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EAST PENN TOWNSHIP
CARBON COUNTY
ORDINANCE NO...77...

AN ORDINANCE OF THE TOWNSHIP OF EAST PENN, CARBON COUNTY, PENNSYLVANIA; ESTABLISHING PROCEDURES AND FIXING REQUIREMENTS AND REGULATIONS AND STANDARDS GOVERNING THE COLLECTION, TRANSPORTATION, PROCESSING, GENERATION, TREATMENT AND DISPOSAL OF SOLID WASTE, HAZARDOUS WASTE, RESIDUAL WASTE, CONTAMINATED SOIL, HOSPITAL WASTE, INFECTIOUS AND CHEMOTHERAPEUTIC WASTE, MUNICIPAL WASTE, SPECIAL HANDLING WASTE, SLUDGE AND OTHER MATERIALS RELATED THERETO WITHIN THE TOWNSHIP OF EAST PENN.

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WHEREAS, this Township, as a township of the second class, is governed by the Second Class Township Code of the Commonwealth of Pennsylvania, Act of May 1, 1933, P.L. 103, as amended, 53 P.S. § 65101 et seq.; and,

WHEREAS, pursuant to the provisions of said Code as amended, the Township has the following powers and duties among others:

A. "To regulate or prohibit the dumping or otherwise depositing of ashes, garbage, rubbish and other refuse materials within the township. To prohibit accumulations of ashes, garbage, rubbish and other refuse materials upon private property...." 53 P.S., § 65708.

B. "To prohibit nuisances, including but not limited to, accumulations of garbage and rubbish, and the storage of abandoned or junked automobiles, on private and public property, and the carrying on of any offensive manufacture or business...." 53 P.S., § 65712.

C. "To make such regulations, by ordinance, not inconsistent with State laws and regulations, as may be necessary for the promotion of the health, cleanliness, comfort and safety of the citizens of the township." 53 P.S., § 65729.

D. To regulate drains, sewers and drainage systems itself or with others as provided for in 53 P.S., § 65727 and § 65730.

E. To be concerned with and involved in the supply of water for public and private uses in the township as provided for in 53 P.S., § 65731.

F. "To take all needful means for securing the safety of persons or property within the township....." 53 P.S., § 65747.

G. "In order to promote the public health, safety, morals, and the general welfare, to enact and enforce suitable ordinances to govern and regulate the construction, alteration, repairs, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing or parts of buildings and housing constructed, erected, altered, designed, or used in whole or in part for human habitation, and of the sanitation and inspection of land appurtenant thereto...." 53 P.S., § 65751.

H. To make and adopt all such ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth as may be deemed expedient or necessary for the proper management, care and control of the township and its finances and the maintenance of peace, good government and welfare of the township and its trade, commerce and manufactures....." 53 P.S., § 65762. and,

WHEREAS, the Supreme Court of the Commonwealth of Pennsylvania has recognized that the boundaries of a township "encompass a certain natural existence--land, water, air, etc. collectively referred to as environment. Whatever affects the natural environment within the borders of a township or county affects the very township or county itself." Franklin township v. Commonwealth of Pennsylvania Department of Environmental Resources, 499 Pa. 162, 167, reprinted at 500 Pa. 1, 6, reprinted at 452 A. 2d 718, 720 (1982); and,

WHEREAS, the Supreme Court of this Commonwealth in said case has also recognized that: "Aesthetic and environmental well-being are important aspects of the quality of life in our society, and a key role of local government is to promote and protect life's quality for all of its inhabitants.", supra; and

WHEREAS, in the event of an environmental emergency, the local municipality would be the first line of containment and defense; and,

WHEREAS, Article I, Section 27, of the Constitution of the Commonwealth of Pennsylvania provides in part: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment."; and,

WHEREAS, townships have certain powers to adopt ordinances, regulations and standards for the storage, collection, treatment and disposal of municipal wastes under the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and particularly § 4000.304 (b) and under the provisions of the Solid Waste Management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S., § 6018.101, et seq., and particularly § 6018.202; for the storage, collection, treatment and disposal of infectious and chemotherapeutic waste under the provisions of the Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; for the disposal of hazardous waste pursuant to the provisions of the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18,

1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and for the storage, collection, treatment and disposal of solid waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, sludge and other materials related thereto pursuant to the provisions of the Air Pollution Control Act of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) no. 2119, as amended, 35 P.S. § 4001 et seq., and,

WHEREAS, said Acts provide various Statewide regulations concerning solid waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, sludge and other materials related thereto which is defined to include but not limited to municipal, residual or hazardous wastes, including solid, liquid, semisolid, or gaseous materials; and,

WHEREAS, the Solid Waste Management Act, in Section 607 thereof, 35 P.S., § 6018.607, declares the legislative intention of the General Assembly of the Commonwealth of Pennsylvania that one of the purposes of said Solid Waste Management Act is "to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of solid waste within this Commonwealth" and,

WHEREAS, said section of said Act further states that nothing contained in the Act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law; and,

WHEREAS, said section of said statute provides that said Act shall not be construed as estopping any municipality from enforcing any common law or statutory rights; and,

WHEREAS, the Municipal Waste Planning, Recycling and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and the solid waste management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S., § 6018.101, et seq., and the provisions of the Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; and the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and the Air Pollution Control Act

of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) No. 2119, as amended, 35 P.S. § 4001 et seq., establish Statewide regulation of the collection, storage, transportation, processing, treatment, and disposal of waste within the Commonwealth, which regulation does not, however, cover all matters and things which the Supervisors of this Township believe should be covered to adequately protect the health, safety and welfare of its people; and,

WHEREAS, the Township is concerned that there are matters and things relating to the collection, storage, transportation, processing, treatment, and disposal of waste not covered or encompassed by said Acts; and,

WHEREAS, the Township, by virtue of the authority aforementioned, has various powers of regulation also as aforementioned, which it may exercise provided its exercise of the same shall not be inconsistent with the aforementioned legislative enactment of the Commonwealth of Pennsylvania relating to the aforementioned Acts nor inconsistent with the Rules and Regulations promulgated by the Department of Environmental Resources, the Environmental Quality Board or any other regulatory agency of this Commonwealth; and,

WHEREAS, the Township, pursuant to the aforementioned rights and all other rights that it has by virtue of the aforementioned Second Class Township Code and the common law and statutory law of this Commonwealth, desires to exercise all of its powers to the maximum extent legally available in the promotion of the health, cleanliness, comfort, safety, and welfare of the citizens of the Township; and,

WHEREAS, the collection, storage, transportation, processing, generation, treatment and disposal of solid waste, hazardous waste, municipal waste, residual waste, infectious and chemotherapeutic waste, sludge and other materials related thereto as those terms are defined in the aforementioned legislative enactments, presents dangers to and adversely affects the health, safety, and welfare of the citizens of the Township in the following and other respects: By polluting or causing a danger of pollution of water supplies; by creating conditions that may

discourage recreational use of land and resources of the Township; thereby adversely affecting the economy of the Township; by destroying or threatening to destroy the present natural state of land and resources of the Township; which land and resources are assets to the economy and the welfare of the Township and its inhabitants and are irreplaceable; by polluting and threatening a danger of polluting land, water and air, thereby adversely affecting the health and welfare of the citizens of the Township; by creating or threatening to create a deleterious effect on the environment in which Township residents live; by causing worry and concern to the citizens of the Township; by destroying the present way of life of the citizens of the Township by raising various matters of intense public and private concern thereby causing harm to the health and welfare of both the minds and bodies of the citizens of the Township; and,

