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# Peach Bottom Township Sustainable Agriculture and Community Self-Government Ordinance

Peach Bottom Township, York County, Pennsylvania  
Ordinance No. \_\_\_\_\_ of 2007

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF PEACH BOTTOM TOWNSHIP BY ESTABLISHING A SUSTAINABLE AGRICULTURE POLICY FOR THE TOWNSHIP; BY BANNING CORPORATIONS FROM ENGAGING IN AGRICULTURE AND THE LAND APPLICATION OF SEWAGE SLUDGE; BY BANNING PERSONS FROM USING CORPORATIONS TO ENGAGE IN AGRICULTURE AND THE LAND APPLICATION OF SEWAGE SLUDGE; BY PROVIDING FOR CERTAIN LIMITED EXCEPTIONS TO CORPORATIONS ENGAGING IN AGRICULTURE; 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 “Peach Bottom Township Sustainable Agriculture and Community Self-Government Ordinance.”

### Section 2—Authority

This Ordinance is enacted pursuant to the inherent right of the citizens of the Township of Peach Bottom to self-government, and by the authority granted to Peach Bottom Township by all relevant Federal and State laws and their corresponding regulations, including:

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 Peach Bottom 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. § 1532 of the Second Class Township Code, which authorizes Peach Bottom Township to regulate transient merchants within the Township.

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66506, which authorizes Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 residents and their Board of Supervisors in Peach Bottom Township find and declare that:

The general purpose of this Ordinance is to recognize that farm ownership and agricultural practices engaged in by families and non-corporate entities offer stability and encourage a rural quality of life in Peach Bottom Township. The residents of Peach Bottom Township and their Board of Supervisors also recognize that compensation for any harms caused by corporate agriculture and practices not recognized by the community to be normal farming activities may be difficult to obtain through a corporation, and that corporations have fewer reasons to respect the natural environment and township community than do natural persons. The residents of Peach Bottom Township and their Board of Supervisors also recognize that non-family owned corporate agriculture and the corporate land application of sewage sludge represent threats to the health, safety, and welfare of the Township’s residents and to the Township environment upon which residents rely for their health, safety, and quality of life. The residents and Supervisors also recognize that non-family owned industrial agricultural facilities and sludge hauling and application operations have caused environmental degradation and endangered citizens in other states, and that a broad range of literature exists that documents those problems.

The land application of sewage sludge in Peach Bottom Township poses a significant threat to the health, safety, and welfare of the citizens and environment of Peach Bottom 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 Peach Bottom 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, Peach Bottom 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 Peach Bottom 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 farming and the land application of sewage sludge. It is recognized that a small number of agricultural and waste management corporations control the vast majority of livestock production, sludge hauling and land application, and that corporate concentration enables those corporations to define agriculture and 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 render 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 Peach Bottom 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 Peach Bottom Township are doing so in compliance with state laws and regulations, so Peach Bottom Township must have the option of enforcing those laws and regulations itself.

Peach Bottom 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 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.

**DEP:** The Pennsylvania Department of Environmental Protection.

**Engage in Agriculture.** Day-to-day operation, ownership of livestock, control of agricultural processes, or contractual arrangements entered into between an individual and a corporation in which control over the farm operation, the marketing of produce, or the ownership of animals, is transferred to the corporation.

**Factory Farm.** An agricultural operation wholly or substantially owned or controlled by a corporation that is not a family farm corporation.

**Family Farm Corporation or Syndicate.** A family farm corporation or syndicate is a corporation engaged in farming or the ownership of agricultural land, in which seventy-five percent (75%) of the partnership interests, shares, stock, or other ownership interests are held by members of a family or a trust created for the benefit of a member of that family.

**Family.** Natural persons related to one another within the fourth degree of kinship according to civil law, or their spouses.

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.

Municipality. A municipal corporation or municipal authority chartered by the state, as distinct from a self-governing community of people.

