

UPPER BERN TOWNSHIP
BERKS COUNTY PENNSYLVANIA

ORDINANCE NO. # 56, 200

AN ORDINANCE PROVIDING PROCEDURAL REQUIREMENTS, GENERAL STANDARDS AND REGULATIONS FOR THE APPLICATION OF SEWAGE SLUDGE OR SIMILAR PRODUCTS ON ALL LAND AREAS WITHIN UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AND PENALTIES FOR VIOLATION THEREOF.

WHEREAS, the Upper Bern Township Board of Supervisors have hereinbefore enacted an Ordinance requiring all persons, landowners, partnerships and corporations to comply with the regulations set forth under this Ordinance for the application of sewage sludge or similar products on all land areas within Upper Bern Township;

WHEREAS, the Upper Bern Township Board of Supervisors desire to adopt certain regulations with regard to the public notification, standards, provisions and procedural requirements which are specified for the application of sewage sludge or similar products within the limits of Upper Bern Township, Berks County, Pennsylvania;

WHEREAS, it is the intent of the Upper Bern Township Board of Supervisors to promote the health, safety and general welfare of the community within Upper Bern Township;

WHEREAS, it is the intent to minimize danger to public health by protecting water supply and air quality; and,

WHEREAS, the Upper Bern Township Board of Supervisors desire to adopt certain regulations in order to further implement goals and objectives of the Upper Bern Township Comprehensive Plan; the Upper Bern Township Act 537 Plan Update; the Upper Bern Township Zoning Ordinance; and the Upper Bern Township Subdivision and Land Development Ordinance.

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AS FOLLOWS:

SECTION 1. DEFINITIONS

The terms and words used within this Ordinance, unless otherwise expressly stated, shall be construed as defined below. When terms, phrases or words are not defined, they shall have their ordinarily accepted meanings or such as the context may imply.

- (a) Access Road: A roadway or course proving a means for vehicular ingress and egress to the site of the permit area.
- (b) Act: The Solid Waste Management Act, as amended
- (c) Adjacent Area: Land located outside the permit area, including air, surface water or groundwater, fish, wildlife, vegetation, or other resources, which may be adversely affected by municipal waste facilities.
- (d) Agricultural Utilization: The land application of sewage sludge for its plant nutrient value or as a soil conditioner as part of an agricultural operation.
- (e) Applicant: The individual, partnership, group, company or corporation responsible for the permit application involving the application of sewage sludge within a permit area.
- (f) Aquifer: A geological formation, group of formations or part of a formation capable of yielding sufficient groundwater for use and monitoring purposes.
- (g) Department: The Pennsylvania Department of Environmental Protection (Pa DEP).
- (h) Disposal: The deposition, injecting, dumping, spilling, leaking or placing of sewage sludge into land within the permit area as approved and permitted by the PA DEP.
- (i) Disposal Area: The part of the site or permit area.
- (j) EPA: The United States Environmental Protection Agency.
- (k) Facility: Land, structures and other appurtenances or improvements where municipal waste disposal is permitted.
- (l) Governing Body: The Upper Bern Township Board of Supervisors, hereinafter referred to as the "Supervisors".

- (m) Groundwater: Water beneath the surface of the ground that exists in a zone of saturation.
- (n) Groundwater Degradation: The unnatural increase in concentration of one (1) or more contaminants in the groundwater above background concentrations for those same contaminants.
- (o) 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.
- (p) Land Application: Agricultural utilization of land reclamation of solid waste. This term does not apply to the disposal of solid waste within a landfill, transfer station, resource recovery facility, recycling center, composting facility, hazardous waste site, or any facility other than disposal area for the application of sewage sludge or similar products in a permit area.
- (q) Landowner: The legal owner or owners of record.
- (r) Land Reclamation: The land application of sewage sludge for its plant nutrient value or as a soil conditioner, in order to establish vegetation growth or restore or enhance the soil.
- (s) Municipality: Upper Bern Township, Berks County, Pennsylvania
- (t) NPDES: National Pollutant Discharge Elimination System
- (u) PA DEP: The Pennsylvania Department of Environmental Protection
- (v) Perennial Stream: A body of water flowing in a channel or bed composed of substrates associated with flowing water and capable, in the absence of pollution or other man-made disturbances, of supporting a benthic macroinvertebrate community which is composed of two (2) or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.
- (w) Permit: A permit issued by the PA DEP for land application of sewage sludge within a permit area for its plant nutrient value or as a soil conditioner, in order to establish vegetative growth or restore or enhance the soil.

