



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

TOM CORBETT
ATTORNEY GENERAL

August 15, 2007

15th Floor, Strawberry Square
Harrisburg, PA 17120
Phone: (717) 787-1100
Fax: (717) 705-7239

James F. Menconi, Esquire
Solicitor for East Brunswick Township
119 W. Broad Street
Tamaqua, PA 18252

Re: East Brunswick Township Sewage Sludge Ordinance No. 1-2006

Dear Mr. Menconi:

This will respond to your letter of July 17, 2007, requesting details on what provisions of Ordinance No. 1-2006 violate Act 38, what legal authority supports our position, and what changes we might recommend.

Section 6 of the Ordinance, which adopts state regulations concerning the land application of biosolids as local law, Section 7.2, which prohibits a person from hauling or land applying biosolids without first complying with Section 8, and Sections 8 and 9, which prescribe application and testing requirements and procedures, are preempted by the Solid Waste Management Act (SWMA), 35 P.S. §6018.101, *et seq.*, and Department of Environmental Protection (DEP) regulations, which prescribe permit, application, and testing requirements for land application of biosolids, establish standards for the concentration of pollutants, pathogens, and vector attractants and for sampling, analysis, and monitoring, and authorize DEP to deny, suspend, modify, or revoke any permit or license and otherwise to enforce the SWMA and DEP regulations. Liverpool Twp. v. Stephens, 900 A.2d 1030 (Pa. Commw. Ct. 2006).

Sections 6, 7.2, 8, and 9 are also preempted by the Nutrient Management Act (NMA), 3 Pa. C.S. §501 *et seq.*, and State Conservation Commission (SCC) regulations, which authorize state conservation districts to review and approve nutrient management plans, prescribe nutrient application procedures, provide for soil testing, and authorize state conservation districts and the Department of Agriculture to enforce the NMA and SCC regulations.

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Page 2 of 2

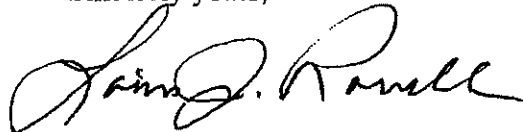
Sections 7.3 and 7.4, which prohibit corporations from engaging in the land application of biosolids, are preempted by the SWMA and the NMA, which allow corporations to engage in the land application of biosolids. Section 7.5, which declares corporations not to be persons or to have the rights of persons under provisions of the Pennsylvania and United States Constitutions, exceeds the authority conferred by the Second Class Township Code, 53 P.S. §§66506, conflicts with the Business Corporation Law, 15 Pa. C.S. §§1501 and 1502, is preempted by the SWMA, 35 P.S. §6018.103, and the NMA, 3 Pa. C.S. §503, and obviously is unconstitutional.

East Brunswick Township has no authority under the Second Class Township Code or any other law to create the rights of action or remedies set forth in Sections 7.6, 11.7, and 12, to establish a right to recover attorneys fees in an action in equity as provided in Sections 11.4 and 11.7, to prescribe criminal and civil penalties for violations of state regulations incorporated into the Ordinance as provided in Sections 11.2, 11.3, and 11.6, or to prohibit DEP permit holders from land applying biosolids as provided in Section 13. Indeed, the SWMA, NMA, and accompanying regulations establish enforcement schemes that fully preempt Sections 11 through 13 of the Ordinance.

State law and regulations leave little room for local regulation of the land application of biosolids. Sections 6 through 9 and 11 through 13 must be repealed. In their place, the Township might consider a provision that requires a person or business planning to land apply biosolids to file with the Township in advance of doing so copies of the permits required by state law and regulations.

We plan to file a lawsuit on October 1, 2007, unless the Township, before then, commits to repeal the offending provisions of the Ordinance. We remain available to meet, and we will consider any alternative proposal submitted by the Township to resolve this matter, provided the proposal fully and specifically addresses the legal problems we have identified, and is delivered to us on or before September 28, 2007.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Louis J. Rovelli". The signature is fluid and cursive, with the first name "Louis" and last name "Rovelli" clearly distinguishable.

Louis J. Rovelli
Executive Deputy Attorney General

ORDINANCE NO. 2009-3

AN ORDINANCE AMENDING ORDINANCE NUMBER 2008-2 TITLED "AN ORDINANCE TO PROTECT THE SAFETY AND HEALTH OF CITIZENS OF EAST BRUNSWICK TOWNSHIP BY PROVIDING FOR ACCESS TO INFORMATION RELATING TO SLUDGE APPLICATION IN THE TOWNSHIP AND FOR MEASURES TO ASSURE PUBLIC SAFETY DURING AND AFTER LAND APPLICATION AND/OR STORAGE OF SEWAGE SLUDGES"

PREAMBLE

East Brunswick Township is a rural community, and consists of farms, tree farms, equestrian activities and riding trails, which are located in proximity to residential communities and businesses. Citizens of East Brunswick Township have expressed concern that the public health will be adversely impacted by exposure to sewage sludge on lands in the Township. Ordinance Number 2008-2 was adopted to address health and welfare concerns of the Township and its citizens from exposure to sewage sludge.