WHEREAS, the Township desires to promote continued operational stability of any waste management activity contemplated within its borders; and,

WHEREAS, the Township desires to create a buffer zone between the waste management activities and habitable buildings so as to minimize the environmental intrusion on the citizens of the Township by the activity; and,

WHEREAS, use of the public roads in the Township by trucks hauling the aforementioned waste presents a likelihood of spillage, leakage, damage due to the weight of said vehicles and accidents which would present a danger to and cause harm to the citizens of the Township and the environment of the Township as well as increased damage to said roads because of the weight and number of trucks; and,

WHEREAS, past experiences in the Township with the actions of the Commonwealth of Pennsylvania's Department of Environmental Resources in looking out for and protecting the interest of the citizens of the Township has indicated that the Township and its citizens cannot rely solely upon the Department of Environmental Resources of the Commonwealth of Pennsylvania but rather must rely also on its own powers in regulating matters relating to waste in addition to and not inconsistent with the

regulations provided on a Statewide basis by the aforementioned legislative enactments; the Department of Environmental Resources; the Environmental Quality Board and other regulatory agencies; and,

WHEREAS, the Township has determined that to prevent nuisances and to exercise all of its statutory and common law powers for the protection of the public health, safety, economy and welfare, it is advisable to adopt this ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of East Penn Township, Carbon County, Pennsylvania, as follows:

SECTION I

Definitions

The following definitions shall apply in the interpretation and enforcement of this ordinance:

1. "Board of Supervisors" or "Supervisors" shall mean the duly qualified and acting Supervisors of this Township.

2. "Chemotherapeutic waste" shall mean waste resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells. Chemotherapeutic waste does not include waste containing antineoplastic agents that are listed as hazardous waste under § 75.261 (relating to criteria, identification and listing of hazardous waste).

3. "Facility" shall mean any establishment, plant, operation or activity which shall be involved in the storage, collection, generation, treatment, transfer or disposal of solid waste, hazardous waste, residual waste, municipal waste, infectious and chemotherapeutic waste, waste, sludge or any other materials related thereto.

4. "Hazardous waste" shall mean any waste defined as hazardous under the Act of July 7, 1980, P.L. 380, No. 97, known as the Solid Waste Management Act, and any regulations promulgated under that Act.

5. "Infectious waste" shall mean municipal waste which, unless processed, disposed, stored, collected or transported in

accordance with this article, is or may be contaminated by a disease-producing microorganism, or material, or may harm or threaten human health. The term includes the following wastes unless they are generated by individual residences:

- (i) Wastes generated by hospitalized patients who are isolated, or on blood and body fluid precautions, in order to protect others from their severe and communicable disease.
- (ii) Cultures and stocks of etiologic agents.
- (iii) Animal waste blood products which are known or are suspected to contain contagious zoonotic pathogens, and human waste blood and blood products.
- (iv) Tissues, organs, body parts, blood and fluids that are removed during surgery and autopsy.
- (v) Wastes generated by surgery or autopsy of septic cases or patients with infectious diseases.
- (vi) Wastes that were in contact with pathogens in any type of laboratory work, including collection containers, culture dishes, slides, plates and assemblies for diagnostic tests; and devices used to transfer, inoculate and mix cultures.
- (vii) Sharps.
- (viii) Wastes that were in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers.
- (ix) Carcasses and body parts of animals exposed to contagious zoonotic pathogens.
- (x) Animal bedding and other wastes that were in contact with animals suffering from contagious zoonotic diseases due to natural infection or laboratory research, and their excretions, secretions, carcasses or body

parts.

(xi) Waste biologicals - for example, vaccines - produced by pharmaceutical companies for human or veterinary use.

(xii) Food and other products that are discarded because of contamination with etiologic agents.

(xiii) Equipment and equipment parts contaminated with etiologic agents.

6. "Municipal waste" shall mean any garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material, hydrocarbon contaminated soil, petroleum contaminated soil, resulting from operation of residential, municipal, commercial or institutional establishments and from community activities and any sludge not meeting the definition of residual or hazardous waste in the Solid Waste Management Act from a municipal, commercial, or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility. The term does not include source-separated recyclable materials.

7. "Person" shall mean and include any individual, or individuals, firm, corporation, partnership, association, or other organization or entity, including a municipality.

8. "Residual waste" shall mean any garbage, refuse, other discarded material or other waste, including solid, liquid, semisolid or contained gaseous materials, hydrocarbon contaminated soil, petroleum contaminated soil, still bottoms, resulting from industrial, mining and agriculture operations and any sludge from industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility, provided that it is not hazardous. The term shall not include coal refuse as defined in the act of September 24, 1968 (P.L. 1040, No. 318), known as the Coal Refuse Disposal Control Act. The term shall not include treatment sludge from coal mine drainage treatment plants, disposal of which is being carried on pursuant to and in compliance with a valid permit issued pursuant to the Act of June

22, 1937, P.L. 1987, No. 394, known as The Clean Streams Law.

9. "Roads" shall mean all roads maintained by either the Commonwealth or the Township or any public entity for the purpose of vehicular travel within the geographical limits of the Township.

10. "Sludge" shall mean any material meeting the definition of residual or hazardous waste in the Solid Waste Management Act from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.

11. "Solid waste" shall mean solid waste, as defined in the Act of July 7, 1980, P.L. 380, No. 97, known as the Solid Waste Management Act.

12. "Special handling waste" shall mean municipal waste that requires the application of special storage, collection, transportation, processing or disposal techniques due to the quantity of material generated or its unique physical, chemical, or biological characteristics. The term includes sewage sludge, infectious waste, chemotherapeutic waste and ash residue from a municipal waste incineration facility.

13. "Township" shall mean the Township of East Penn, Carbon County, Pennsylvania.

14. "Township roads" shall mean those roads within the Township over which the Township exercises jurisdiction and as to which the Township has the responsibility for maintenance.

15. "Waste" shall mean but shall not be limited to that waste previously defined as solid waste, municipal waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, hydrocarbon contaminated soil, petroleum contaminated soil, special handling waste, sludge and other materials related thereto and shall include all of the above regardless of whether they are generated onsite or offsite.

16. Except as herein otherwise specifically indicated, use of the terms in the WHEREAS clauses hereof or in the body of this Ordinance of "abatement"; "agricultural waste"; "captive facilities"; "coal ash"; "commercial establishment"; "disposal", "drill cuttings"; "food processing waste"; "industrial establishment"; "management"; "manifest system"; "mining"; "municipality";

"person"; "pollution"; "processing"; "storage"; "transportation"; and "treatment" shall have the same meanings as those terms have under the provisions of the Municipal Waste Planning, Recycling, and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and under the provisions of the Solid Waste Management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S., §6018.101, et seq., and under the provisions for the storage, collection, treatment and disposal of infectious and chemotherapeutic waste under the provisions of the Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; and under the provisions for the storage, collection, treatment and disposal of hazardous waste pursuant to the provisions of the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and under the provisions for the storage, collection, treatment and disposal of solid waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, sludge and other materials related thereto pursuant to the provisions of the Air Pollution Control Act of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) No. 2119, as amended, 35 P.S. § 4001 et seq.

