

**POSITION STATEMENT OF EAST COVENTRY TOWNSHIP ("TOWNSHIP")
IN RE:
AGRICULTURAL COMMUNITIES AND RURAL ENVIRONMENT ("ACRE")
REVIEW REQUEST ("COMPLAINT") OF NATHANIEL NOLT**

BACKGROUND

This matter stems from [REDACTED] and related entities and predecessors in interest (individually and collectively [REDACTED] desire to engage in the delivery, storage and direct application of food processing residual ("FPR") on all or some of seven (7) parcels of land located in the adjacent townships of East Coventry Township ("Township") and East Vincent Township which are comprised in the aggregate of approximately 125.7 acres and have addresses of [REDACTED] [REDACTED] (each and collectively the "Properties").

The portion of the Properties located in East Coventry Township are zoned FR Farm Residential District which permits, among other uses, "agriculture, including farm ponds, provided that any structures used for the housing of livestock or poultry shall be located not less than 100 feet from any lot line" and "single family detached dwellings". See, East Coventry Township Code of Ordinance ("Township Code") Section 27-502.

Unbeknownst to the Township at the time, the Pennsylvania Department of Environmental Protection ("PA DEP") allowed land application of FPR to the Properties by way of that certain Food Processing Residual Management Plan dated April 17, 2022 ("FPR Management Plan")¹ prepared on behalf of [REDACTED] which purported to incorporate and adhere to all of the best management practices ("BMPs") set forth in the Food Processing Residual Management Manual ("FPR Manual" or "BMP Manual") promulgated by PA DEP.

By way of an email exchange between PA DEP's Local Government Liaison, Robert Fogel, MPA, to Pennsylvania State Senator Katie Muth dated October 6, 2022, PA DEP

¹ At the same time, the Properties were also subject to the requirements set forth in a Manure Management Plan dated April 24, 2021 ("MMP").

articulated its determination and its roles and responsibilities in connection with the land application and storage of FPR on the Properties as follows:

- 1) "Based on a review of by DEP's Waste Management Program, including the proposed [FPR] storage tank design, the evaluation of FPR sources, including nutrient value and potential odor generation, and land application methodology, we have determined that the [Properties] can operate under the permit exemption found at 25 PA Code 287.101(b)(2)."
- 2) "[R]egular inspections are not required under this permit exemption."
- 3) "So long as they [REDACTED] operate under the conditions found in the BMP Manual, DEP's Waste Management Program will have no role, other than responding to any complaints that may arise from its operation."

Essentially, PA DEP's approach to regulation of the land application of FPR is a hands-off and reactionary; and PA DEP presumes the information and documentation provided to it to show compliance with the FRP Manual is true and correct and should not be questioned prior to the land application of FPR. Instead, PA DEP only reacts to complaints after a problem has been identified.

On or about January 11, 2023, East Coventry Advocacy and [REDACTED] filed an appeal ("EHB Appeal") of PA DEP's determination to the Pennsylvania Environmental Hearing Board ("EHB"), which Appeal was docketed at EHB Dkt. No. 2022-008, and to which the Township became a party as an intervenor.

At the center of the Appeal was the fact that, despite [REDACTED] representations to the contrary, the FPR Management Plan for the Properties did not, in fact, comply with the BMPs set forth in the FPR Manual. PA DEP did not verify the information contained in the FPR Management Plan through site visits to the Properties or otherwise. Instead, PA DEP concluded, without further

inquiry, that information and statements contained in the FPR Management Plan were accurate including, without limitation, the size and characteristics of the Properties (including locations of natural features such as streams and drainage channels) and the location for land application of FPR. To the best of the Township's knowledge and belief, DEP never conducted a site visit or otherwise verified the accuracy of the description of the Properties, natural features (wetlands, slopes, sinkholes, streams, drainage channels, etc.), location of public or private wells, required setbacks or isolation distances, or any other site conditions of the Properties set forth in the FPR Management Plan.

Beginning in late 2022, before the EHB Appeal was taken, the Township undertook a lengthy, very public process of drafting, deliberating and finally adopting Township Ordinance 2024-268 (the "FPR Ordinance"), which is the subject of the matter at bar. The process took over a year, involved input from the public and creation of a steering committee. The Township invited [REDACTED] and PA DEP to participate in the process.