The Supervisors of East Brunswick Township are hereby amending Ordinance Number 2008-2, so as not to duplicate the regulatory scheme of the Pennsylvania Department of Environmental Protection regarding the land application of non-exceptional quality sewage sludge. The amended Ordinance is intended to (1) provide the Township with notice of the land application of non-exceptional quality sewage sludge in the Township; and (2) provide local monitoring to ensure that the public health and safety is not adversely impacted as a result of the land application of such sludge.

The Supervisors of East Brunswick Township hereby repeal the following provisions of Ordinance 2008-2 in entirety: Section VI; Section VII(A), (B),(D); Section VIII(B), (D) and (E) and Section X(A), (B), (C) and (D). The remaining provisions of this Ordinance, as amended, are hereby adopted and anything contrary hereto in Ordinance 2008-2 is likewise repealed.

Section I: General Provisions

The purposes of this Ordinance shall be as follows:

A. To provide to the citizens of East Brunswick Township and others notice, information and records relating to non-exceptional sewage sludge (hereinafter referred to as Class B sewage sludge) application and storage practices within the Township.

B. To provide for the health, safety and general welfare of all East Brunswick Township citizens and others and, to the extent possible, prevent unknowing or inadvertent exposure to Class B sewage sludge.

C. To preserve and protect agriculture and agriculture-related activities and the commercial and agricultural economy and land base in East Brunswick Township.

D. To assure that local concerns are addressed in the planning, management and application of Class B sewage sludge to lands within the Township.

Section II: Title

This Ordinance shall be known and may be cited as "An Ordinance Providing Notice to East Brunswick Township of the Land Application of Sewage Sludges and Assuring Local Public Health and Safety During and After Land Application of Sewage Sludges."

Section III: Definitions

Terms used in this Ordinance shall have the meanings set forth in the Solid Waste Management Act, 35 P.S. §6018.101 et seq., and accompanying Department of Environmental Protection Regulations.

Section IV: Compliance with PaDEP Standards

Application or storage of Class A or Class B sewage sludge, as defined in 25 PA. Code §271.1, within East Brunswick Township shall be in accordance with the requirements set forth by the Pennsylvania Department of Environmental Protection.

Section V: Notification to the Township and its Occupants of Land Application of Class B Sewage Sludge

A. Any person or company intending to store or apply Class B sewage sludge to agricultural land in East Brunswick Township shall, at least thirty (30) days prior to the first intended application, notify the Township by submitting to the Township copies of all information required to be submitted to the Pennsylvania Department of Environmental Protection pertaining to the land application of Class B sewage sludge in the Township.

B. (repealed by Board of Supervisors October 15, 2009).

C. At least 48 hours prior to the actual land application of Class B sewage sludge, any person or company intending to apply Class B sewage sludge to agricultural land in East Brunswick Township shall notify the Township of:

1. the dates and times of the intended land applications so that the Township can monitor the spreading operations pursuant to Section IX(B) below; and
2. how the site restrictions specified in 25 Pa. Code Section 271.932(b)(5)(vii) or (viii), as applicable, will be complied with following the land application of Class B sewage sludge.

Section VI: Public Safety and Environmental Data Assessment Fees (repealed by Board of Supervisors October 15, 2009).

Section VII: Providing Post-Application Information to the Township

- A. (repealed by Board of Supervisors October 15, 2009).
- B. (repealed by Board of Supervisors October 15, 2009).
- C. A person or company that prepares or applies Class B sewage sludge that is applied on agricultural lands within the Township shall provide to the Township copies of any information required to be submitted to the Pennsylvania Department of Environmental Protection at the time the recordkeeping information is submitted to the Pennsylvania Department of Environmental Protection.
- D. (repealed by Board of Supervisors October 15, 2009).

Section VIII: Protection of Public Health and Welfare

- A. Sludge application in the Township shall not take place on the holidays of Christmas, New Year's Day, Easter, Memorial Day, July 4th, Labor Day and Thanksgiving.
- B. (repealed by Board of Supervisors October 15, 2009)
- C. When Class B sewage sludge is applied to lands abutting a public road, the applicant and/or landowner shall place clearly visible signs written in English and Spanish at intervals at least every 50 feet along said road or roads at least 48 hours prior to sludge

application and for the duration of operations at such lands. The signs shall state "WARNING" in red, contain notice that Class B sludge has been applied to the land and prohibit public access to such lands. Such signs shall be at least 12" by 12" and in format similar to that set forth at Attachment A to this Ordinance or other form acceptable to the Township.