SECTION II

Certain Conduct Prohibited

The collection, storage, transportation, processing, treatment, and disposal of waste within the Township is hereby declared to be a public nuisance and unlawful, except

(1) when such collection, storage, generation, transportation, processing, treatment, and disposal of waste is conducted in accordance with all applicable laws of the Commonwealth of Pennsylvania, including but not limited to the Municipal Waste Planning, Recycling and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and the Solid Waste Management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S., § 6018.101 et seq., and the provisions of the Act of July 13, 1988,

P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; and the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and the Air Pollution Control Act of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) No. 2119, as amended, 35 P.S. § 4001 et seq., and in full compliance therewith and with all rules and regulations thereunder and all permits issued thereunder, and in accordance with and in full compliance with the terms and provisions of this ordinance and all requirements of this or any other proper authority, or

(2) except as has heretofore been provided for or may hereafter be provided for by this Township with respect to the collection, storage, transportation, processing, treatment or disposal of waste originating within this Township.

SECTION III

Registration

1. No person shall engage in any conduct requiring a permit from the Commonwealth of Pennsylvania under the Municipal Waste Planning, Recycling and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and the Solid Waste Management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S. § 6018.101, et seq., and the Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; and the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and the Air Pollution Control Act of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) No. 2119, as amended, 35 P.S. § 4001 et seq., within the corporate limits of this Township without first obtaining the requisite permit from the Commonwealth and registering with the Township, pursuant to this ordinance, and obtaining a registration certificate from the Township. If, at the time this ordinance becomes effective, a person already has a permit from the Commonwealth of Pennsylvania, then that person shall have a period

not greater than three (3) months within which to obtain a registration certificate from the Township in accordance with this ordinance and may operate without registration during that period. If such a person is proceeding with due diligence to obtain a registration certificate from the Township, the Township Supervisors may, by motion, for good cause shown, extend the time during which the person may operate without a registration certificate.

2. A registration certificate shall be applied for by any person seeking a permit from the Commonwealth simultaneously with the filing of said permit application with the Commonwealth by filing a true, complete and correct copy of the State application with the Supervisors of the Township. If a person already holds a permit from the Commonwealth, or has already filed an application, a true, complete and correct copy thereof shall be filed forthwith upon the effective date of this ordinance.

Registration certificates shall only be obtainable by persons who are municipalities or municipal authorities, except by the grant of a petition for any exemption which shall be filed concurrently with the application for registration certificate and shall include such documentation to demonstrate such financial and other resources so as to provide economic and other stability with respect to the waste management activity.

The Township Supervisors will evaluate the petition as well as the application for a certificate in light of the goal to achieve continued operational stability and financial stability of the applicant to satisfy all obligations under this ordinance and the prevention of abatement of a public nuisance that may be created by the waste facility.

3. All applicants for a registration certificate and all persons who hold a registration certificate shall submit to the Township true, complete and correct copies of all materials submitted to the Commonwealth of Pennsylvania, in connection with the project or facility for which a registration certificate is sought, including but not limited to applications, supporting papers, documents, maps, test results, statements and responses to inquiries by the Commonwealth. Such material shall be submitted simultaneously with its submission to the Commonwealth or, if

already submitted to the Commonwealth, promptly upon effective date of this ordinance. Any information which is designated as "confidential" and is permitted to be so designated by the Commonwealth, shall be disclosed only to the Supervisors, engineers, solicitor or other professionals needing such information for purposes of enforcement of this ordinance or applicable law, and shall be disclosed by them only as necessary in the performance of their duties.

(a) Said application shall certify that no waste activity shall be undertaken within 500 feet of any habitable building with said distance being measured horizontally from the habitable building, unless the current owner of the dwelling has provided a written waiver consenting to the facility being closer than 500 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner. Waste management activity when used herein shall encompass a permitted or proposed area to be permitted by the Pennsylvania Department of Environmental Resources.

4. Every person applying for a registration certificate shall give public notice by advertisements one time in a newspaper of general circulation in Carbon County and in such other or substitute newspapers as the Supervisors of the Township may hereafter by motion designate, of their application for a registration certificate and of the type of permit obtained or being sought from the Commonwealth, the type of activity intended to be engaged in, the location thereof, and setting forth the complete name and address of the applicant, and also setting forth a location within the Township where any interested citizen may examine a copy of the application, and setting forth reasonable hours during which the same may be examined. Said notice shall specify that if any person has any objection to the granting of a registration certificate by the Supervisors of the Township pursuant to this ordinance, such

person should make known the same within thirty (30) days from the date of said advertisement, in writing, addressed to the East Penn Township Supervisors, c/o the secretary of the East Penn Township Board of Supervisors or at such other address or designation as the Township Supervisors may by motion hereafter fix. The Supervisors may accept comments or objections received after said 30-day period. In all respects the applicant must comply with the provisions of Title 25 Pa. Code Chapter 271, § 271.141-271.144 but compliance will not be limited to only those sections set forth above.

5. The Supervisors shall review the application and supporting data, together with any comments or objections received from citizens, and may, if they deem it appropriate in the exercise of their discretion, hold a public hearing on the application for a registration certificate. A registration certificate shall be issued if the applicant complies with all of the terms and conditions of this ordinance and makes appropriate provisions for future compliance with the terms and provisions of this ordinance, including the posting of such bonds, letters of credit or the like as may be required by the terms hereof. A registration certificate may be issued at any time but shall not be effective until applicant receives a permit from the Commonwealth. The Supervisors shall act on the request for registration within ninety (90) days of receipt of the application and supporting data and notification by the applicant that the Department of Environmental Resources has deemed the permit application to be administratively complete unless they notify the applicant that additional time is required (not to exceed an additional three (3) months), explain the reasons therefor and afford applicant an opportunity for a hearing on the question of need for additional time. The granting of a registration certificate shall not be deemed approval of the application permit from the Commonwealth.

6. If the Supervisors do not grant a registration certificate, they shall give notice of that decision to the applicant, in writing, stating the reasons why a registration certificate has been refused and the applicant shall be afforded an opportunity for a prompt hearing before the Supervisors at a public

meeting after which the Supervisors shall make a final decision. If a State permit has already been granted, then a hearing shall at least be offered within ten (10) days of the Supervisors' notice to the applicant that it will not approve registration and stating the reasons thereof and, unless waived by the applicant, the Supervisors shall make their decision within ten (10) days after the hearing. If this process takes place prior to the grant of the permit by the Commonwealth, the ten (10) day time limit shall not apply; instead the hearing shall be scheduled within thirty (30) days and the decision shall be rendered within thirty (30) days after the hearing.

7. If a hearing is held under paragraph 5 or 6 of this section, notice of same shall be given by regular mail or other appropriate means to any person who made written objection to the granting of registration within the Township under paragraph 4 of this section and those other persons who specifically requested notice of any hearing under paragraph 5 or 6 of this section. Notice shall be mailed at least three (3) days before the hearing. Public notice meeting the requirements of law for meetings of the Supervisors shall also be given. These provisions apply only to notice of a hearing held under paragraph 5 or 6 of this section. These provisions do not apply to other public hearings that may be held.

SECTION IV

A. Protection of Water Supplies

1. (a) The Supervisors hereby determine that the providing of safe, potable and aesthetically acceptable drinking water to houses, buildings, and dwellings of the Township is important to the health, safety and welfare of the residents of the Township.

