

**TOWNSHIP OF UPPER BERN
COUNTY OF BERKS
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO.: 1002 of 2010

**AN ORDINANCE OF UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA,
ESTABLISHING CERTAIN RULES, STANDARDS, SPECIFICATIONS, INSPECTIONS,
PENALTIES, AND OTHER REGULATIONS PERTAINING TO BIO-SOLID AND SEWAGE
SLUDGE APPLICATIONS WITHIN UPPER BERN TOWNSHIP. THIS ORDINANCE SHALL
BE HEREINAFTER REFERRED TO AS THE UPPER BERN TOWNSHIP BIO-SOLID AND
SEWAGE SLUDGE APPLICATION ORDINANCE.**

BE IT ENACTED AND ORDAINED, by the Board of Supervisors of Upper Bern Township, Berks County, Pennsylvania, the following provisions are hereby established as the Upper Bern Township Bio-Solid and Sewage Sludge Application Ordinance:

Section 1: Statement of Intent.

- (A) Upper Bern Township hereby adopts this Bio-Solid and Sewage Sludge Application Ordinance in order to consider and implement the following objectives:
- (1) To ensure that plans and permits involving bio-solid and sewage sludge applications have been approved and issued by the appropriate agencies with jurisdiction.
 - (2) To establish regulations for the notification and posting of a permit area for bio-solid and sewage sludge applications.
 - (3) To establish reasonable safeguards, setback requirements, site inspections and testing procedures in order to protect the health, safety and/or general welfare of areas within a permit area or adjacent area on which bio-solids and sewage sludge is applied.
 - (4) To protect the aquifer, groundwater and surface water from contamination or degradation.
 - (5) To prevent inadvertent exposure to bio-solids and sewage sludge applications.
- (B) The provisions of this Ordinance shall replace and repeal the provisions contained within Upper Bern Township Ordinance 56-2000.

Section 2: Definitions.

- (A) For purposes of this Ordinance, the following terms are hereby defined as follows.
- (1) **Adjacent Area:** Land located outside the permit area, where air, surface water or groundwater, fish, wildlife, vegetation or other resources, which may be adversely affected by the application of bio-solids or sewage sludge.

- (2) **Agricultural Operation:** An enterprise that is actively engaged in the production of crops, livestock and livestock products including the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.
- (3) **Agricultural Utilization:** The land application of bio-solids and sewage sludge for its plant nutrient value or as a soil conditioner as part of an agricultural operation.
- (4) **Applicant:** An individual, partnership, group, company or corporation that is responsible for the permit application involving the application of bio-solids and sewage sludge within a permit area.
- (5) **Aquifer:** A geologic formation, group of formations or part of a formation capable of yielding sufficient groundwater for monitoring purposes.
- (6) **Bio-Solids:** A nutrient-rich organic material produced from the stabilization of sewage sludge, which meets specific criteria and is suitable for land application in accordance with the provisions established by the Pennsylvania Department of Environmental Protection and all applicable laws of the Commonwealth of Pennsylvania.
- (7) **Disposal:** The deposition, injection, dumping, spilling, leaking or the placing of bio-solids or sewage sludge into or on the land of a permit area, as approved and permitted by the Pennsylvania Department of Environmental Protection.
- (8) **Disposal Area:** The part of the site or permit area where bio-solids or sewage sludge may be applied in accordance with the permit issued by the Pennsylvania Department of Environmental Protection.
- (9) **Groundwater:** Water beneath the surface of the ground that exists in a zone of saturation.
- (10) **Groundwater Degradation:** A measurable increase in the concentration of one or more contaminants in groundwater above background concentrations for those contaminants.
- (11) **Intermittent Stream:** A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.
- (12) **Land Application:** Agricultural utilization or land reclamation of solid waste conducted in accordance with the laws of the Commonwealth of Pennsylvania.
- (13) **Land Reclamation:** The land application of bio-solids or sewage sludge for its plant nutrient value or as a soil conditioner, in order to establish vegetative growth or restore or enhance the soil.

