

Willig, Robert A.

From: [REDACTED]
Sent: Thursday, February 22, 2018 10:13 PM
To: ACRE Shared Mailbox
Subject: East Penn Twp, Carbon County Biosolids Ordinance

Mr. Willig,

I have attached for your review ordinance 77 from East Penn Township in Carbon County. The chairman of the board of supervisors, [REDACTED] has called a special public meeting for March 1 to discuss this ordinance and the application by Synagro to DEP to apply Class B biosolids on the farm owned and operated by [REDACTED] and [REDACTED]. My husband [REDACTED] and I also live on the farm and help operate it where we raise beef cattle and feed. Through a Facebook posting by a township staff person under East Penn's account it was admitted that the majority of the supervisors are against the application and intend to vote to enforce this ordinance.

I am kindly asking if you might give the ordinance a preliminary review for legality and enforcability. The chair is well aware that DEP is the controlling entity in these situations but has chosen a campaign of propoganda and fear mongering with our neighbors, including using the East Penn Township Facebook page to contact neighboring municipalities to scare us out of applying.

For full disclosure, my mother in law [REDACTED] is a township supervisors and a part time employee of the township and I am the External Affairs Director for DEP, but I have signed a full recusal related to the DEP review of the permit. I also previously interned in the AG's office in the ACRE program under Susan Bucknum so my unqualified opinion of the ordinance did not give it a favorable chance of surviving a challenge, but I wanted to ask if you might be willing to render an informal opinion or possibly contact the township solicitor to explain its short comings.

I would love to talk to you if you are available. My phone number is [REDACTED] and my email is [REDACTED]

Thank you for your consideration,
[REDACTED]

Sent from my Verizon, Samsung Galaxy smartphone

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Summary of East Penn Township Ordinance No. 77

- P. 41 • The purpose of the Ordinance is to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of waste within the Commonwealth.
- P. 13 • A registration Certificate, which is reviewed and approved by the Township Supervisors, is required.
- P. 14 • The application filed with the State, including all supporting documentation, and ongoing correspondence, must be provided to the Township.
- P. 14 • Registration Certificates are only attainable by municipalities or municipal authorities, unless an exemption is granted.
- P. 14 • The Board of Supervisors are the issuing authority for both Registration Certificates and Petitions for Exemption.
- P. 15 • A 500-foot buffer exists between any waste activity and habitable buildings.
- P. 15 • Public notice of the proposed activity and application for a Registration Certificate is required to be published in a local newspaper.
- P. 15 • Objectors to the application must notify the BOS in writing.
- P. 16 • BOS may hold a hearing on the matter.
- P. 18 • Applicant shall be responsible to ensure their proposed activity will not affect any public water supply.
- P. 18 • A public water supply is defined as a supply serving ten (10) or more households. Are there any public water supplies in the vicinity?
Requirements, which are dependent on the water supplies' location, vary depending if they are ground-source or surface-source water supplies.
- P. 18 • If the project has a potential impact on a private water supply within 2,500-feet of the project boundary, the applicant must demonstrate that the activity proposed will not adversely affect the private water supply. **This matter must be addressed at a public hearing.**
- P. 18 • If a private water supply greater than 2,500 feet from the project boundary is in question, the owner or user of that water supply shall bear the burden of demonstrating that the project will affect their water supply.
- P. 19 • In lieu of the above proof, evidence, or demonstrations, an applicant may still qualify for a Registration Certificate by entering into a hold harmless agreement with the Township

Summary of East Penn Township Ordinance No. 77

which provides protections for-, replacement of-, and/or treatment of an affected water supply. This agreement provides for detailed financial securities to be posted.

- P. 23
- The duration of the above-mentioned security shall be:
 - Ten years after closure of the facility.
 - Until no leachate is produced which is of lesser quality than the natural water was prior to construction of the project.
- P. 23
- The Ordinance makes clear that, in the absence of other clear, precise, and convincing evidence, any deterioration or degradation in the quality or quantity of a public water supply (as compared to the quality or quantity of water prior to operation of the facility) shall be attributable to the facility. In this instance, the facility shall provide a substitute water supply and appropriate remedial action.
- P. 24
- If the project is required to provide monitoring wells, they shall be used, in part, to determine degradation of water quality and/or quantity, if possible.
- P. 25
- The applicant must provide evidence that the proposed facility will not create or contribute to the following problems:
 - Rodents
 - Odors
 - Mosquitoes
 - Other similar problems which could affect the health, safety, and welfare of the citizens of East Penn Township
- P. 25
- The application shall provide: Chemical, physical, and biological characteristics of the waste and identify the source of the waste.
- P. 25
- The application shall include the methods of transportation and potential dangers resulting from a motor vehicle accident with a waste hauling vehicle, as well as steps that must be immediately taken in the event of an accident to protect the welfare and safety of the citizens.
- P. 26
- The applicant must have a qualified individual available 24-hours a day in the event of an emergency or accident. The Supervisors shall also appoint an individual as an emergency contact.
- P. 26
- No trucks hauling waste to or from the facility may pass within 900-feet of any existing public or private school within East Penn Township.
- P. 27
- Transportation routes must be specified in the application. Use of Township roads, including crossing a Township road, by waste hauling vehicles to or from the site, whether loaded or empty, is prohibited, except with express permission of the BOS. Bonds, wheelage, or other assurances for maintenance and improvements may be required. Provisions are made for emergency situations.