(b) The Supervisors also determine that because of the mining activity in the Township and the lack of complete and comprehensive records thereof and because of the dangers of mining and the infiltration of water supplies through mining and because of the difficulties inherent in trying to trace water or water contamination underground, and because of changes in strata and water flow that may result from blasting in connection with mining

operations, any applicant for a registration certificate shall certify and bear the burden of proving by clear, precise, competent and convincing evidence that the applicant's proposed activity will not affect any public water supply, which, for purposes of this ordinance, shall be any water supply serving ten (10) or more households.

(c) If the proposed facility is to be located in any area higher in elevation than any public water supply and if said water supply (1) is ground-water dependent and is within three (3) miles of such facility; or, (2) is surface-water dependent and the proposed facility or parts thereof (measured by the boundaries of the area permitted or to be permitted by the Commonwealth) is within the watershed of said public water supply, then it shall be presumed that such facility could affect said water supply unless the applicant shall rebut said presumption by competent proof meeting the clear, precise, and convincing standard set forth above.

(d) If, at any hearing under paragraph 5 or 6 of Section III, the effect of the project on a private water supply (a private water supply for this purpose is one which is within 2,500 feet of the boundary of the project area to be permitted by the Commonwealth and which does not meet the foregoing definition of a public water supply) is at issue, applicant shall bear the burden of proving by preponderance of the evidence that the applicant's proposed activity will not adversely affect the private water supply.

(e) As to private water supplies as defined in (d) but not within the 2,500 foot area required by the definition in (d), the owner or user shall have the burden of proving by a preponderance of the evidence that the proposed activity will affect his or her private water supply.

2. Whether under this section or any other provision hereof, the decision of the Supervisors on all questions of fact shall be subject to the highest degree of finality allowed by law and the scope of review of any such decisions shall be the narrowest scope of review which legally may be imposed. This section is not intended to deny any person any right of review or appeal

which is provided for by law.

3. If the applicant is unable to produce evidence to the Supervisors meeting the standards set forth above, or if the applicant chooses not to attempt to meet such requirements of proof, then the applicant can still qualify for a registration certificate by entering into an agreement with the Supervisors to adequately protect or replace or treat the water supply involved at no cost to the Township or to those affected or potentially affected and by furnishing security as follows:

(a) The initial amount of security to be provided shall be 150% of the cost of performing the obligations under the agreement determined as follows: Cost estimates and projections prepared by competent professionals and adequately explained and documented and not inherently unreasonable will be accepted in making determinations under this paragraph unless the Supervisors obtain contrary advice from other competent professionals. In such event, the conflicting professionals shall select an independent professional whose decision on cost estimates and projections shall be final. Applicant shall pay the costs incurred for such independent professional. Cost estimates shall be calculated to project costs five (5) years ahead (as if the facilities were constructed five (5) years after the time the estimates are actually prepared). The initial security shall be posted prior to the granting of a registration certificate, or, if applicant elects to defer posting of initial security, the Township's grant of a registration certificate shall be conditioned upon the posting of the security prior to commencement of construction or operation. In such a case, applicant shall have no authority or right under said registration certificate to construct or operate a facility until such security is in fact posted.

(b) Said cost estimates shall be revised in the same manner every three (3) years and additional security shall be provided if necessary to cover 150% of the revised cost estimates. Such additional security shall be provided within thirty (30) days of a request therefor from the Supervisors.

(c) Security shall be provided by:

(1) Cash deposits or assignments of certificates of deposit or similar instruments equivalent to cash; or,

(2) Irrevocable or renewable letters of credit on terms and with obligors satisfactory to the Supervisors exercising reasonable business judgment; or,

(3) Irrevocable or renewable guarantees on terms and with guarantors acceptable to the Supervisors exercising reasonable business judgment; or,

(4) Surety bonds on terms satisfactory to the Supervisors and with responsible surety or sureties satisfactory to the Supervisors exercising reasonable business judgment. Whenever the Supervisors have reasonable doubt about the solvency or continued solvency of a surety or reasonable doubt about the ability of the surety to meet its obligation at all times when it might be required to do so, the Supervisors may require a substitute surety meeting the foregoing standards of other equivalent security; or,

(5) A combination of the foregoing acceptable to the Supervisors; or,

(6) Some other form of security acceptable to the Supervisors.

(d) If revisions of cost estimates are not made when required, or if additional or substitute security is not provided when required, or if security in whatever form is not renewed and maintained in effect at least sixty (60) days prior to the end of

any expiring term (and evidence thereof furnished to the Supervisors), and if applicant shall not cure such deficiency within ten (10) days of notice thereof, except where notice was already given, such as with respect to providing additional security within thirty (30) days of request therefrom, or if applicant shall fail to meet all of applicant's obligations under the agreement with the Township and shall not cure said breach within ten (10) days of notice thereof, the Township may forthwith declare the security forfeited and forthwith receive or collect same on or upon the affidavit of at least two (2) of the Supervisors that one or more of the circumstances entitling the Township to forfeit of the funds has occurred. Any funds thus forfeited to the Township shall be held and used for the purposes for which the security was posted and for all costs and expenses, including legal services and expenses, associated with enforcement of the collection of the security, maintenance thereof, and performance of obligations under the aforementioned agreement, provided, however, that:

(1) If the reason for forfeiture is the failure to revise cost estimates when required, or failure to post additional or substitute security, or failure to renew or maintain security as required, then the funds shall be held by the Township (except for expenditures to reimburse itself for costs and expenses as aforesaid, excluding costs and expenses of providing a substitute water supply) and if the reason for the forfeiture is cured within nine (9) months, the funds less said costs and expenses, shall be repaid to the original payor or at the original payor's direction.

(2) Notwithstanding subparagraph (1) above, if, during the nine (9) month period referred to in (1), it is necessary under the terms hereof or under the terms of the agreement with the Township that a substitute water supply be provided, then the Township may

expend said funds for that purpose.

(3) The Township may allow applicant to proceed to provide any substitute water supply and if applicant does so in accordance with the terms of this ordinance, the agreement above referred to, and applicable law, any forfeited amount in excess of the Township's costs, expenses and legal fees and expenses as aforesaid shall be returned to the provider of the security or such provider's designee.

(4) If, as permitted in subparagraph (2) above, the Township expends such funds to provide such substitute water supply, it shall refund to the provider of such security any excess over the amount expended therefor and the amount of the aforementioned costs, expenses and legal fees and expenses, and an administrative fee of fifteen percent (15%) of the Township's project costs and other costs, expenses and legal fees and expenses as aforesaid.

5) If the Township's project costs and other costs, expenses and legal fees and expenses shall exceed the amount of the security, applicant shall pay the excess to the Township within ten (10) days of demand therefor.

(6) If the defects referred to in subparagraph (1) above are not cured within nine (9) months, the Township may also proceed to provide such substitute water supply or allow applicant to do so, and subparagraphs (3), (4), and (5) above shall be applicable.

(e) When necessary in lieu of forfeiture of the security or any portion thereof, applicant may provide an immediate suitable substitute water supply or any portion of such substitute system as needed and means of implementation and use thereof.

(f) The duration of the security shall be (1) ten (10) years after closing of the facility or (2) until no leachate is produced of a quality inferior to or lesser than the quality of the naturally occurring water prior to construction of the project, whichever period is greater.