- (14) Landowner or Owner: The person, firm, partnership, corporation or other legal entity holding legal title to a lot or other real property, as the same is recorded in the office of the Recorder of Deeds of Berks County, Pennsylvania.
 - (15) Lot: A lot, tract or parcel of land located within Upper Bern Township in any zoning district that abuts one or more occupied dwelling units, regardless of whether the lot is vacant or improved with a building or structure.
 - (16) Perennial Stream: A body of water flowing in a channel or bed composed of substrates associated with flowing waters and capable, in the absence of pollution or other manmade disturbances, of supporting a benthic macro-invertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.
 - (17) Permit: A document issued by the Pennsylvania Department of Environmental Protection for the application of bio-solids and sewage sludge in accordance with the applicable laws of the Commonwealth of Pennsylvania.
 - (18) Permit Area: The land area within the boundaries specified by the permit, which is designated and depicted on maps included with the permit application that has been approved by the Pennsylvania Department of Environmental Protection.
 - (19) Sewage Sludge: Liquid or solid sludge that is the by-product from a municipal sewage treatment system, which meets specific quality criteria and are suitable for land application in accordance with the provisions established by the Pennsylvania Department of Environmental Protection and all applicable laws of the Commonwealth of Pennsylvania.
 - (20) Stabilized Sewage Sludge: Sewage sludge that has been treated to reduce odor potential and the number of pathogenic organisms. Treatment methods include anaerobic and aerobic digestion, composting, lime stabilization and chlorine stabilization
 - (21) Water Source: The site or location of a well, spring or water supply stream intake which is used for human consumption.
 - (22) Wetlands: Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.
- (B) All other terms not defined under Section 2 of this Ordinance shall either be defined by the applicable provisions established by the Pennsylvania Department of Environmental Protection and/or the applicable laws of the Commonwealth of Pennsylvania.

Section 3: Compliance Requirements.

- (A) Permits and Plans: The following provisions shall apply to permit and plan requirements involving the application of bio-solids or sewage sludge application within Upper Bern Township:
- (1) The application of bio-solids or sewage sludge shall not be permitted unless a nutrient management plan has been approved by the local and state agencies with jurisdiction.
 - (2) The application of bio-solids or sewage sludge shall not be permitted unless a conservation management plan has been approved by the local and state agencies with jurisdiction.
 - (3) The application of bio-solids or sewage sludge shall not be permitted unless a permit has been issued by the Pennsylvania Department of Environmental Protection or has been approved by a state or federal agency with jurisdiction.
 - (4) All land application and land reclamation activities involving bio-solids or sewage sludge shall be in accordance with the regulations established by the Pennsylvania Department of Environmental Protection and the applicable laws of the Commonwealth of Pennsylvania.
 - (5) A complete copy of all approved plans and permits shall be submitted to Upper Bern Township prior to the application of bio-solids and sewage sludge.
- (B) Notification and Posting Requirements: The following notification and posting requirements shall apply to the application of bio-solids or sewage sludge application within Upper Bern Township:
- (1) The applicant or landowner shall provide Upper Bern Township with seven (7) days of notice prior to the commencement or initial application of bio-solids or sewage sludge within a permit area.
 - (2) The applicant or landowner shall provide Upper Bern Township with a schedule of the anticipated deliveries and frequency of deliveries to the permit area. The schedule shall also include the anticipated conclusion date of the site activities that are to be conducted in order to comply with the permit issued by the Pennsylvania Department of Environmental Protection.
 - (3) The applicant or landowner shall provide written notification to Upper Bern Township that a permit area shall be utilized for the application of bio-solids or sewage sludge.
 - (4) The applicant shall provide Upper Bern Township with a copy of a contractual consent form from the landowner.
 - (5) The applicant or landowner shall provide notification to the adjacent landowners in accordance with the requirements specified by the Pennsylvania Department of Environmental Protection and the applicable laws of the Commonwealth of Pennsylvania.
 - (6) The permit area shall be clearly marked and posted in accordance with the provisions established by the Pennsylvania Department of Environmental Protection and the applicable laws of the Commonwealth of Pennsylvania.

- (C) Setback Requirements: Unless otherwise specified by state and federal laws, the following setback requirements shall apply:
- (1) The permit area shall not be located within fifty (50) feet of an intermittent stream.
 - (2) The permit area shall not be located within one hundred (100) feet of a perennial stream.
 - (3) The permit area shall not be located within fifty (50) feet of an area that has been classified or delineated as wetlands.
 - (4) The permit area shall not be located within one hundred (100) feet of surface waters.
 - (5) The permit area shall not be located within fifty (50) feet of a street right-of-way line or property line.
 - (6) The temporary storage or staging area of the bio-solids or sewage sludge shall be contained within the permit area.
 - (7) The applicant and landowner shall not cause or allow a point or non-point discharge of pollution from the permit area to any surface waters.
 - (8) The applicant and landowner shall be responsible for preventing groundwater degradation within the permit area and the adjacent areas to the permit area. The applicant and landowner shall maintain all safeguards as required by the Pennsylvania Department of Environmental Protection.
- (D) Inspection and Testing Requirements: The following site inspections and testing requirements shall apply:
- (1) The applicant and landowner shall conduct periodic inspections to insure that the permit area is in compliance with this Ordinance and the permit issued by the Pennsylvania Department of Environmental Protection.
 - (2) Upper Bern Township shall have the right, but not the duty, to conduct periodic inspections in order to verify if the permit area is in compliance with this Ordinance and the permit issued by the Pennsylvania Department of Environmental Protection. The cost of these inspections shall be the responsibility of Upper Bern Township.
 - (3) If permitted by the landowner, Upper Bern Township shall have the right, but not the duty, to take samples of surface water, groundwater and/or soils within the permit area and on adjacent areas to the permit area in order to determine if the bio-solid or sewage sludge applications are creating an adverse environmental impact. The cost of the sampling and laboratory testing shall be the responsibility of Upper Bern Township.
 - (4) If permitted by the landowner, Upper Bern Township may take samples of the bio-solids or sewage sludge that is being applied within the permit area. The cost of the sampling and laboratory testing shall be the responsibility of Upper Bern Township.

