

[Adopted 5-1-2007 by Ord. No. 620]

§ 273-11 Title.

The name of this article shall be the "Tamaqua Borough Corporate Waste and Local Control Ordinance."

§ 273-12 Definitions.

The following terms shall have the meanings defined in this section wherever they are used in this article:

BENEFICIAL USE

Use or reuse of residual waste or material derived from residual waste for commercial, industrial or governmental purposes. (See 25 Pa. Code Chapter 271, Subchapter A, § 271.1.)

BOROUGH

Tamaqua Borough in Schuylkill County, Pennsylvania, its Borough Council, or its representatives or agents.

CHEMOTHERAPEUTIC WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which results from the production or use of antineoplastic agents used for the purpose of inhibiting or stopping the growth of malignant cells or killing malignant cells.

COAL ASH

Waste, defined under Title 25, § 287.1 of the Pennsylvania Code, including fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation. For purposes of this article, the term also includes fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is not and has not been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. This definition explicitly does not include individually generated residential coal ash on residential premises.

CONSTRUCTION AND DEMOLITION WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which results from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic surfaces, bricks, block and unsegregated concrete.

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.

DREDGED MATERIAL

Material, defined under Title 25, § 271.1 of the Pennsylvania Code, which is dredged or excavated from waters for the direct or indirect purpose of establishing or increasing water depth, or increasing the surface or cross-sectional area of a waterway and which includes sediment, soil, mud, shells, gravel, or other aggregate.

ENGAGE IN THE DISPOSAL

A phrase that includes, but is not limited to, any activities associated with the disposal of wastes within the Borough of Tamaqua.

HAZARDOUS WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which includes garbage, refuse, or sludge from an industrial or other wastewater treatment plant; sludge from a water supply treatment plant or air pollution control facility; and other

discarded material, including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities; or a combination of the above, which, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- A. Cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population; or
- B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

INFECTIOUS WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which is generated in the diagnosis, treatment, immunization or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for interment or cremation, or in the production or testing of biologicals.

ORDINANCE

The Tamaqua Borough Corporate Waste and Local Control Ordinance.

PCB-CONTAINING WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which contains polychlorinated biphenyls in any measurable concentration.

PERSON

A natural person.

RADIOACTIVE MATERIAL

Materials, as defined under Title 25, § 271.1 of the Pennsylvania Code, which spontaneously emit alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom's nucleus. This term shall include, but not be limited to, source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954.^[1]

RESIDUAL WASTE

Waste, defined under Title 25, § 271.1 of the Pennsylvania Code, which includes solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining, and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility, if not hazardous. This definition explicitly excludes "sewage sludge," or "sludge" as defined by Ch. 260, Sewers and Sewage Disposal, Art. VI, Sewage Sludge.

SYNDICATE

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 shall not include general partnerships, except general partnerships in which corporations or other limited liability business entities are partners.

[1] *Editor's Note: See 42 U.S.C. § 2011 through 2394.*

§ 273-13 Authority.

This article is adopted and enacted pursuant to the right of self-government of the residents of Tamaqua, and by the authority granted to the Borough by all relevant state and federal laws, including, but not limited to, the following:

- A. The Declaration of Independence, which declares that governments are instituted to secure people's rights, and that government derives its just powers from the consent of the governed.
- B. 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."
- C. The Tenth Amendment to the United States Constitution, which declares, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
- D. The Pennsylvania Constitution, Article 1, § 2, which declares that "All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness."

- E. The Pennsylvania Constitution, Article 1, § 27, which declares that "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."
- F. The Borough Code, Chapter 12, Section 1202(5),^[1] which establishes the authority of Borough governments in the commonwealth to adopt ordinances "as may be necessary for the health, safety, morals, general welfare and cleanliness, and the beauty, convenience, comfort and safety of the Borough."
 [1] *Editor's Note: See 8 Pa.C.S.A. § 1202(5).*
- G. The Borough Code, Chapter 12, § 1202(20)(i)(A), which establishes the authority of Borough governments in the commonwealth to adopt ordinances to prohibit, within the Borough, "the carrying on of any manufacture, art, trade, or business which may be noxious or offensive . . . to . . . the inhabitants."
- H. The Borough Code, Chapter 12, § 1203, which establishes the general power of Borough governments in the commonwealth to make and adopt ordinances that "may be expedient or necessary for the proper management, care and control of the borough and its finances and the maintenance of peace, good government, safety and welfare of the borough and its trade, commerce and manufactures."