Ordinance: The Peach Bottom Township Sustainable Farming and Community Self-Government 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 Peach Bottom Township.

Township: Peach Bottom Township in York 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 Peach Bottom 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

Peach Bottom 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 No corporation or syndicate may acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any real estate used for farming in this Township, or engage in farming. The term "corporation" means any corporation organized under the laws of any state of the United States or any country. The term "syndicate" includes any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or any country. A syndicate does not include general partnerships, except general partnerships in which non-family farm syndicates or non-family farm corporations are partners. The term, "farming", means the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for the production of livestock or livestock products.

Section 7.1.1: Exceptions. The restrictions in Section 7.1 of this Ordinance do not apply to:

- (1) A family farm corporation or syndicate. In order to qualify for this exception, at least one of the family members in a family farm corporation or syndicate shall reside on or be actively engaged in the day-to-day labor and management of the farm located within Peach Bottom Township. Day-to-day labor and management shall require both daily and routine substantial physical exertion and administration. None of the corporation's or syndicate's partners, members, or stockholders may be

nonresident aliens, or other corporations or syndicates, unless all of the stockholders, members, or partners of such entities are persons related within the fourth degree of kinship to the majority of partners, members, or stockholders in the family farm corporation or syndicate. This exception does not apply if the family farm corporation has a contractual arrangement with a corporation in which control over the farm operation, the marketing of produce, or the ownership of animals, is transferred to the corporation;

(2) Agricultural land acquired or leased, or livestock kept, fed or owned, by a cooperative organized under the laws of any state, if a majority of the shares or other interests of ownership in the cooperative are held by members in the cooperative who are natural persons actively engaged in the day-to-day labor and management of a farm, or family farm corporations or syndicates, and who either (1) acquire from the cooperative, through purchase or otherwise, such livestock, or crops produced on such land, or (2) deliver to the cooperative, through sale or otherwise, crops to be used in the keeping or feeding of such livestock;

(3) Nonprofit corporations organized under state non-profit corporation law;

(4) Agricultural land, which, as of the approval date of this Ordinance, is being farmed, which is owned or leased (or in which there is a legal or beneficial interest; directly or indirectly owned, acquired, or obtained by a corporation or syndicate), or if such land or other interest is held in continuous ownership or under continuous lease by the same such corporation or syndicate. For the purposes of this exemption, land purchased on a binding and irrevocable contract signed as of the approval date of this Ordinance is considered as owned on that date;

(5) Livestock, which as of the approval date of this Ordinance, is owned by a corporation or syndicate. For the purposes of this exemption, livestock to be produced under contract for a corporation or syndicate are considered as owned, if the contract is for the keeping or feeding of livestock and is (1) signed as of the approval date of this Ordinance, and (2) if the livestock continues to be housed in a building in which livestock had been housed as of the date of this ordinance, and (3) if the contract remains in effect and is not terminated by either party to the contract. Should a building currently housing livestock be destroyed by fire or other natural disaster, this exemption shall apply to any replacement building built, so long as said replacement building has total square footage equal to or less than the original building. This exemption does not extend beyond the term of any contract signed as of the approval date of this ordinance;

(6) A farm operated for research or experimental purposes, if any commercial sales from the farm are only incidental to the research or experimental objectives of the corporation or syndicate;

(7) Land leases by alfalfa processors for the production of alfalfa;

(8) Agricultural land operated for the purpose of growing seed, nursery plants, or sod;

(9) Mineral rights on agricultural land;

(10) Agricultural land acquired or leased by a corporation or syndicate for immediate or potential non-farming purposes, for a period of five (5) years from the date of purchase. A corporation or syndicate may hold such agricultural land in such acreage as may be necessary to its non-farm business operation, but pending the development of the agricultural land for non-farm purposes, such land may not be used for farming except under lease to a family farm corporation or family farm syndicate or a non-syndicate or non-corporate farm;