- (x) Permit Area: The area of land and water within the boundaries of the permit, which is designated on the permit application maps as approved by the PA DEP.
- (y) Planning Commission: The Upper Bern Township Planning Commission
- (z) Seasonal High Water Table: The minimum depth from the soil surface at which redoximorphic features are present within the soil.
- (aa) Sewage Sludge: Liquid or solid sludges and other residues from municipal sewage treatment systems. The term does not apply to ash generated during the firing of sewage sludge in a sewage sludge incinerator; grit and screenings generated during preliminary treatment of any sewage sludge from any collection or treatment system; and any other sewage sludge, grit or screenings which are recognized by the PA DEP as inappropriate for land application of sewage sludge within a permit area.
- (bb) Stabilized Sewage Sludge: Sewage Sludge that has been treated to reduce odor potential and the number of pathogenic organisms. Acceptable treated methods recognized by the PA DEP may include anaerobic and aerobic digestion, composting, lime stabilization and chlorine stabilization.
- (cc) Township Engineer: The Upper Bern Township Engineer
- (dd) Township Sewage Enforcement Officer: The Upper Bern Township Sewage Enforcement Officer.
- (ee) Township Solicitor: The Upper Bern Township Solicitor
- (ff) Water Source: The site or location of a well, spring or water supply stream intake which is utilized for human consumption.
- (gg) Wetlands: Those areas that are inundated or saturated by surface 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. Wetlands generally include swamps, marshes, bogs and similar areas. The three major characteristics of wetlands include vegetation, soil and hydrology.

SECTION 2 - PERMIT CONDITIONS AND REQUIREMENTS

The following provisions shall all apply to individuals, partnerships, groups, companies or corporations involving the application of sewage sludge for agricultural utilization and/or land reclamation within Upper Bern Township:

- (a) The application of sewage sludge or similar products shall not be permitted on any land area within Upper Bern Township unless it is in compliance with the Act and all applicable regulations of the PA DEP, as set forth at 25 Pa.Code 271.901- 271.933, and 25 Pa.Code 275.201- 275.418, and the applicant has procured a permit from the PA DEP.
- (b) A complete copy of all permit applications for the use of sewage sludge for agricultural utilization and/or land reclamation shall be submitted to the PA DEP and Upper Bern Township for review. (A true and correct copy of the Permit Application Form which shall be utilized is appended hereto and incorporated herein by reference as though set forth herein at length).
- (c) The applicant shall provide Upper Bern Township with documentation that public notice has been afforded in a manner which is in compliance with the Act, and all other applicable laws and ordinances; and in compliance with the regulations of the PA DEP and the EPA.
- (d) The applicant shall provide Upper Bern Township with documentation that all of the adjacent property owners have been given notice by certified mail. Depending upon the topography of the area, the township may require additional property owners to be given such notice as well.
- (e) The applicant shall provide Upper Bern Township with a complete history or experience and compliance with the use of sewage sludge for agricultural utilization and/or land reclamation. This information shall also include a list of all violations for not only the applicant, but also and all violations for its predecessor(s) in interest.
- (f) The applicant shall provide Upper Bern Township with a complete list of all similar permits that have been issued within the Commonwealth of Pennsylvania over the past ten (10) years for both the applicant and its predecessor(s) in interest.
- (g) The applicant shall provide Upper Bern Township with a copy of the contractual consent form from the landowner of record.