On April 4, 2023, while the EHB Appeal was pending, the East Coventry Board of Supervisors duly adopted the original FPR Ordinance at a public meeting. Thereafter, the original FPR Ordinance was amended by the Board of Supervisors at a public meeting on February 12, 2024. The FPR Ordinance, as amended, is now codified at Township Code Section 10-601 et seq.

A year after the Township adopted the first version of the FPR Ordinance and more than 2 months after the Township duly adopted the final version of the FPR Ordinance, the parties to the EHB Appeal, including [REDACTED]² and DEP, agreed to settle the underlying FPR storage and land application dispute pursuant to that certain Stipulation of Settlement filed April 26, 2024 ("Settlement Agreement"). Under the Settlement Agreement, the Parties, including PA DEP and

² At the time, the owners of the Properties were [REDACTED]

██████ agreed that, among other things, "Owner/Operator ██████ shall comply with all applicable rules, regulations statutes and laws governing the land application, storage, disposal and transportation of FPR including, without limitation, all duly enacted local ordinances. At no point did ██████ or ██████ counsel indicate that it would not comply with the FPR Ordinance.

Despite ██████ representations regarding compliance with all local ordinances adopted on or before the date of the Settlement Agreement, the ACRE complaint at bar challenging to the FPR Ordinance was submitted to the Pennsylvania Attorney General on or about October 8, 2024 ("Complaint"). In the Complaint ██████ alleges that the FPR Ordinance violates ACRE in 3 ways: 1) by regulating how, when and where FPR may be used in the Township; 2) duplicating and imposing a regulatory scheme that is far more stringent than that required by the Solid Waste Management Act ("SWMA") and PA DEP's regulations and guidance; and 3) prohibiting FPR land application by "outlawing" the land application of residual waste. ██████ conclusions are flawed.

Summary of the FPR Ordinance

Despite ██████ contentions to the contrary, the FPR ordinance expressly permits the storage and land application of FPR in the Township provided that such storage and land application is part of a normal agricultural operation. The purpose of the FPR Ordinance is to: 1) establish uniform standards for land application and storage of FPR; 2) assure compliance with PA DEP rules, regulations, standards and best management practices, including those set forth in the FPR Manual; and 3) protect public safety and to minimize the adverse effects of such land application of FPR. See, Township Code Section 10-601. In order to accomplish this purpose, the FPR Ordinance establishes minimum setbacks (Township Code Section 10-602); maximum slopes and minimum groundwater, seasonal highwater table and bedrock depths (Township Code Section 10-603 and 10-604); requires erosion and sediment control measures and field markings

to identify the areas to which FPR will be land applied (Township Code Section 10-605); provides for sampling and testing of FPR and soil (Township Code Section 10-606); addresses storage enclosures (Township Code Section 10-607); seeks a narrative plan and evidence of sufficient financial security to provide a temporary or permanent water supply in the event of a spill or contamination (Township Code Section 10-608); protects against nuisances that are associated with a normal agricultural operation (Township Code Section 10-609); requires record keeping and record sharing (Township Code Section 10-610) and provides for penalties and enforcement in the event the FPR Ordinance is violated (Township Code Section 10-611).

Standard of Review of the FPR Ordinance

Generally, the standard of review for government action involving economic regulations or non-fundamental rights is the "rational basis review". Here, the FPR Ordinance does not involve gender discrimination or commercial speech; nor does it regulate, restrain or restrict fundamental rights. Rather, the FPR Ordinance protects a fundamental right: the Constitutional right of its residents to pure water. Therefore, the FPR Ordinance should be subject to the rational basis review.

Under ACRE, Pennsylvania law affords additional protection for normal agricultural operations from local government regulations. However, ACRE expressly indicates that a local government unit may adopt an ordinance that limits or impacts a normal agricultural operation provided that the local government unit: 1) has expressed or implied authority under State law to adopt the ordinance; and 2) the ordinance is not prohibited or preempted under State law. 3 Pa.C.S. § 312. Here, the Township satisfies both requirements. Therefore the Ordinance is not an "unauthorized local ordinance" as that term is defined by ACRE.