§ 273-14 Findings and purpose.

The general purpose of this article is to recognize that corporations engaged in certain types of waste storage, "beneficial use" and/or waste disposal within the Borough constitute a threat to the health, safety, welfare, and rights of the residents of Tamaqua Borough due to the limited liability of those corporations, which may prevent full recovery for damages in the event of injuries caused to Borough residents. That limited liability privilege shields and protects the individuals operating the corporation, and thus serves to thwart any deterrent effect from lawsuits brought to remedy injuries caused by those persons using the corporation to engage in waste disposal. The Borough of Tamaqua declares that persons using corporations to store or dump dredged material, coal ash, sewage sludge, construction and demolition (C&D) waste, radioactive material, and other waste deemed by the Borough to be hazardous, toxic, or dangerous, place the residents of the Borough at increasing risk, due to the harmful and dangerous composition of those wastes. The Borough of Tamaqua also declares that corporations, engaging in waste disposal in any neighboring municipality, that causes harm to residents of the Borough of Tamaqua, shall be held strictly liable for the migration of toxic and hazardous contaminants across municipal borders. The Borough of Tamaqua also declares that waste management, "beneficial use" of waste, waste disposal and mine "reclamation" corporations increasingly determine waste policy in the commonwealth and that the Borough must take affirmative steps to subordinate the powers of those corporations to the will of the majority within the Borough of Tamaqua.

§ 273-15 Interpretation.

Anyone interpreting, implementing, or applying this article shall give priority to the findings and purposes stated in § 273-14 over such accounting and business terms characterized as "economy," "efficiency" and "scheduling factors."

§ 273-16 Statements of law.

- A. It shall be unlawful for any person, corporation, or other entity to use a corporation or syndicate to engage in the storage, "beneficial use," land application, or disposal of hazardous waste, coal ash, residual waste or materials derived from residual waste, dredged material, or PCB-containing waste, as those terms are defined within Title 25, Chapter 271 et seq., and Chapter 287 et seq. of the Pennsylvania Code, the Atomic Energy Act of 1954,^[1] and the provisions of this article, within the Borough of Tamaqua. It shall be unlawful for any person, corporation, or other entity to use a corporation or syndicate to engage in the "beneficial use," land application, or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, or radioactive material as those terms are defined within Title 25, Chapter 271 et seq., of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua.
 [1] *Editor's Note: See 42 U.S.C.A. § 2011 through 2394.*
- B. It shall be unlawful for any person to assist a corporation to engage in the storage, "beneficial use," land application, or disposal of hazardous waste, coal ash, residual waste or materials derived from residual waste, dredged material, or PCB-containing waste, as those terms are defined within Title 25, Chapter 271 et seq., and Chapter 287 et seq. of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua. It shall be unlawful for any person to assist a corporation to engage in the "beneficial use," land application, or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, or radioactive material as those

terms are defined within Title 25, Chapter 271 et seq., of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua.