4. All public water supplies shall be available to an applicant for background and period testing at reasonable times during reasonable business hours provided applicant complies with reasonable requirements of the owner or operator of such water supplies as to safety and accompaniment by a representative of the owner or operator. The Township hereby requires the owner and operator of such water supplies to permit such testing. As to private water supplies, if the owner refuses upon reasonable request of applicant to permit such testing in the same manner as herein required for public water supplies, the owner and all persons served by such water supply shall waive all protection under this ordinance and no requirement of this ordinance shall apply to such water supply.

5. (a) With respect to any public water supply referred to in paragraph 1; (b) of this section, it shall be presumed that any significant and material deterioration or degradation in the quality or quantity of water after operation of the facility commences (as compared to quantity and quality of water during a period immediately preceding commencement of operation of the facility) is caused by the facility. This presumption shall not preclude appropriate proof of causation under other circumstances.

(b) If such deterioration or degradation causes said water to fail to meet federal safe drinking water standards in some respect that did not exist prior to operation of the facility as aforesaid, then a substitute water supply and appropriate remedial action shall be furnished by the applicant forthwith upon occurrence of such deterioration or degradation, unless applicant notifies the Township that it believes there exists clear, precise and

convincing evidence that the deterioration or degradation in water quality or quantity is not caused by the facility. In such a case, the Township shall grant a prompt hearing on the issue at applicant's request and applicant shall not be required to take interim remedial action until the Township renders a decision after said hearing.

(c) If the Township determines that applicant has failed to rebut the presumption of causation by clear, precise, competent and convincing evidence, then temporary or interim remedial action shall be taken pending final adjudication unless a supersedeas is obtained from a court of competent jurisdiction. Test results from applicant's monitoring wells shall be admissible, but not necessarily conclusive, evidence on the causation issue. Also, if the problem is a deterioration or degradation in quantity of water, evidence that the area experienced a severe drought shall be admissible, but not necessarily conclusive, on the causation issue.

(d) If temporary or interim remedial action is required, the temporary or interim replacement water need only meet federal safe drinking water standards or the quality and quantity standards existing prior to operation of the facility, whichever standard is least severe.

(e) Upon final adjudication of applicant's responsibility as aforesaid, a permanent substitute water supply shall be provided as soon as possible. The permanent substitute water supply or treatment facility shall be such as to provide water at least equal to the quantity and quality of the water prior to operation of the waste facility.

(f) If the applicant's project as submitted to and permitted by the Department of Environmental Resources provides for monitoring wells between the waste facility and a public water supply as herein defined, and if the test results from said monitoring wells indicate a significant and material degradation of water quality (or quantity if the loss of quantity is due to operation of the facility rather than natural drought or other unrelated cause), then applicant shall undertake prompt action to either (1) prevent said water in its degraded state from percolating or moving further toward the water supply (such as by

pumping and treating or otherwise intercepting said water) or to (2) proceed with implementing the substitute water supply plan or treatment plan so that the replacement or treated water will be available before the degradation found in the monitoring wells shall reach the water supply.

B. Additional Requirements

6. The applicant shall, in the materials submitted, or by separate submission if necessary to comply herewith, furnish evidence that the proposed activity will not create or contribute to a rodent or odor problem or mosquito problem or other similar problems that could affect the health, safety, and welfare of the citizens of the Township by virtue of objectionable, hazardous or offensive odor from the project being noticeable outside the property line of the property dedicated to the project or by virtue of the possibility of mosquitos, rodents or other health danger originating on the property affecting other property, persons or things outside the boundary line of the property dedicated to the project. If such off-premises effects occur during operation of the project, applicant shall take prompt remedial action.

7. The applicant shall as part of the application and by such separate submissions before or after registration as may be required describe in such detail as is reasonably practical the chemical, physical, and biological characteristics of the waste to be involved in the project and identify the source of such waste. This information shall be supplemented from time to time as necessary, and such information shall, if properly designated as confidential, be subject to confidentiality provisions of Section III, paragraph 3, hereof. The application shall indicate the methods of transportation expected to be used. The application and such subsequent submissions as may be required shall set forth in reasonable detail the dangers that could be presented from a motor vehicle accident involving a truck or other vehicle carrying waste and the steps which would have to be immediately taken to protect the welfare and safety of the citizens of the Township so that by reference thereto the Township police and Supervisors and fire officials could act promptly in the event of such an occurrence so

as to minimize damage and danger to residents of the Township and their property pending the time when expert officials from the State or elsewhere could be called in to deal with the problem. In order to cover situations where composition of waste may change before additional information is made available or where the Township is unable to determine the characteristics of a particular load of waste that may be involved in an accident, the applicant shall have available to the Township a qualified individual twenty-four (24) hours a day to deal with any such accidents or problems, which individual shall have reasonable familiarity with all of the substances thereof which will be handled by the project, and of emergency procedures to be undertaken with respect to any such substance or who shall have access to persons who have such information and expertise. The purpose of this provision is to provide as much immediate, local, on-site expertise as possible, with easy access to more detailed information, so as to minimize any danger or damages resulting from an accident or spill. The applicant shall designate a contact person or persons who can be reached for emergency information at any time. The Supervisors shall designate a person with whom the applicant can communicate on emergency matters at any time.

SECTION V

Restriction on Use of Certain Roads

1. Any applicant shall conduct the project in such a way and impose such requirements on anyone from whom it accepts any waste as may be necessary such that no vehicles hauling waste to or in connection with the project or empty vehicles which had hauled waste to or in connection with the project shall pass within nine hundred (900) feet of any existing public or private school within the Township. The Supervisors determine that this provision is necessary to protect children because of the greater risk of a catastrophic accident if a vehicle hauling waste were to be involved in an accident in the vicinity of a school or if spillage or leakage from vehicles should occur in the vicinity of the school.

2. The route of transportation shall be specified in the

application and the Supervisors shall be notified in advance of any change in route.

3. Because of the customary heavy-weight vehicles engaged in the hauling of waste, because of the possibility of accidents, spillage or leakage, because of the possibility of the contents damaging township roads, and because of the greater risk of such damage coming from the frequency of use that would exist from the location of a waste facility within the Township as distinguished from an occasional use of a township road by general traffic, the Supervisors hereby determine that no township road or any portion of any township road shall be used as a way of ingress to or from an waste disposal or storage site from a State highway, except with permission of the Supervisors, which permission shall be granted only if there is no other reasonably practical means of access from a State highway and then only upon the applicant making satisfactory arrangements with the Supervisors for bearing the expense of the additional risk and danger to the road because of the weight, content, and frequency of travel associated with the operation of a waste facility within the Township. Reasonable bonds, payment of wheelage or other assurances of ability to meet maintenance and improvement obligations agreed to may be required. The Township official designated as contact person under paragraph 7 of Section IV.B. is hereby authorized to grant permission for use of township roads during emergency situations. Permission shall be presumed for a period not to exceed four (4) hours for situations where traffic must be diverted because of an accident or similar situation temporarily blocking the designated route. The emergency contact person shall, however, be promptly notified by applicant as soon as applicant becomes aware of the problem. The Township may revoke the "presumed" permission at any time by appropriate barricades, signs or other traffic control measures. Crossing of a township road shall also be considered use of a road and shall require an appropriate agreement between the applicant and the Township whereby applicant agrees to properly maintain the intersection, including the township road portion thereof. In intersection situations, a bond or other security shall be required only under exceptional circumstances. If applicant shall fail to perform any

road maintenance obligation, applicant may be denied the use of the road, or the Township may perform the work and applicant shall promptly reimburse the Township for the costs thereof.