Finally, regardless of the additional protections afforded to farming under ACRE, the FPR Ordinance must be viewed through the lens of the Environmental Rights Amendment to the Pennsylvania Constitution (Article 1, Section 27) which establishes the rights of Pennsylvania

citizens to clean air and pure water. And, the review of the FPR Ordinance must be guided by the Pennsylvania Supreme Court decisions finding that every level of government, including a local township, is a trustee of the environment with a fiduciary obligation to conserve, maintain the environment, and prevent and remedy degradation, diminution or depletion of public natural resources, including water.

Summary of the Argument

██████ would have us believe that FPR is the equivalent of an organic fertilizer that conditions the soil creating ideal conditions for crop growth with little or no effort and the added benefit of repurposing material that would otherwise end up in a landfill thereby benefiting not only the farmer, but every citizen of the Commonwealth. It is not that simple. Careful and regularly recurring testing of soil and FPR to ensure proper nutrient amendment is being added to the soil to support crop growth is required. Proper land application with protection zones around water features and erosion and sediment control measures is essential. In short, at a minimum, careful planning to meet the requirements set forth in the BMP Manual – although the BMP Manual itself is antiquated and outdated – is required.

Under the best case scenarios,, when properly land applied, FPR is beneficial. However, when all applicable BMPs are followed, land applied FPR that is, in part, slaughterhouse waste or other animal byproduct, has an aroma that is noticeably different from the strangely comforting sour yet sweet smell of manure that is so familiar to the rural counties of the Commonwealth. Instead, it has the faint smell of days old roadkill in August.

And, what about the other side of the coin when it is not properly tested or applied, or spills from trucks or containment facilities? The results can be devastating: barren fields dripping with animal fat that chokes and suffocates every seedling that attempts to poke through the earth; poisoned water capable of sickening (or even killing) yearling calves; contaminated drinking

wells incapable of being used as a water source. These are not far flung fantastical and unproven consequences. All of these things have happened as result of FPR. In fact, all of them have happened in one small, rural Pennsylvania community in Antrim Township, Franklin County.

██████████ contention that the FPR Ordinance is "illegal" and that the Township as "no authority" to review an FPR "management plan" for compliance is completely misguided. Further, ██████████ assertion that PA DEP has "sole authority to enforce violations of environmental statutes and regulations is patently false and flies in the face of the Township's Constitutional mandates. The FPR Ordinance does not violate ACRE. The Township has express authority under the Second Class Township Code to protect public health and safety. Moreover, the Supreme Court has already determined that the SWMA does not preempt a local ordinance. Additionally, the Township is mandated to act as a trustee of the environment and to protect the inalienable rights of its residents to pure water under the Environmental Rights Amended of the Pennsylvania Constitution.

The Township has the express authority to adopt and enforce the FPR Ordinance under the Second Class Township Code.

The Township is a Second Class Township of the Commonwealth of Pennsylvania. As such, the Township's express authority is established by the Second Class Township Code, 53 P.S. § 65101 et seq. The Second Class Township Code expressly authorizes the Township's board of supervisors to pass ordinances "in which general or specific powers of the township may be exercised." 53 P.S. Section 66601. Further, the Township, acting through its board of supervisors:

may make and adopt any ordinance...not inconsistent with or restrained by the Constitution and laws of this Commonwealth necessary for the proper management, care and control of the township...and the maintenance of peace, good government, health and welfare of the township and its citizens, trade, commerce and manufacturers.

53 P.S. Section 66506.

Here, the Township “recognize[d] that it has an obligation to protect safety and to minimize the adverse effects of ...land application of FPR through the standards set forth....” Township Code Section 10-601. Therefore, the Ordinance is a proper exercise of the Township’s authority to protect the health, safety and welfare of its residents.