Summary of East Penn Township Ordinance No. 77

- P. 28 • The applicant shall require any haulers to the site to maintain appropriate insurances on all vehicles. Details regarding coverage amounts are provided.
- P. 29 • Restrictions on hours for waste acceptance are provided.
- P. 30 • The Township may appoint two (2) inspectors who shall be entitled to be present at the facility at all times when any activity or operations are occurring.
- P. 30 • Additional requirements are set forth for hazardous waste facilities in Section VII of the Ordinance.
- P. 32 • The Township's Registration Certificate may be revoked for the reasons set forth on page 32 of the Ordinance – namely "environmental violations", as more clearly defined therein.
- P. 32 • The applicant must notify the Township immediately of any "environmental violation" as defined therein.
- P. 33 • The BOS may attach additional terms and conditions to the issuance of a Registration Certificate, provided those terms and conditions relate to the matters covered by the Ordinance.
- P. 38 • Violations are provided for beginning in Section XII.
 - The Supervisors or their agents are given the right to inspect any property, buildings and vehicles, and to take samples to determine compliance with the terms of the Ordinance.
- P. 40 • Applicant must provide a report to the Township annually listing the characteristics and sources of the waste received and providing updated emergency management information.
- P. 40 • Applicant must maintain all records, including weigh tickets, invoices or manifests required to determine the amount, type, and weight of materials deposited or processed at the facility. These records shall be subject to inspection by the Township.
- P. 41 • The Township may participate to the maximum extent provided for by law in the State permitting process.
- P. 42 • An application for a Registration Certificate shall pay a fee of \$100. The applicant shall also be responsible for reimbursing the Township any specific expenses incurred in evaluating and processing the application, including, but not limited to advertising, engineering fees, and duplicating expenses.

Willig, Robert A.

From: [REDACTED]
Sent: Thursday, March 1, 2018 10:38 PM
To: ACRE Shared Mailbox
Subject: RE: East Penn Twp, Carbon County Biosolids Ordinance
Attachments: East Penn Township biosolids public comment 3.1.18.docx

Mr. Willig,

This evening the East Penn Township Supervisors held a public meeting to discuss our biosolids application with Synagro to DEP. They gave several members of the community the chance to voice their concerns and then allowed my husband [REDACTED] from Synagro, our crop consultant [REDACTED], and finally me the chance to have 3 minutes each to address the board. I have attached the written comment I submitted and read before the board that outlined the information that you gave me and my encouragement to seek your guidance in writing a more appropriate ordinance. The Chair, [REDACTED], also accosted me about my position at the department. I chastised him for publicly questioning my ethics and provided a copy of my recusal memo witnessed by our chief counsel and Secretary.

Following the public comment period, the township had a presentation from an associate from Hanover Engineering that they authorized to study biosolids, our DEP application, and an application they are requesting we submit in accordance with Ordinance 77. They also had a presentation from the solicitor who bumbled through the applicable law but who has been in contact with the Center for Environmental Legal Defense Fund and recommended that they be brought on to assist the township in suing us individually and mounting an Article I Section 27 case against biosolids as a whole. The chair and the solicitor directly encouraged the public to sue us personally and said CEDLF will help them organize against us.

So, as I predicted would be the case, I am formally requesting that the Attorney General's Office review Ordinance 77 and please consider engaging East Penn Township on our behalf. Do we need to send you a formal engagement letter or will this correspondence suffice? I'd be happy to send you any information you might need or want to assist with your review. The township intends to hold another public meeting on March 29 to get a report from the engineering firm and CEDLF.

Thanks you again for your assistance,
Katie Hetherington Cunfer

On Tue, 2/27/18, ACRE Shared Mailbox <acre@attorneygeneral.gov> wrote:

Subject: RE: East Penn Twp, Carbon County Biosolids Ordinance
To: "'ktpsufotball'" <ktpsufotball@yahoo.com>
Date: Tuesday, February 27, 2018, 9:06 AM

I'm glad the material was helpful. I'm hoping it would be. If things don't work out with the Township let me know.