D. (repealed by Board of Supervisors October 15, 2009).

E. (repealed by Board of Supervisors October 15, 2009).

Section IX: Investigation and Inspection

A. Prior to the first land application of Class B sewage sludge, the Township or its agent may inspect the fields on which land application is to take place to assess conditions on the fields and to ensure compliance with the DEP permit requirements. The Township or its agent may also obtain one representative soil chemical sample for each field on which sewage sludge is to be land applied for pH and those constituents listed in the tables in 25 Pa. Code Section 271.914(b). The Township may test well water only with the consent of the landowner. The Township must provide the landowner and the land applicator 72 hours advance notice prior to an inspection. The Township will bear the expense of the inspection and testing. The Township will only conduct one inspection prior to the first land application at the DEP approved site.

B. During the spreading of Class B sewage sludge, the Township or its agent may inspect the spreading operations to ensure compliance with the DEP permit requirements and regulations. Samples of the sewage sludge being applied may be collected by the Township and analyzed utilizing Department-approved procedures. Samples may be tested for the pollutants listed in the DEP regulations. The Township may require written proof from the land applicator to indicate which pathogen reduction treatment alternative and which vector attraction reduction option was used to produce the Class B sewage sludge used at the site. The Township may test

well water only with the consent of the landowner. The Township will bear the expense of all inspections and testing and may only conduct an inspection during the land application at the DEP approved site. Copies of any test results shall be maintained by the Township as part of the land application history within the Township.

Section X: Enforcement and Penalties

- A. (repealed by Board of Supervisors October 15, 2009).
- B. (repealed by Board of Supervisors October 15, 2009).
- C. (repealed by Board of Supervisors October 15, 2009).
- D. (repealed by Board of Supervisors October 15, 2009).
- E. If the operation or application of Class A or Class B sewage sludge is in violation of the Pa. DEP regulations or this ordinance, the Township hereby empowers its authorized representative to seek such equitable remedy for the violation(s) as the Township may seek under the Solid Waste Management Act or the Second Class Township Code.

Section XI: Administration

The provisions of this Ordinance shall be administered by the East Brunswick Board of Supervisors or their duly authorized representatives who shall keep and maintain records hereunder of sewage sludge land application, disposal, or storage within the Township, make such records available to residents and other interested parties and enforce the provisions of this Ordinance.

Section XII: Severability

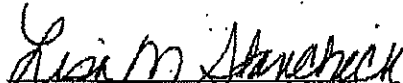
The provisions of this ordinance are severable, and if any section, clause, sentence, part or provision shall be held illegal, invalid or unconstitutional by any court of competent

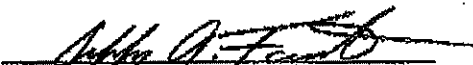
jurisdiction, such decision of the court shall not affect, impair or invalidate any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if any such section, clause, sentence, part or provisions determined to be illegal, invalid or unconstitutional had not been included.

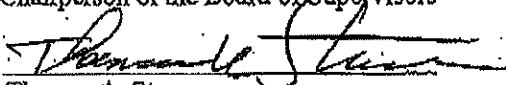
ENACTED AND ORDAINED into law by the Township of EAST BRUNSWICK,
Schuylkill County, Pennsylvania, this 15 day of October, 2009.

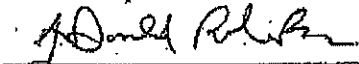
ATTEST:

TOWNSHIP OF EAST BRUNSWICK


Lisa M. Stanchick, Secretary

BY: 
Jeffrey A. Faust,
Chairperson of the Board of Supervisors

BY: 
Thomas A. Strauss,
Vice-Chairperson of the Board of Supervisors

BY: 
Donald Rubinkam, Member
Board of Supervisors

CERTIFICATE OF ADOPTION

The undersigned, Secretary of the Township of East Brunswick, Schuylkill County, Pennsylvania, does hereby certify that the foregoing ordinance was duly adopted by a majority vote of the East Brunswick Township Board of Supervisors at a duly advertised, called and held public meeting of said Council, which meeting was held on the 15 day of October, 2009, at the Offices of the Township.

TOWNSHIP OF EAST BRUNSWICK

BY: Lisa M. Stanchick
Lisa M. Stanchick, Secretary

WARNING/CUIDADO !!

DO NOT ENTER

NO TRESPASSING

NO TRESPASE

CLASS B SEWAGE SLUDGE HAS BEEN APPLIED TO THIS LAND

for additional information contact:

(Name of landowner or applicer)