(11) Agricultural lands or livestock acquired by a corporation or syndicate by process of law in the collection of debts, or by any procedures for the enforcement of a lien, encumbrance, or claim thereon, whether created by mortgage or otherwise. Any lands so acquired shall be disposed of within a period of five (5) years and may not be used for farming before being disposed of, except under a lease to a family farm corporation or syndicate, or a non-syndicate or non-corporate farm. Any livestock so acquired shall be disposed of within six months;

(12) Agricultural lands held by a state or nationally chartered bank as trustee for a person, corporation, or syndicate that is otherwise exempt from the provisions of this Ordinance, inclusive of this Article;

(13) A bona fide encumbrance taken for purposes of security;

(14) Custom spraying, fertilizing, or harvesting;

(15) Livestock futures contracts, livestock purchased for slaughter within two (2) weeks of the purchase date, or livestock purchased and resold within two (2) weeks.

Section 7.1.2 Disqualification. If a family farm corporation or family farm syndicate that has qualified under all the requirements of a family farm corporation or family farm syndicate ceases to meet the defined criteria, it has three months (if the ownership of the majority of the stock of such corporation, or the majority of the ownership interest of such a syndicate, continues to be held by persons related to one another within the fourth degree of kinship or their spouses, and their land holdings are not increased), to either requalify as a family farm corporation or family farm syndicate or dissolve and return to personal ownership;

Section 7.2: It shall be unlawful for any person, corporation, or other entity to violate in Peach Bottom 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 7.3: It shall be unlawful for any person to land apply sewage sludge in Peach Bottom Township without first complying with the requirements in section 8 of this Ordinance.

Section 7.4: It shall be unlawful for any corporation to engage in the land application of sludge within the Township of Peach Bottom. It shall be unlawful for any person to assist a corporation to engage in the land application of sewage sludge within Peach Bottom Township.

Section 7.5: 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 Peach Bottom Township.

Section 7.6: Within the Township of Peach Bottom, corporations engaged in agriculture and/or 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 Peach Bottom Township, and so shall not have the rights of persons under those constitutions and laws. In addition, within the Township of Peach Bottom, no corporation engaged in agriculture and/or 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 7.7: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Township of Peach Bottom. 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 Peach Bottom, 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 7.8: All residents of Peach Bottom 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 7.9: Residents of Peach Bottom Township who engage in farming possess a fundamental and inalienable right to make a living for themselves and their families, and thus have a right to farm free from non-competitive, monopolistic practices, non-negotiable contracting arrangements, and involvement in the vertically integrated model of agriculture imposed on communities by factory farms and corporate controlled agriculture.

#### Section 8—Application and Testing Requirements

Before each and every truckload of sewage sludge is land applied in Peach Bottom 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 Peach Bottom Township with written proof of the Class of sewage sludge to be land applied. If the sludge is Class A, provide Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 Peach Bottom Township the testing and collection fees identified below and, when indicated, provide Peach Bottom 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 Peach Bottom Township. The sewage sludge applicant shall notify Peach Bottom 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 Peach Bottom 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 Peach Bottom Township, it shall do so in compliance with all applicable federal, state, and local laws and regulations.

#### Section 9—Testing Procedures

When Peach Bottom 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 Peach Bottom Township. Otherwise, the Township shall grant permission for the land application.

#### Section 10—Administration

This Ordinance shall be administered by Peach Bottom 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: Peach Bottom 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: Peach Bottom Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of York County. (See 53 P.S. § 66601 (c.1)(4).) In such an action, Peach Bottom 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 Peach Bottom 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 Peach Bottom 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 York 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 Peach Bottom 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, 7.7, and other sections 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 Peach Bottom 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. It is declared that those other measures may legitimately include the partial or complete separation of the Township from the other units and levels of government that attempt to preempt, amend, alter, or overturn 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 Peach Bottom 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 Peach Bottom Township 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 Peach Bottom Township.



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

\_\_\_\_\_

\_\_\_\_\_

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

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