The Township has the authority and obligation to adopt and enforce the FPR Ordinance under the Environmental Rights Amendment of the Constitution of the Commonwealth of Pennsylvania

Article I, Section 27 of the Pennsylvania Constitution provides as follows:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

In Pennsylvania Environmental Defense Foundation, the Supreme Court summarized the two basic duties of all branches of Commonwealth government in relation to the Environmental Rights Amendment to the Pennsylvania Constitution:

Pennsylvania's environmental trust thus imposes two basic duties on the Commonwealth as the trustee. First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. Robinson Twp., 83 A.3d at 957. Second, the Commonwealth must act affirmatively via legislative action to protect the environment. Id. at 958 (citing Geer v. Connecticut, 161 U.S. 519, 534, 16 S. Ct. 600, 40 L. Ed. 793 (1896) (trusteeship for the benefit of state's people implies legislative duty "to enact such laws as will best preserve the subject of the trust, and secure its beneficial use in the future to the people of the state").

Pa. Env'tl. Del. Found. v. Commonwealth, 161 A.3d 911 at 933 (Pa. 2017).

Moreover, our Supreme Court clearly held that all branches and levels of government, including local municipalities like the Township, are obligated to protect the environment, including “pure water,” as trustees with duties that are the same as those of a private trustee:

The drafters and the citizens of the Commonwealth who ratified the Environmental Rights Amendment, aware of this history, articulated the people's rights and the government's duties to the people in broad and flexible terms that would permit not only reactive but also anticipatory protection of the environment for the benefit of current and future generations. Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.

(Emphasis applied). *Id.* at 918-919 (quoting Robinson at 960-63).

Obviously, the FPR Ordinance is an environmental protection ordinance. The minimum setbacks; maximum slopes; erosion and sediment control requirements; and minimum depths to groundwater, seasonal high-water table and bedrock; set forth in the FPR Ordinance are all intended to prevent soil erosion and contamination of surface and groundwater. The field marking requirements set forth in the FPR Ordinance provide a means of checking compliance with the foregoing requirements. The sampling testing and record keeping requirements in the FPR Ordinance ensure that the substance that is stored and land applied is, in fact, FPR and not contaminated waste.

In light of the foregoing, the Township has both the express authority to adopt and enforce the FPR Ordinance under the Second Class Township Code and the implied authority (and duty) to adopt and enforce the FPR Ordinance under the Environmental Rights Amendment of the Pennsylvania Constitution. Therefore, the first prong of the 2-part test to determine the validity of the FPR Ordinance under ACRE has been met.

The SWMA does not, as a matter of law, preempt local ordinances; and, thereof, the FPR Ordinance is not preempted by the SWMA.

The second prong of the 2-part test under ACRE requires an analysis of whether the FPR Ordinances are prohibited or preempted under State law. Nolt's claim that the SWMA preempts

the FPR Ordinance is wrong; the FPR Ordinance is not preempted by the SWMA.

The Commonwealth is not presumed to have preempted a field merely by legislating in it. This principle was expressly applied to the SWMA by our Supreme Court in Hydropress Envtl. Servs. v. Twp. of Upper Mount Bethel, 836 A.2d 912, 918 (Pa. 2003). In Hydropress, a company engaged in the business of processing municipal sludge and residuals filed a declaratory judgment action seeking to declare illegal a local ordinance which regulated land application of sludge-derived products. The trial court granted the company's motion for summary judgment and determined that local regulation of the land application of waste material such as biosolids, septage or sewage sludge is preempted by the SWMA, which determination was affirmed by the Commonwealth Court. The Supreme Court overturned the holdings below and concluded as a matter of law the SWMA does not preempt local ordinances. In doing so, the Supreme Court reasoned as follows:

[t]he SWMA contains no express preemptive mandate. Just to the contrary, the primary legislative purpose of the SWMA, contained in 35 P.S. § 6018.102(1), is to **"establish and maintain a cooperative State and local program...."**

(Emphasis added). Hydropress, at 918-19.

In its analysis of the SWMA, the Supreme Court identified numerous provisions of the SWMA which would instruct against preemption including DEP's "delegated duties include cooperation with local units of government....and the training of local municipal personnel." Id. at 919 (citing 35 P.S. §§6018.104(2)-104(3)). The Supreme Court further reasoned that:

County health departments are expressly delegated powers of administration and enforcement. 35 P.S. §6018.106(a).