- C. It shall be unlawful for any corporation to engage in the storage, "beneficial use," land application, or disposal of hazardous waste, coal ash, residual waste or materials derived from residual waste, dredged material, or PCB-containing waste, as those terms are defined within Title 25, Chapter 271 et seq., and Chapter 287 et seq. of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua. It shall be unlawful for any corporation to engage in the "beneficial use," land application, or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, or radioactive material as those terms are defined within Title 25, Chapter 271 et seq., of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua.
- D. It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in the storage, "beneficial use," land application, or disposal of hazardous waste, coal ash, residual waste or materials derived from residual waste, dredged material, or PCB-containing waste, as those terms are defined within Title 25, Chapter 271 et seq., and Chapter 287 et seq. of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua. It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in the "beneficial use," land application, or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, or radioactive material as those terms are defined within Title 25, Chapter 271 et seq., of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, within the Borough of Tamaqua.
- E. Within the Borough of Tamaqua, corporations engaged in the storage, "beneficial use," land application, or disposal of hazardous waste, coal ash, residual waste, dredged material, PCB-containing waste, or radioactive material as those terms are defined within Title 25, Chapter 271 et seq. and Chapter 287 et seq., of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, shall not be "persons" under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, or Tamaqua Borough, and so shall not have the rights of persons under those constitutions and laws. Nor shall they be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the Pennsylvania Constitution, within the Borough of Tamaqua. Within the Borough of Tamaqua, corporations engaged in the "beneficial use," land application, or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, as those terms are defined within Title 25, Chapter 271 et seq. and Chapter 287 et seq. of the Pennsylvania Code, the Atomic Energy Act of 1954, and the provisions of this article, shall not be "persons" under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, or Tamaqua Borough, and so shall not have the rights of persons under those constitutions and laws. Nor shall they be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the Pennsylvania Constitution, within the Borough of Tamaqua.
- F. 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 Borough of Tamaqua, along with any resident of the Borough, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough, regardless of the relation of those natural communities and ecosystems to Borough residents or the Borough itself. Borough 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.
- G. All residents of Tamaqua Borough 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 Borough 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. The residents of Tamaqua Borough possess a fundamental and inalienable right to self-government and a republican form of government.
- H. Any corporation engaging in, or planning to engage in, the storage, "beneficial use" or disposal of waste in violation of this article shall not possess limited liability attributes within the Borough of Tamaqua for the purposes of the enforcement of this article. Directors, officers, owners, and/or managers of that corporation shall be personally liable for violations of this article.
- I. Persons using corporations to engage in the types of waste storage, "beneficial use" or waste disposal addressed by this article in a neighboring municipality shall be strictly liable for all harms caused to the health, safety and welfare of the

residents of Tamaqua Borough from those activities, and for all harms caused to ecosystems and natural communities within Tamaqua Borough.

- J. No permit, license, privilege or charter issued by any state or federal regulatory agency, commission or board to any person or any corporation operating under a state charter, or any director, officer, owner, or manager of a corporation operating under a state charter, which would violate the provisions of this article or deprive any Borough resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within the Borough of Tamaqua. Additionally, any employee, agent or representative of any state or federal regulatory agency, commission or board who issues a permit, license, privilege or charter to any person or any corporation operating under a state charter, or any director, officer, owner, or manager of a corporation operating under a state charter, which would violate the provisions of this article or deprive any Borough resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, 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 attorneys' fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Borough of Tamaqua for restoration of those natural communities and ecosystems.

§ 273-17 Enforcement.

- A. Tamaqua Borough shall enforce this article by an action brought before a Magisterial District Judge in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.
- B. Any person who violates or permits a violation of this article shall, upon conviction in a summary proceeding under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not more than \$1,000, plus court costs and reasonable attorneys' fees incurred by the Borough in the enforcement proceedings. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the defendant may be sentenced and committed to the Schuylkill County correctional facility for a period not exceeding 30 days.
[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]
- C. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this article that is found to be violated.
- D. Tamaqua Borough may also enforce this article through an action in equity brought in the Court of Common Pleas of Schuylkill County. In such an action, Tamaqua Borough shall be entitled to recover all costs of litigation, including, without limitation, expert and attorneys' fees.
- E. All monies collected for violation of this article shall be paid to the Treasurer of Tamaqua Borough.
- F. Any person, corporation, or other entity that violates, or is convicted of violating, this article two or more times shall be permanently prohibited from engaging in business in Tamaqua Borough. 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 article, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this article.
- G. Any Borough resident shall have the authority to enforce any section of this article 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 attorneys fees.

§ 273-18 Civil rights enforcement.

- A. 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 Borough resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this article, 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 attorneys' fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to the Borough of Tamaqua for restoration of those natural communities and ecosystems.

- B.** Any Borough resident shall have standing and authority to bring an action under this article's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, or Borough residents, as recognized by the provisions of this article.

§ 273-19 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 article, or parts of this article, shall require the Borough Council 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.

§ 273-20 Administration.

The Borough Council of Tamaqua Borough shall administer this article.