- (h) The applicant shall provide Upper Bern Township with proof of insurance and liability coverage. This information shall be reviewed by the Township Solicitor and shall be for a minimal amount deemed reasonable by the Township Solicitor but in no event less than \$5,000,000 in liability coverage for the activities in question.
- (i) The applicant shall depict the precise location of the proposed permit area on a U.S. Geological Survey map, aerial map, tax map and soils map.
- (j) The applicant shall submit documentation concerning the methods and procedures that are to be employed for stabilization.
- (k) The applicant shall submit an Erosion and Sedimentation Control Plan to the PA DEP and Upper Bern Township.
- (l) The applicant shall submit a complete Nutrient Management Plan to the PA DEP and Upper Bern Township.
- (m) The applicant shall provide documentation on how the groundwater and surface water quality within and adjacent to the permit area will be protected and monitored during the application period. A contingency plan shall be provided by the applicant setting forth remediation procedures and procedures for supply of an alternate source of drinking water in the event that any water source is affected by the application of sewage sludge.
- (n) The applicant shall provide documentation on how the air quality within and adjacent to the permit area will be protected to limit odor problems during the application period. A contingency plan for remediation shall be provided by the applicant in the event that odors become noxious and/or offensive as a result of the application of sewage sludge.
- (o) The applicant shall identify the originated sources of the sewage sludge that is to be utilized within the permit area.
- (p) The applicant shall provide a complete soils analysis from a certified laboratory of the sewage sludge which is to be utilized within the permit area. The acceptable parameters of the soils analysis shall be determined by the PA DEP and the Township Engineer.
- (q) The applicant shall submit a tentative schedule indicating when the sewage sludge application will commence and conclude.

- (r) The applicant shall provide Upper Bern Township with notification concerning the expiration of any permits associated with the application of sewage sludge within the permit area.
- (s) The applicant shall provide Upper Bern Township with any violation notices or fines that have been imposed by any regulatory authority, including, but not limited to, EPA or the PA DEP, concerning the permit area.
- (t) The applicant shall provide Upper Bern Township with a 45 day review period to provide comments to the appropriate authorities prior to the renewal of any permit for the application of sewage sludge.
- (u) The applicant shall remit to Upper Bern Township a permit fee of Ten Dollars and 00/100 (\$10.00) per acre within any permit area involved with the application of sewage sludge and/or similar items on land areas within Upper Bern Township.

SECTION 3. - GENERAL REQUIREMENTS

The following provisions shall apply to all individuals, partnerships, groups, companies or corporations involving the application of sewage sludge for agricultural utilization and/or land reclamation within the permit area of Upper Bern Township:

- (a) The applicant shall provide Upper Bern Township with a copy of all permits issued by the PA DEP and/or and other regulatory agencies for the application of sewage sludge for agricultural utilization and/or land reclamation within the permit area.
- (b) The applicant shall provide Upper Bern Township with certified documentation that the permit area has been properly posted as required by the regulations of the PA DEP.
- (c) The applicant shall submit a schedule indicating when the sewage sludge application will commence and conclude. The schedule shall include the frequency of deliveries to the permit area.
- (d) The applicant shall provide written notification to the Upper Bern Township Engineer seven (7) days prior to the initial delivery of sewage sludge to the permit area.