Local municipalities are expressly charged with planning responsibilities, 35 P.S. §6018.201, as well as permit review and comment functions. 35 P.S. §6018.504. Finally, municipal solicitors are expressly authorized to commence actions at law and in equity to restrain violations of the SWMA, 35 P.S. §6018.604(b), and it is 'declared to be the purpose of [the Act] to

provide additional and cumulative remedies....” 35 P.S.
§6018.607.

Hydropress, 836 A.2d at 919. Ultimately, the Supreme Court concluded that the SWMA did not, as a matter of law, preempt local ordinances and that the SWMA includes “**language of intergovernmental coordination and cooperation, not of preemption.**” Id. (emphasis added).

Since the Supreme Court concluded that the SWMA did not, as a matter of law, preempt a local ordinance dealing with the processing of municipal waste, it follows that the SWMA does not, as a matter of law, preempt a local ordinance addressing the application and storage of FPR.

The FPR Ordinance is an environmental protection ordinance enacted pursuant to the power and authority vested in the Township by the Environmental Rights Amendment of the Pennsylvania Constitution.

While the Supreme Court unequivocally concluded that the SWMA does not, as a matter of law, preempt local ordinances, it did find that certain components of Upper Mount Bethel’s ordinance were beyond the police powers afforded in the Second Class Township Code. Id. at 920. However, Hydropress was decided over a decade before the Pennsylvania Environmental Defense Fund, *supra*, and did not analyze the Upper Mount Bethel ordinance under the Environmental Rights Amendment rubric. Moreover, PA DEP by way of the SWMA provides **far greater** regulatory oversight and scrutiny on municipal waste processors than that which is imposed on storage, processing and land application of FPR.

In fact, FPR storage, processing and land application is conducted in a regulatory grey-area in Pennsylvania. [REDACTED] acknowledges that the SWMA and Chapter 287 make clear that the land application of FPR is exempt from PA DEP permitting provided that the land application is consistent the BMPs set forth in the FPR Manual [REDACTED] further acknowledges that the FPR Manual is a guidance document that cannot be interpreted as a prescriptive regulation [REDACTED] reasons that “the recommendations discussed and listed in the Manual are just that – recommendations for the

land application of FPR to assist farmers and encourage good practices [and] unlike a promulgated regulation, a guidance document does not have the force and effect of law.” Complaint, pgs. 2 and 3.

The Township agrees with [REDACTED] interpretation; and, for that very reason, the Township is authorized to enact the FPR Ordinance under the authority vested in it by the Environmental Rights Amendment to the Pennsylvania Constitution. Drawing from Robinson Township, the Supreme Court explained in Pennsylvania Environmental Defense Foundation, supra, that “[t]he plain meaning of the terms “conserve and maintain” [in the Environmental Rights Amendment] implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources” and a duty to act toward the corpus of the trust “with prudence, loyalty, and impartiality.” Pennsylvania Environmental Defense Foundation at 161 A.3d at 932 (quoting Robinson Twp., 83 A.3d at 957).

The FPR Ordinance is not inconsistent with the SWMA or any other laws of the Commonwealth³

To the extent [REDACTED] argues the Ordinance is “inconsistent” with the laws of this Commonwealth, such argument lacks merit. The only law alleged by [REDACTED] to be violated by the FPR Ordinance is the SWMA. As discussed in greater detail above, the Ordinance does not violate the SWMA. Instead, the FPR Ordinance furthers the SWMA’s stated purpose of intergovernmental coordination and cooperation.

³ In recognition of the dangers of FPR, the State Legislature is considering amendments to the SWMA. House Bill No. 2393, approved by the House on October 9, 2024 amends the SWMA. Although previous versions of the SWMA do not prohibit or preempt local ordinances that are not more stringent than the requirements of the SWMA, the new text of the bill clearly and unequivocally states in §509 H pertaining to FPR: ...but nothing in this Chapter shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more Stringent than the requirements of this Chapter and the regulations or guidelines promulgated under this Chapter. Given that the current SWMA does not prohibit or preempt local ordinances to regulate FPR, a Right of Action by the Attorney Generals’ office under §315 of ACRE is currently unwarranted and will become expressly prohibited if HB 2393 is adopted by the Senate and signed into law by Governor Shapiro.