- (5) All adverse biological, environmental and/or ecological impacts shall be mitigated and resolved by the landowner and applicant. The landowner and applicant shall be financially responsible to mitigate and resolve any adverse impacts.
- (E) Prohibited Applications: Solid or liquid waste or other materials that classified and/or categorized as biological waste, hazardous waste, infectious waste, pathological waste, municipal waste, residual waste, nuclear waste and/or untreated sewage waste, as defined by the Pennsylvania Department of Environmental Protection, shall be prohibited from being applied, discharged, disposed or injected within an approved permit area designated for bio-solids and sewage sludge applications.

Section 4: Administrative Provisions.

- (A) The provisions of this Ordinance shall be administered and enforced by the Upper Bern Township Board of Supervisors or their duly authorized representatives.
- (B) In addition to the provisions specified by this Ordinance, all applicable state and federal regulations involving the application of bio-solids and sewage sludge shall apply.
- (C) Upper Bern Township shall notify the Pennsylvania Department of Environmental Protection of any potential violations that have been observed as part of a site inspection or reported by an adjacent landowner.

Section 5: Violations and Penalties.

- (A) Any person who violates or permits the violation of any provision of this Ordinance shall, upon conviction thereof in a summary proceeding brought before a District Justice under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense, and shall be subject to the payment of a fine of not less than \$100 and not more than \$1,000, plus the costs of prosecution, including attorneys fees.
- (B) Each section of this Ordinance violated shall constitute a separate offense, and each day or portion thereof in which a violation of this ordinance is found to exist shall constitute a separate offense each of which violations shall be punishable by a separate fine imposed by the District Justice of not less than \$100 and not more than \$1,000, plus the costs of prosecution, including attorneys fees, or upon default of payment thereof, the defendant may be sentenced to imprisonment in the county prison for a term of not more than thirty (30) days.
- (C) All fines and penalties collected for the violation of this Ordinance shall be paid to Upper Bern Township.

Section 6: Severability and Repealer.

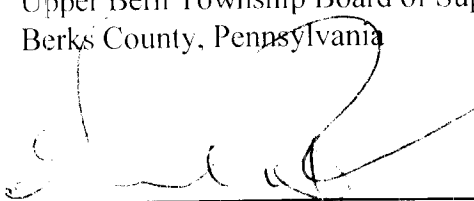
- (A) All other provisions adopted by Upper Bern Township are hereby ratified and confirmed.
- (B) Upper Bern Township Ordinance 56-2000 is hereby repealed and replaced by this Ordinance.
- (C) Any provision of any Ordinance inconsistent with the provisions of this Ordinance is hereby repealed to the extent of the inconsistency.

Section 7: Municipal Enactment.

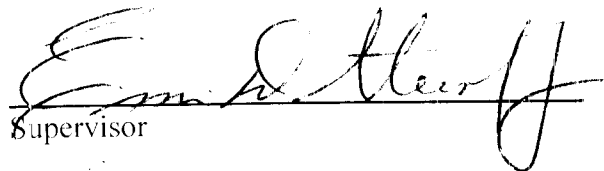
ORDAINED AND ENACTED by the Upper Bern Township Board of Supervisors, Berks County, Pennsylvania in public session duly assembled on September 14, 2010.

Upper Bern Township Board of Supervisors
Berks County, Pennsylvania


ATTEST:



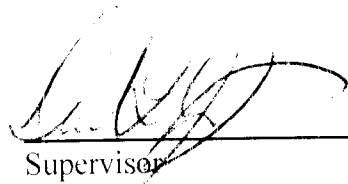
Chairman



Supervisor



Upper Bern Township Secretary



Supervisor