- (e) The applicant shall notify the Upper Bern Township Engineer by telephone and facsimile transmittal within 24 to 48 for all deliveries of the sewage sludge to the permit area.
- (f) The Upper Bern Township Engineer shall have the right, but not the duty, to conduct periodic inspections to verify if the permit area is in compliance with the permit issued by the PA DEP. The cost of the inspections shall be the responsibility of Upper Bern Township.
- (g) The Upper Bern Township Engineer shall have the right, but not the duty, to obtain three (3) samples of the sewage sludge that is to be applied within the permit area. The sampling may occur at any of the periodic inspections that are conducted by the Upper Bern Township Engineer. All of these samples may be submitted to a certified laboratory for a complete analysis of the sewage sludge that is being applied within the permit area.
- (h) At the request of the Upper Bern Township Engineer, the applicant shall be notified that a split sample of the sewage sludge shall be conducted for soils analysis by a certified laboratory to be selected by the Upper Bern Township Engineer. The parameters of the soils analysis shall be determined by the Upper Bern Township Engineer. The cost of the laboratory analysis and certification shall be the responsibility of the applicant.
- (i) In lieu of conducting a comprehensive soils analysis on certain parameters during the split sample, the applicant shall supply the Upper Bern Township Engineer with certified laboratory results of the sewage sludge from the source in which it originated.
- (j) All laboratory results must be tested and issued by a laboratory recognized as certified by the PA DEP.
- (k) The applicant shall conduct weekly inspections of the permit area to insure that the site is secured, marked and within the limits of the criteria specified in the permit issued by the PA DEP.
- (l) Unless otherwise permitted by the PA DEP, the application of sewage sludge for agricultural utilization and/or land reclamation is prohibited in the following areas:
 - (1) Within 100 feet of an intermittent or perennial stream

- (2) Within 300 feet of a water source, unless approved in writing by the PA DEP
 - (3) Within 1,000 feet upgradient of a surface water source, unless approved in writing by the PA DEP
 - (4) Within 25 feet of any bedrock outcropping
 - (5) Within 50 feet of a property line within which the sludge is applied, unless approved in writing by the PA DEP
 - (6) Within 100 feet of a sinkhole or of an area draining into a sinkhole
 - (7) Within 25 feet of the perimeter of an undrained depression
 - (8) In or within 100 feet of an exceptional value stream or wetland (as defined in 25 Pa.Code Section 105.17 (relating to wetlands)).
- (m) The temporary storage of sewage sludge within the permit area is acceptable provided it is stabilized, stored in a manner which is consistent with the applicant's/operator's permit, and does not create noxious or offensive odors or constitute a breeding ground for insects and other pests to any adjacent property owners.
- (n) Unless otherwise permitted by the PA DEP, the application of sewage sludge for agricultural utilization and/or land reclamation shall be limited to the following provisions:
- (1) No sewage sludge may be applied to land where the regional groundwater table is less than 4 feet from the surface.
 - (2) No sewage sludge may be disposed or applied so as to adversely affect the food chain, cause odors, or allow vectors.
 - (3) No sewage sludge may be disposed or applied so as to cause noxious or offensive odors to any adjacent property owners.
 - (4) Prior to land application, sewage sludge shall be stabilized according to methods approved by the PA DEP.
 - (5) Sewage sludge may not be applied to land:

- a) where root vegetables or vegetables that are eaten raw are grown or will be grown within two (2) years; and/or,
 - b) where tobacco is grown or will be grown.
- (6) Sewage sludge shall be applied and/or injected into the soil surface or incorporated in a manner that prevents ponding or standing accumulations of liquid or sludge.
- (7) Sewage sludge may not be applied with spray irrigation equipment and shall not contaminate the aquifer.
- (8) Livestock may not be allowed to graze within the permit area for a least two (2) months after the application.
- (o) The applicant must comply with all requirements set forth in applicable statutes, ordinances, and regulations of the EPA and the PA DEP, including, but not limited to, those set forth in 25 Pa.Code Section 275.205 (relating to erosion control), and those requirements specified on the Erosion and Sedimentation Control Plan approved by the PA DEP.
- (p) The applicant must comply with all requirements specified on the Nutrient Management Plan approved by the PA DEP.
- (q) The applicant shall not cause or allow a point or non-point source of discharge of pollution from the permit area to the surface waters of the Commonwealth of Pennsylvania.
- (r) The applicant shall be responsible for preventing and controlling groundwater or surface water pollution. The applicant shall maintain all safeguards required by the PA DEP until the sludge application has concluded. If applicable, the applicant shall comply with all criteria specified in the NPDES Permit.
- (s) The applicant shall submit all required chemical analysis to the PA DEP and Upper Bern Township.
- (t) The permit area shall be clearly marked and visible during the entire duration of the sewage sludge application and as specified by the PA DEP. The access road to the permit area shall be open, accessible and in mud-free condition during operation.