The Complaint also vaguely alleges the Ordinance is in violation of Section 603 of the Municipalities Planning Code ("MPC"). However, as [REDACTED] admits, Sections 603 of the MPC only limits a municipality's ability to pass zoning ordinances "regulating activities related to agricultural production in a manner that exceeds requirements imposed under state law." Moreover, Section 603 of the MPC permits zoning ordinances that protect and preserve natural and historic resources and prime agricultural land. The FPR Ordinance does not impose requirements in excess of those provided by state law. Instead the FPR Ordinance tracks the guidance provided for in the FPR Manual, which [REDACTED] admits does not have the effect of law.^{4,5} Therefore, any alleged conflict with the FPR Manual would not exceed requirements imposed under state law.

[REDACTED] is estopped from bringing this complaint under the terms of the Settlement Agreement

[REDACTED] October 7, 2024 correspondence to Robert Willis, Esq. falsely states that [REDACTED] owns property at [REDACTED] (East Coventry Township, Chester County, PA). The parcel is part of the Properties, is actually owned by [REDACTED] and was the subject of a Stipulation of Settlement at EHB Docket No. 2023-008-CS (that is, the Settlement Agreement) relative to land application and storage of FPR thereon. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit "A". By falsely stating that [REDACTED] is the property owner, it appears [REDACTED] is attempting to circumvent the obligations of [REDACTED] under the Stipulation of Settlement which

[REDACTED] alleges that the Township is demanding financial security for the provision of a temporary and permanent water supply in the event of contamination. That is not the case, the FPR Ordinance requires a remediation plan in the event of contamination and a means of being able to pay for such remediation if needed.

⁵ This Office has repeatedly stated in Acceptance Letters that local government units like the Township are permitted to seek records for compliance purposes in the context of, for example Erosion and Sediment Control. The vast majority of the FPR Ordinance seeks similar documentation, but in the context of an FPR management plan.

binds [REDACTED] to abide by the requirements of the FPR Ordinance. Indeed the PA Department of State records list [REDACTED] as a principal of [REDACTED]

The classification of storage and land application of FPR as a normal agricultural operation is a fact specific inquiry which requires review on a case-by-case basis

[REDACTED] relies heavily on Branton v. Nicholas Meat, LLC, 159 A.3d 540 (Pa. Super. 2017), for the position that the spreading and storage of FPR is a normal agricultural operation as a matter of law. In Branton, the factual background was clearly established (the parties agreed on the facts), and demonstrated that the FPR was either immediately spread on the farm in question, or stored and spread only on the farm and only one other farm:

[T]here is no pertinent question regarding the character of the substance in this specific case or Farmers' use of [FPR] at the Bowes and Camerer Farms. Thus,... whether the spreading and storage of [FPR] is a normal agricultural operation **in this case** is a question of law”.

(Emphasis added). Branton, 159 A.3d at 548 (internal quotations omitted). Our Courts have consistently held that the determination of what constitutes a “normal agricultural operation” is an evidentiary determination, and not a legal one, requiring a factual inquiry for which the burden is on the landowner to prove that the proposed use constitutes a normal agricultural operation. Com., Off. of Atty. Gen. ex rel. Corbett v. E. Brunswick Twp., 956 A.2d 1100, 1115 (Pa. Commw. 2008); Boswell v. Skippack Twp., 2012 WL 8670346, at *6 (Pa. Commw. June 27, 2012), affd, 620 Pa. 286, 67 A.3d 757 (2013). Moreover, specifically regarding fertilizers, the Commonwealth Court has held that “while undisputedly fertilizer can be used and applied in an agricultural setting to enhance crop yields or growth, this does not transform what is otherwise clearly a manufacturing process into an agricultural one” in all circumstances. Green 'N Grow Composting, LLC v. Martie Twp., 2019 WL 2400455, at *3 (Pa. Commw. May 3, 2019).

Admittedly, off-site generation of FPR for land application is permitted. *See* Branton, 159 A.3d 540; Tinicum Twp. v. Nowicki, 99 A.3d 586, 593 (Pa. Commw. 2014). However, Branton,

which does not stand for the assertion that FPR may be stored and spread without restriction as a normal agricultural operation.