East Penn Township Supervisor's Public Meeting

Public Comment: [REDACTED]

March 1, 2018

Good evening Township Board members and members of the audience. My name is [REDACTED] and I am a farmer, operating [REDACTED] with my husband [REDACTED] and his parents. I am here tonight to talk to you about the Right to Farm Act and the Agriculture, Communities and Rural Environment (ACRE) Program. In my capacity as a farmer, I have been in contact with Senior Deputy Attorney General Robert Willig, Coordinator of the Pennsylvania Attorney General's ACRE Program concerning East Penn Township's Ordinance 77 and requested they review the ordinance. He did not conduct a formal review so as not to violate the Commonwealth Attorney's Act, but he did provide several items that I have provided to you this evening that he hopes you will read thoroughly.

The first is a copy of the East Brunswick Township Case where the Commonwealth Court struck down a majority of the biosolids ordinance which parallels Ordinance 77. The Court found the ordinance in violation of the Solid Waste Management Act and the Nutrient Management Act in several capacities and held that the township lacks the authority to enact or enforce ordinances that are duplicative or more restrictive than state laws or regulations.

The second is a copy of the engagement letter from the Attorney General's Office that outlined where they found the ordinance to have run afoul with state law and their planned argument. They did offer the township 30 days to remedy the illegal provisions of the ordinance before going to court.

The third and fourth are copies of the agreement by East Brunswick Township and the ordinance that they used to repeal and replace the illegal ordinance. Please note the new ordinance does allow the township some authority including the ability to conduct an annual inspection and an annual biosolids sampling provided the farmer and operator are given 72 hours' notice and the sampling must be conducted by an adequately certified individual who can collect samples in accordance with the Department of Environmental Protection (DEP) sampling protocols and sends the tests to a DEP accredited lab. All costs of these inspections and tests are to be borne by the township alone.

The final item is a copy of the expert testimony from Dr. Herschel Elliott, Professor of Agricultural and Biological Engineering at Penn State who explained what biosolids actually are, the history and safety of the process, the promotion of the practice by both our land grant institution and Non-Governmental Organization (NGOs) as a beneficial recycling and conservation program, and the role of state and federal regulators in the process.

It is my hope that you will review the documents provided to you from the Attorney General's Office and seek a remedy that allows the township to retain a level of authority but does not attempt to usurp state law and place an unnecessary burden on the tax payers of the township when the defense of Ordinance 77 will cost \$50,000-\$100,000. The Attorney General's

Office would be happy to work with you in crafting a new ordinance that complies with state law at no cost to the township.

Respectfully Submitted,

A large black rectangular redaction box covering the signature and name of the sender.

Willig, Robert A.

From: [REDACTED]
Sent: Monday, February 26, 2018 11:22 AM
To: ACRE Shared Mailbox
Subject: RE: East Penn Twp, Carbon County Biosolids Ordinance

Mr. Willig,

This is extremely helpful. I was in the office when this case was decided (which is why this approach from the township boggles my mind) and we have been in contact with Mr. Hill to attend the meeting on Thursday. This information will be very beneficial in attempting to inform the township on the applicable case law. It is my hope that the township supervisors will see reason and understand how beneficial this program really is, but if they choose a different route on Thursday I will be in touch.

Thanks again,
[REDACTED]

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: ACRE Shared Mailbox <acre@attorneygeneral.gov>
Date: 2/26/18 10:49 AM (GMT-05:00)
To: [REDACTED]
Subject: RE: East Penn Twp, Carbon County Biosolids Ordinance

Dear [REDACTED]

Thank you for your inquiry. You ask that I conduct an informal legal review and render an opinion as to the legality and enforceability of a biosolids ordinance. Under the Commonwealth Attorneys Act, I am unable to render an opinion or give legal advice under these circumstances. What I can do, however, is give you information on a previous biosolids case out of East Brunswick Township that we had in our Office and that Susan Bucknum so expertly handled. Attached for your review are five things: 1) a letter from the OAG to the Township explaining the defects in its original biosolids ordinance; 2) the Commonwealth Court's written opinion concerning the lawsuit that the OAG brought against the Township; 3) the ordinance that the Township enacted in response to the lawsuit; 3) an expert opinion from a PSU biosolids expert; and 5) a model biosolids ordinance. Hopefully these resources will answers any questions that you may have. Please feel free to reach out if I can assist in any other way.

Sincerely,

Robert A. Willig

Senior Deputy Attorney General