4. To ease cleanup in the event of spills or accidents, to keep down dust or otherwise protect public safety and welfare, and to provide a good road surface to make less likely the occurrence of tire failure or blowouts, and dangers of spillage or leakage associated therewith, it is hereby required that any private road used to provide access to a waste facility from a State highway or a township road shall be paved or surfaced with asphalt, gravel, cinders, or other equivalent materials approved by the Pennsylvania Department of Transportation and maintained in such a manner as to at all times provide a smooth hard surface thereon from said State highway or township road to the property line of the property designated for the project.

5. In order to protect the citizens, inhabitants and traveling public of East Penn Township, applicant shall conduct the project in such a way and impose contractual requirements on anyone from whom it accepts waste such that all vehicles transporting said waste to the applicant's facility shall be covered by or included in a policy or policies of public liability insurance kept in force with good and reliable insurance companies authorized to do business in the Commonwealth of Pennsylvania. The liability limits shall be not less than One Million Dollars (\$1,000,000) bodily injury liability per person; One Million Dollars (\$1,000,000) aggregate per occurrence and One Million Dollars (\$1,000,000) property damage liability. Should the material transported or handled be hazardous waste, applicant shall require a minimum of Five Million Dollars (\$5,000,000) liability insurance coverage for personal injury and Five Million Dollars (\$5,000,000) for property damage.

6. It is hereby declared to be unlawful for any transporter of waste to applicant's facility to fail to follow the designated route (except as hereinabove provided in the case of emergencies) or to otherwise fail to comply with the provisions and requirements of this section. Applicant shall not be responsible for an independent transporter's violation of this section if

applicant has fulfilled its direct obligations hereunder and has taken reasonable steps to inform such independent transporters of the requirements of this section. Applicant shall not accept waste from any person who has transported such waste in violation of the provisions of this ordinance if applicant knew or should have known in the exercise of reasonable business practice of such violation, unless applicant has been furnished evidence satisfactory to a reasonably prudent businessman that the violation will not likely be repeated and that any harmful effects of the violation have been corrected..

SECTION VI

RESTRICTIONS ON HOURS AND DAYS

1. It is hereby declared that the continuous transportation by vehicles of waste creates an increased danger to the health, safety and welfare of the residents of East Penn Township, their property and environment. Any applicant who has received a registration certificate from the Township under this Ordinance and the proper permits under the Municipal Waste Planning, Recycling and Waste Reduction Act and/or the Solid Waste Management Act and/or Hazardous Sites Cleanup Act and/or Air Pollution Control Act and/or Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; upon commencing to receive solid waste or any other types of waste at the permitted site, shall be subject to the following restrictions on the hours and days which vehicles may deliver waste to the facility site:

(a) Vehicles may deliver waste to the facility only between the hours of seven o'clock (7:00 a.m.) and five o'clock (5:00 p.m.) each day when delivery is permitted.

(b) Delivery of waste to the facility shall occur only on weekdays, Monday through Friday, and shall not be permitted on Saturdays or Sundays. Delivery of waste to the facility shall not occur on a weekday if the weekday is a State holiday as determined by the Common-

wealth of Pennsylvania.

2. Township shall be permitted to have two inspectors of the Township's choice, present at the facility site to oversee the times when vehicles are delivering waste and to oversee and inspect the contents of any or all vehicles that deliver waste to the facility site and to oversee the operation of the facility itself. The Township inspectors shall be entitled to be present at the facility site at all times when any activity or operations are occurring. If the inspectors report any violations to the Township, the Township may proceed to enforce the provisions of any applicable Ordinance, statute, rule or regulation that may apply.

SECTION VII

Hazardous Waste

1 (a) No registration certificate shall be issued for any facility or for the collection, storage, production, generation, transportation, processing, treatment or disposal of hazardous, chemotherapeutic or infectious waste unless the applicant shall first provide the Supervisors certification of compliance by the applicant, and the operator of any site involved, with this ordinance, any State permit, and any laws, rules and regulations of this Township, the Commonwealth of Pennsylvania or any other proper authority, and further conditioned upon the future deposit and containment of hazardous waste in compliance with the requirements of this ordinance, any state permit, and any laws, rules and regulations of this Township, the Commonwealth of Pennsylvania or any other proper authority such that the applicant shall guarantee there is no possibility that hazardous waste or any matter derived from such hazardous waste will leak or escape from the container and area in which such hazardous waste is disposed of and so that the applicant shall guarantee that there is no possibility that such hazardous waste will at any time in the future adversely affect the public health, safety, and welfare and economic and social well-being of the citizens of the Township. If the applicant or operator abandons the facility or if the applicant or the disposal operations and methods do not comply with the requirements

of this ordinance or State permit or any rule or regulation of any other proper authority, the Supervisors immediately may proceed to enforce the provisions of any applicable ordinance, statute, rule or regulation of the Commonwealth of Pennsylvania or any regulatory agency of other proper authority.

(b) Any hazardous waste generated, collected, stored, transported, processed or treated resource recovery facility or any other operation or which occurs as a result of any waste management activity within the Township shall be treated, handled and disposed of in accord with the Department of Environmental Resources' regulations for the handling of said hazardous waste as well as shall be treated, handled and disposed of in accord with the provisions of the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq. This provision shall be applicable regardless of the amount of hazardous waste involved.

2. The applicant for a certificate of registration dealing in any way with hazardous waste shall also provide evidence to the Township that said applicant has in force public liability insurance specifically covering environmental hazards in an amount not less than Ten Million Dollars (\$10,000,000) or such greater amount as the Supervisors may fix, depending upon the nature and scope of the project. Said insurance shall be with a reputable insurance company acceptable to the Supervisors and shall contain a noncancellation clause and shall be and remain in effect, unless substitute insurance likewise meeting the terms hereof is subsequently provided, for a period of at least one hundred (100) years after the deposit of waste commences, the generation of wastes occurs or after the deposit of the last waste deposited or generated on the site.

SECTION VIII

Consideration of Background of Applicant and Suspension,
Modification or Revocation of Registration

If an applicant or applicants, or any operator, contractor or agent, or any principal of any corporate applicant, operator or agent, or any principal or a corporate principal, shall commit an environmental violation, as herein defined, the Township may suspend, modify or revoke a certificate of registration, under the circumstances hereinafter set forth.

As used herein, "principal" means any person owning more than five percent (5%) of the capital stock of a corporation, or an officer of the corporation, or a management level employee of the corporation.

"Environmental violation" shall mean any violation in connection with the project registered or sought to be registered under this ordinance, the registration certificate issued pursuant hereto, and State permit in relation to the project or any law, rule or regulation of any proper authority relating to this project, including any criminal or other laws as they apply to or relate to this project. "Environmental violation" shall also mean any past or present violation of any criminal law, which violation in any manner relates to solid waste, waste or environmental matters, including contracts and obtaining contracts in relation thereto, any past or present violation of any criminal law which is in the category of "crimen falsi" offenses, and any active or continuing violation of any law, rule, regulation or permit of any proper authority relating to solid waste, waste or other environmental matters connected with or related to the disposal of waste.