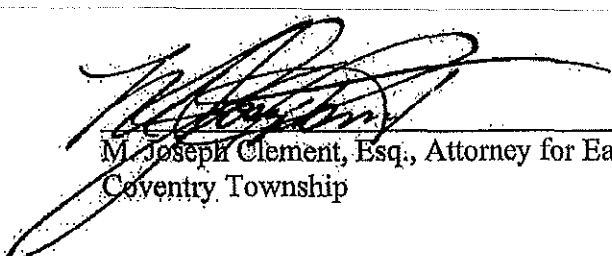
Conclusion

For at least the foregoing reasons, [REDACTED] challenge of the FPR Ordinance under ACRE must fail. The Township is authorized by the Second Class Township Code to enact the FPR Ordinance in order to protect the health, safety and welfare of its citizens. In fact, the Township is obligated to enact the FPR Ordinance under the authority vested in it by the Environmental Rights Amendment in order to protect the environment, and most specifically, pure water, from degradation by FRP or substances "presumed to be" FPR. Moreover, the SWMA does not preempt the FPR Ordinance.

Most farmers engage in responsible farming practices; and most farmers care about the impact their farming practices have on the environment. However, the unregulated application of waste which is potentially hazardous to the environment under the guise of a "normal agricultural operation" flies in the face of the Environmental Rights Amendment, and would allow for the type of unfettered and unregulated degradation of the environment under the guise of "farming" that the Environmental Rights Amendment so zealously guards against.

RESPECTFULLY SUBMITTED,

WISLER PEARLSTINE, LLP



M. Joseph Clement, Esq., Attorney for East
Coventry Township

EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



EAST COVENTRY ADVOCACY, and
[REDACTED] Appellants, and
EAST COVENTRY TOWNSHIP BOARD
OF SUPERVISORS, Intervenor

v.

EHB Docket No. 2023-008-CS

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and [REDACTED]
Permittees

ORDER

AND NOW, this 26th day of April, 2024, in consideration of the Parties' correspondence of April 25, 2024, informing the Board that the Parties have agreed to the dismissal of this appeal in accordance with the terms of a Stipulation of Settlement, the parties having provided the Board with a copy of the Stipulation of Settlement for inclusion in the record of this appeal, a copy of which is attached to and made a part of this Order, the above-captioned appeal is hereby dismissed without prejudice.

ENVIRONMENTAL HEARING BOARD

s/ Sarah L. Clark
SARAH L. CLARK
Judge

DATED: April 26, 2024



c: For the Commonwealth of PA, DEP:

Adam N. Bram, Esquire
Robert Elsen McDivitt III, Esquire
(via electronic filing system)

For Appellants:

William G. Roark, Esquire
Steven A. Hann, Esquire
(via electronic filing system)

For Permittees:

Robert J. Schena, Esquire
James Clark, Esquire
(via electronic filing system)

For Intervenor:

Michael Joseph Clement, Esquire
Mark Andrew Hosterman, Esquire
(via electronic filing system)



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

EAST COVENTRY ADVOCACY and
[REDACTED] Appellants, and
EAST COVENTRY TOWNSHIP BOARD
OF SUPERVISORS, Intervenor

EHB Docket No. 2023-008-CS

v.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
[REDACTED] and
[REDACTED]
Permittees

STIPULATION OF SETTLEMENT

1. WHEREAS, East Coventry Advocacy ("ECA") and [REDACTED] collectively
"Appellants") filed an appeal on January 11, 2023 ("Appeal"), challenging the spreading and
storage of food processing residual ("FPR") at [REDACTED] S

[REDACTED] and [REDACTED] S

2. WHEREAS, [REDACTED] and [REDACTED]
(collectively "Farms") are owned and operated by [REDACTED]

3. WHEREAS, [REDACTED] and [REDACTED]
are collectively referred to herein as "Owner/Operator").

4. WHEREAS, Appellants, Owner/Operator, Township (hereinafter defined) and the
Commonwealth of Pennsylvania Department of Environmental Protection ("Department")
(hereinafter, collectively identified as "the Parties") are parties to the Appeal.



