania Code, shall not be "persons" under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, or East Brunswick Township, and so shall not have the rights of persons under those constitutions and laws. In addition, within the Township of East Brunswick, no corporation engaged in the land application of sludge, dredged material, or any other type of waste as defined under Title 25, §271.1 of the Pennsylvania Code, shall be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the Pennsylvania Constitution.

Section 7.6: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Township of East Brunswick. 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 Township of East Brunswick, along with any resident of the Township, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Township, regardless of the relation of those natural communities and ecosystems to Township residents or the Township itself. Township 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 East Brunswick Township 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 Township 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 East Brunswick Township by a person, the sewage sludge applicant must do the following:

Section 8.1: Complete and submit to the Township a written application in form and number provided by the Township 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 DEP and other applicable state and federal permits pertaining to the land application.

Section 8.2: Provide East Brunswick Township with written proof of the Class of sewage sludge to be land applied. If the sludge is Class A, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 271.932(a) under

which the sludge qualifies as Class A. If the sludge is Class B, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 271.932(b) under which the sludge qualifies as Class B. For all Classes of sludge, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 933(b) under which the sludge purportedly satisfies DEP vector attraction requirements. The purpose of this subsection is to confirm the Class of sludge to be applied and to identify the testing that East Brunswick Township 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 East Brunswick Township 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 DEP at 25 Pa. Code § 271.914 (pollutants), § 271.932 (pathogens), § 271.933 (vector attractants), and at all other applicable state and federal regulations, as amended.

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

Pollutants: For all classes of sewage sludge, the testing fee for pollutants under 25 Pa. Code § 271.914(a)(1) will be determined based upon quotes from one or more qualified laboratories at the time of testing.

Pathogens: For Class B sludge under Alternative 1 of 25 Pa. Code § 271.932(b), 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 under Alternatives 2 and 3 of 25 Pa. Code § 271.932(b), 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 under 25 Pa. Code § 271.933(b)(1), (2), or (3), 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 25 Pa. Code § 271.933(b)(4), 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 25 Pa. Code § 271.933(b)(5), (6), (7), (8), (9), or (10), 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 DEP, federal, and state regulations (including without limitation those at 25 Pa. Code §275.204 and 25 Pa. Code Chapter 285) until the Township notifies the sewage sludge applicant whether it may land apply the sewage sludge in East Brunswick Township. The sewage sludge applicant shall notify East Brunswick Township of the location of the stored sludge and the identity of the container storing the sludge, in a manner sufficient to enable the Township 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 East Brunswick Township, 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 East Brunswick Township, it shall do so in compliance with all applicable federal, state, and local laws and regulations.

Section 9—Testing Procedures

When East Brunswick Township 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 DEP's pollutant regulations at 25 Pa. Code § 271.914, pathogen regulations for Class B sludge at § 271.932, vector attractant regulations at § 271.933, and all other applicable state and federal regulations, as amended. The Township shall instruct the laboratory to conduct the tests in compliance with all DEP regulations for testing sewage sludge to be land applied under the beneficial use 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 DEP regulations at 25 Pa. Code § 271.914 (pollutants), § 271.932 (pathogens), § 271.933 (vector attractants), or any other federal or state laws or regulations, as amended, the Township shall deny permission for the sewage sludge to be land applied in East Brunswick Township. Otherwise, the Township shall grant permission for the land application.

Section 10—Administration

This Ordinance shall be administered by East Brunswick Township. The Township may, but is not required to, administer and enforce, at Township 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: East Brunswick Township shall enforce this Ordinance by an action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. (See 53 P.S. § 66601(c.1)(2).)

Section 11.2: Any person, corporation, or other entity that violates any provision of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay a fine of \$750 for first-time violations, \$1000 for second-time violations, and \$1000 for each subsequent violation, and shall be imprisoned to the extent allowed by law for the punishment of summary offenses. (See 53 P.S. § 66601(c.1)(2).)

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. (See 53 P.S. § 66601(c.1)(5).)

Section 11.4: East Brunswick Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Schuylkill County. (See 53 P.S. § 66601 (c.1)(4).) In such an action, East Brunswick Township 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 East Brunswick Township.

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 land applying sewage sludge in East Brunswick Township. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or 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 11.7: Any Township resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Schuylkill County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 12—Civil Rights Enforcement

Section 12.1: Any person acting under the authority of a permit issued by the Department of Environmental Protection, 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 Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania 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 East Brunswick Township for restoration of those natural communities and ecosystems.

Section 12.2: Any Township 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 Township residents, as recognized by sections 7.6 and 7.7 of this Ordinance.

Section 13—Effective Date and Existing DEP 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 East Brunswick Township regardless of the date of the applicable DEP 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 Township 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.

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 East Brunswick Township 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 East Brunswick Township are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2006, by the Board of Supervisors of East Brunswick Township.

By: _____

Attest: _____