- (u) Daily operational records shall be maintained by the applicant in accordance with the criteria specified by the PA DEP. The records shall be submitted to Upper Bern Township each week of operation.
- (v) The application of sewage sludge shall only be permitted within Upper Bern Township if all conditions associated with the soil, geology, hydrogeology, topography and hydrology are within the parameters specified by the PA DEP.
- (w) Sewage sludge which is applied to the surface of the land shall be incorporated into the soil within 24 hours after it is applied.
- (x) Unless otherwise specified within the permit issued by the PA DEP, sewage sludge may not be applied when the ground is frozen, covered with snow or saturated during periods of precipitation.
- (y) If required by the PA DEP, the applicant shall conduct groundwater monitoring and soil-pore water monitoring. All records compiled by the applicant shall be submitted to Upper Bern Township.
- (z) The applicant shall sample a minimum of one (1) background existing well prior to the application of the sewage sludge within a permit area. The well(s) should be preferably located in an area which could become impacted or down-gradient from the permit area. The well(s) should be sampled for nitrates, total coliform, fecal coliform and any other parameters requested by the Upper Bern Township Engineer.

SECTION 4 - ENFORCEMENT

In addition to enforcement by the PA DEP under the Act, 35 P.S. Section 6018.101, et seq., and under regulations of the PA DEP, as set forth at 25 Pa.Code 271.901- 271.933, and 25 Pa.Code 275.201- 275.418, the terms of which are hereby incorporated by reference as though the same were set forth herein at length, Upper Bern Township shall have the right to issue a stop order on the applicant for any and all violations of applicant's permit, and shall have the right to prosecute, at law or in equity, in any court of competent jurisdiction, criminally or civilly, to abate pollution forbidden under the Act, or to abate nuisances, or to enforce common law or statutory rights, all as set forth in Section 607 of the Act, 35 P.S. Section 6018.607. Any Person who violates or permits the violation of this Ordinance shall, upon being found liable therefor in an enforcement proceeding commenced by the Township, pay a fine prescribed by the Township, not exceeding \$1,000.00, plus all court costs, including reasonable attorneys fees incurred by the Township. Each and every day during which a violation of this Ordinance shall occur may constitute a separate violation.

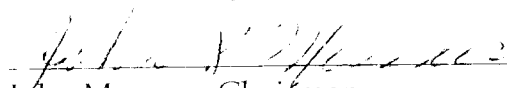
SECTION 5 - SEVERABILITY

The terms and provisions of this Ordinance shall be independent and severable and in the event that any such term, provision, or section hereof is determined to be illegal or invalid by any court of competent jurisdiction, the balance and remainder of said Ordinance shall remain in full force and effect it being the desire of the Upper Bern Township Board of Supervisors that the remaining terms, conditions, and sections shall remain in full force and effect.

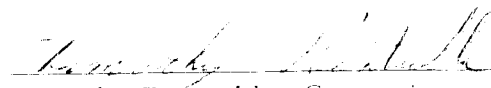
SECTION 6 - EFFECTIVE DATE

This Ordinance shall take effect on the earliest date permitted by law.

ENACTED AND ORDAINED BY THE UPPER BERN TOWNSHIP BOARD OF SUPERVISORS ON THIS 3 DAY OF May, 2000.



John Messner, Chairman



Timothy Rentschler, Supervisor



Paul Mogel, Supervisor

Attest:



Autumn Kauffman, Township Secretary (SEAL)