The applicant shall notify the Township of any "environmental violation" at the time of application or as soon as the same shall have occurred, giving adequate detail to permit proper evaluation thereof. Notification shall be given promptly upon assertion of any environmental violation by any proper authority whether or not the violation has been proven or appeals exhausted, but no adverse action shall be taken by the Township in connection with such violation until a final adjudication thereof.

The Township will not exercise its rights under this

provision to suspend, modify or revoke a certificate of registration with respect to any environmental violation, the harmful effects of which have been promptly corrected or eliminated, or (in appropriate cases where the violation is purely technical and no harm has been done, as to which reasonable efforts have been undertaken to prevent future violations of the same or similar type) unless the violation or series of violations are, in the opinion of the Supervisors exercising reasonable executive discretion and judgment, of such a material and substantive nature or of such long duration or cumulative impact as to manifest an unwillingness or inability to comply with this ordinance, or unless such violations are criminal in nature. If the Commonwealth or Federal Government shall suspend or revoke any required permit in connection with the project, the registration hereunder shall be automatically suspended or revoked.

SECTION IX

Registration of Conditions

and

Preservation of Legal Liability

1. All applicants shall be fully responsible as provided by law for all consequences of their operations and facilities and compliance with this ordinance shall not alter or diminish any such legal liability that might otherwise exist whether to the Township or any person or other entity.

2. In order to meet the terms of this ordinance and to ensure that the application for a registration certificate will continue to observe the requirements hereof, and in furtherance of the purposes hereof, the Supervisors may condition the issuance of any certificate of registration upon such terms and conditions or make the same subject to such undertakings as the Supervisors may deem advisable, consistent with the terms hereof and not inconsistent with State or Federal law. This provision shall not give the Supervisors the authority to impose conditions relating generally to the proposed facility but only conditions relating to matters

covered by this ordinance and then only conditions that are consistent with the provisions of this ordinance.

SECTION X

Township Solid Waste

Any applicant establishing a waste facility in the Township must accept at said facility waste generated in the Township if it would accept such waste from a source outside the Township. The charges, terms, conditions and limitations relating to such waste generated within the Township shall be no less favorable than those applicable to waste generated outside the Township.

SECTION XI

HOST MUNICIPALITY BENEFIT FEE

A. HOST MUNICIPALITY BENEFIT FEE

1. Imposition. There is imposed a host municipality benefit fee upon the operator of each resource recovery facility, or facility or operation dealing with waste as herein defined that has a currently existing permit or receives any new permit from the Department of Environmental Resources pursuant to the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act of the Commonwealth of Pennsylvania, Act of July 28, 1988, P.L. 556, No. 101, 53 P.S. § 4000.101 et seq., and the Solid Waste Management Act of the Commonwealth of Pennsylvania, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S. § 6018.101, et seq., and the Act of July 13, 1988, P.L. 525, No. 93 dealing with Infectious and Chemotherapeutic Waste Disposal, 35 P.S. § 6019.1 et seq.; and the Hazardous Sites Cleanup Act of the Commonwealth of Pennsylvania, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. § 6020.101 et seq., and the Air Pollution Control Act of the Commonwealth of Pennsylvania, Act of January 8, 1960, P.L. (1959) No. 2119, as amended, 35 P.S. § 4001 et seq. The fee shall be paid to the host municipality. If the host municipality owns or operates the landfill, the fee shall not be

imposed for waste generated within such municipality. If the facility is located within more than one host municipality, the fee shall be apportioned among them according to the percentage of the permitted area located in each municipality.

2. Amount. The fee is \$1.- per ton of weighed waste (solid) or \$1.- per three cubic yards of volume-measured waste (liquids) for all waste received or generated at a resource recovery facility, or facility or operation dealing with waste as herein defined. Any amounts paid by an operator to a host municipality pursuant to a preexisting agreement shall serve as a credit against the fee amount imposed by this section.

3. Municipal options. Nothing in this ordinance shall prevent a host municipality from receiving a higher fee or receiving the fee in a different form or at different times than provided in any of the legislative enactment dealing with waste as has been defined within this ordinance, if the host municipality and the operator of the resource recovery facility dealing with waste as herein defined agree in writing.

4. Supersede. The fee imposed by this section shall preempt and supersede any tax imposed on each resource recovery facility under the act of December 31, 1965 (P.L. 1257, No. 511), known as "The Local Tax Enabling Act", which is in excess of the amount imposed on or before December 31, 1987.

5. County options. Nothing in this ordinance shall prevent a host county from negotiating a fee or fee in a different form, if the host county and the operator of the resource recovery facility, or facility or operation dealing with waste as herein defined agree in writing. Any county which has negotiated a fee as of the effective date of this act may require that the fee be continued.

B. FORM AND TIMING OF HOST MUNICIPALITY BENEFIT FEE PAYMENT

1. Quarterly payment. Each operator shall make the host municipality benefit fee payment quarterly. The fee shall be paid on or before the 20th day of April, July, October, and January for the three months ending the last day of March, June, September, and December.

2. Quarterly reports. Each host municipality benefit fee payment shall be accompanied by a form prepared, furnished and completed by the operator. The form shall state the weight or volume of waste received or generated by the landfill or facility or operation during the payment period and provide such other information deemed necessary by the Township. The form shall be signed by the operator.

3. Timeliness of payment. An operator shall be deemed to have made a timely payment of the host municipality benefit fee if all of the following are met:

(a) The enclosed payment is for the full amount owed pursuant to this section, and no further host municipality action is required for collection.

(b) The payment is accompanied by the required form and such form is complete and accurate.

(c) The letter transmitting the payment that is received by the host municipality is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

4. Discount. Any operator that makes a timely payment of the host municipality benefit fee as provided in this section shall be entitled to credit and apply against the fee payable by him a discount of 1% of the amount of the fee collected by him.

5. Alternative proof. For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

C. COLLECTION AND ENFORCEMENT OF FEE

1. Interest. If an operator fails to make a timely payment of the host municipality benefit fee, the operator shall pay interest on the unpaid amount due at the rate established pursuant to section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal Code, from the last day for timely payment to the date paid.

2. Additional penalty. In addition to the interest provided in subsection (a), if an operator fails to make timely payment of the host municipality benefit fee, there shall be added to the amount of fee actually due 5% of the amount of such fee, if the failure to file a timely payment is not for more than one month, with an additional 5% for each additional month, or fraction thereof, during which such failure continues, not exceeding 25% on the aggregate.

3. Assessment notices. If the host municipality determines that any operator of a landfill dealing with waste as herein defined has not made a timely payment of the host municipality benefit fee, it will send a written notice for the amount of the deficiency to such operator within 30 days from the date of determining such deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of waste received or generated at the landfill dealing with waste, as herein defined, for the payment period, the host municipality may estimate the weight or volume in its deficiency notice.

4. Constructive trust. All host municipality benefit fees collected by an operator and held by such operator prior to payment to the host municipality shall constitute a trust fund for the host municipality, and such trust shall be enforceable against such operator, its representatives and any person receiving any part of such fund without consideration or with knowledge that the operator is committing a breach of the trust. However, any person receiving payment of lawful obligation of the operator from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

5. Manner of collection. The amount due and owing as the host municipality benefit fee shall be collectable in any manner provided by law for the collection of debts. If the person liable to pay any such amount neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a judgment in favor of the host municipality, upon the property of such person, but only after the same has been entered and docketed of record by the Prothonotary of the county where such property is situated.

6. Remedies cumulative. The remedies provided to host municipalities in this ordinance are in addition to any other remedies provided at law or in equity.

SECTION XII

Administrative provisions

1. In order to determine if any applicant registered under this ordinance is complying with the ordinance throughout its operations, and in order to evaluate applications for a certificate of registration, and in order to evaluate materials submitted pursuant to the terms hereof, the Township may employ such engineers and other professionals as it may deem advisable from time to time.

2. In order to enforce the provisions hereof, to advise the Township with respect to the application of this ordinance and the implementation thereof, to negotiate agreements authorized by the terms hereof, and to otherwise deal with legal matters relating to the implementation of this ordinance and the enforcement thereof, the Township may employ such attorney or attorneys, including the Township solicitor, to render such special services in relation hereto as the Supervisors may from time to time require.

3. The Supervisors may adopt reasonable rules and regulations to carry out the intent and purpose of this ordinance from the administrative standpoint, such as designations of addresses to be used, persons to be contacted, procedural matters relating to hearings, and other similar matters not inconsistent with the substantive provisions hereof.

4. Any violation of any provision of this ordinance or any rule or regulation of the Township Supervisors adopted pursuant hereto or the term of any registration certificate or the term of any permit issued by the Commonwealth or any law, rule or regulation of any Federal, State or local authority in relation to the matters covered hereby, is hereby declared to constitute a public nuisance and any person committing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation.

5. Any person who shall violate or fail to comply with any of the provisions of this ordinance, any rules or regulations adopted hereunder or any term or condition of any registration certificate or any agreement or undertaking entered into with the Supervisors in connection herewith shall, upon conviction in a summary proceeding, be subject to a fine or penalty of not more than One Thousand Dollars (\$1,000), plus costs of prosecution and, in default of payment thereof, to imprisonment of not more than thirty (30) days. Each day during which any such violation or failure to comply shall occur or continue shall constitute a separate offense.

6. This ordinance shall not restrict the right of the Township to take such other action as may be allowed by law to abate nuisances, to correct same on its own, and to recover the costs thereof, to forfeit bonds, to file municipal claims, and otherwise exercise such rights or remedies as may be otherwise provided by law.

7. This ordinance shall not restrict the right of any person to exercise and enjoy all rights and remedies otherwise available to such person by law relating to the matters covered hereunder, such as but not limited to private rights to abate nuisances or recover damages for tortious conduct. The Township does not intend to preempt or restrict any such rights and remedies of any person.

8. The Supervisors shall have the right and the applicant, by applying for a certificate of registration, or a transporter, collector or processor, by engaging in conduct within the Township, shall be deemed to consent to the Supervisors or their agents entering any building, property, premises, place or vehicle, where any waste is deposited or disposed of or stored, collected or processed for the purpose of making such investigation or inspection and taking such samples as may be necessary to ascertain compliance or noncompliance by any person with the provisions of this ordinance, any registration certificate issued hereunder, any permit issued by the Commonwealth of Pennsylvania, or any law, rule or regulation of the Township, Commonwealth, United States or any other proper authority. The Supervisors shall also have the right

to inspect vehicles hauling waste, whether loaded or empty, and to take samples thereof. All rights hereunder shall be exercised in a reasonable manner and in compliance with reasonable requirements of the inspected party as to matters of safety and accompaniment by representatives of the inspected party during inspections, but this requirement shall not require advance notice or prohibit inspection merely because no one is available at the time to accompany an inspector.

9. The remedies herein provided for the enforcement of the provisions of this ordinance or any other remedy afforded by law shall not be deemed mutually exclusive and may be employed simultaneously or consecutively at the discretion of the Supervisors.

10. If any section or part of any section, sentence, clause or phrase of this ordinance shall be construed to be unconstitutional or invalid by any court of competent jurisdiction, such ruling shall not affect the validity of any other section, sentence, clause or phrase hereof, all of which shall remain in full force and effect and, for this purpose, the provisions of this ordinance are hereby declared to be severable and the intention of the Supervisors is hereby declared to be that this ordinance would have been enacted without such constitutionally offensive section, sentence, clause or phrase.

11. Applicant shall annually or at such greater frequency as applicant may desire (1) submit a report to the Supervisors listing the characteristics and specific sources of the waste received the previous year and, (2) submit a report updating the emergency management information supplied with the application under the terms hereof.

12. In implementing this ordinance, the Township shall provide for such notice and hearings preceding adverse action as may be required by applicable law or constitutional provisions.

13. The applicant shall maintain all necessary records, weigh tickets, invoices, manifests or the like as may reasonably be required to establish the information necessary to determine the amount of materials, the type of materials and the weight of materials deposited or processed in the facility and all such

Information shall be subject to inspection by the Township or its agents.

14. The Supervisors may participate to the maximum extent allowed by law in the State permitting process and in all administrative and judicial remedies provided for therein and nothing in this ordinance shall be deemed to detract in any way from the Township's right to participate in the permitting process and in all administrative and judicial remedies provided for with respect hereto.

15. No grant of a certificate of registration hereunder and no grant of a certificate contingent upon a State permit hereunder shall be deemed to be the consent of the Township to the issuance of a permit by the State or to prohibit the Township from taking any position before the State that it deems advisable.

16. This ordinance and all obligations imposed hereunder or under any registration certificate or agreement pursuant hereto shall be binding upon applicant and his or its heirs, successors and assigns.

17. Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollution forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purposes of this act to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of waste within the Commonwealth, and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or to enforce common law or statutory rights. No courts in this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived

of such jurisdiction in any action to abate any private or public nuisance instituted by any person for the reasons that such nuisance constitutes air or water pollution.

SECTION XIII

Cooperation

In order to implement this ordinance and to facilitate the reasonable operation hereunder by the Township and any applicant, the Township Supervisors hereby agree to meet with the applicant and the parties' respective engineering, legal and other advisors at such reasonable times and with such reasonable frequency as may be reasonably required to facilitate implementation and enforcement of this ordinance consistent with applicable State law and in furtherance of the public interest.

SECTION XIV

APPLICATION FEE

Any applicant for a registration certificate under this Ordinance shall include with its application a registration fee of One Hundred (\$100.-) Dollars. This fee shall be payable upon submitting the application to "East Penn Township" to help cover the administrative costs of processing the application. In addition, the applicant shall be responsible for reimbursing the Township for any specific expenses incurred by the Township in evaluating and processing the application, including but not limited to advertising, engineering fees and duplication expenses for which the Township is unable to secure payment or reimbursement from other sources.

SECTION XV

REPEALER

This Ordinance specifically amends Ordinance 72 and any sections of said Ordinance which are contrary to or in conflict with these amendments are specifically repealed and superseded hereby. In addition all prior Ordinances or parts of Ordinances that conflict with or are inconsistent with the provisions of this Ordinance are hereby repealed. however, any provisions of prior

Ordinances which do not conflict with nor are inconsistent with this Ordinance are hereby preserved and remain in effect.

SECTION XVI

Effective Date

This Ordinance shall become effective five (5) days after the date of enactment.

ORDAINED and ENACTED this day of

BOARD OF SUPERVISORS
East Penn Township
Carbon County,
Pennsylvania.

ATTEST:

EAST PENN TOWNSHIP

Wendy K. Kunkel
Wendy K. Kunkel, Secretary

BY:

Gordon E. Schenck
Chairman - Supervisor