5. **WHEREAS**, on February 3, 2023, the East Coventry Township Board of Supervisors ("Township") joined in the Appeal and filed a petition to intervene.

6. **WHEREAS**, the Parties wish to amicably resolve the matters raised in the Appeal by entering into this Stipulation of Settlement ("Stipulation") and agree to terminate the above-captioned docket pursuant to 25 Pa. Code § 1021.141.

NOW, THEREFORE, the Parties intending to be legally bound do, hereby, agree to the following:

I. REVISED SITE PLAN AND FPR MANAGEMENT PLAN:

A. Owner/Operator will not spread FPR at the Farms without first preparing a revised site plan and/or food processing residual management plan for both [REDACTED] and [REDACTED] in accordance with the guidelines set out in the Department's Food Processing Residual Management Manual, as may be updated or amended from time to time (the "Manual"). A copy of said plan(s) shall be provided to Appellants, the Department, and the Township. Said plan(s) shall show, at a minimum, the following:

1. Setback requirements in accordance with the guidelines in Chapter 8, Table 8.11 the Manual, including for the following features, if applicable:
 - i. Property line(s);
 - ii. Occupied building(s);
 - iii. Individual (private) water well(s);
 - iv. Public water well(s);
 - v. Upgradient of a surface water source(s);
 - vi. Intermittent stream(s);
 - vii. Perennial stream(s);
 - viii. Exceptional value wetland(s);
 - ix. Sinkhole(s);
 - x. Area draining to a sinkhole(s);
 - xi. Perimeter undrained depression(s); and
 - xii. Bedrock outcrop(s).
2. Applicable setback isolation distances may be reduced with written permission of the owner of the site feature; and
3. General site criteria requirements in accordance with the guidelines in Chapter 8, Table 8.10 of the Manual.



- B. Owner/Operator shall comply with all applicable rules, regulations, statutes and laws governing the land application, storage, disposal and transportation of FPR including, without limitation, all duly enacted local ordinances.

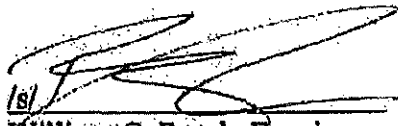
II. FPR TESTING AND STANDARDS

- A. FPR land applied at the Farms should be characterized and applied according to the recommended guidance in the Manual.
- B. FPR land applied at the Farms must not contain any "hazardous waste," as defined in 40 C.F.R. Chapter I, Subchapter I, Part 261.


III. MISCELLANEOUS


- A. The Appellants and the Township agree to withdraw the Appeal, subject to the conditions of this Stipulation and as provided in the attached proposed Order.
- B. The Parties agree that the withdrawal of the Appeal shall be without prejudice to the Appellants and the Township's rights to raise any and all factual or legal issues in the Appeal in any future appeal, unless the issue is litigated and determined. The other parties shall retain their rights to raise defenses to any such appeal; however, the other parties specifically agree that they will not, on the basis of this dismissal, raise claims of administrative finality as a bar to any such future appeal.
- C. The Parties agree to bear their respective attorney's fees, expenses, and costs associated with this matter.
- D. This Stipulation constitutes the entire agreement between the Parties with respect to the instant litigation, and no alteration, additions, or amendments to this Stipulation shall be valid unless mutually agreed to by each of the Parties on behalf of a person authorized to represent that party, set forth in writing, and duly executed by all of the Parties.
- E. The Parties stipulate to the entry of the attached proposed Order, if satisfactory to the Environmental Hearing Board, resolving this appeal.
- F. By their signatures below, the Parties consent to the terms of this Stipulation and represent that they are authorized to execute this agreement on behalf of the party for whom they sign.



/s/ 


Date: 4/24/24

William G. Roark, Esquire
PA I.D. No. 203699
Hamburg, Rubin, Mullin, Maxwell
& Lupin, PC
1684 S. Broad Street, Suite 230
P.O. Box 1479
Lansdale, PA 19446-542
Telephone: (215) 661-0400
Facsimile: (215) 661-0315


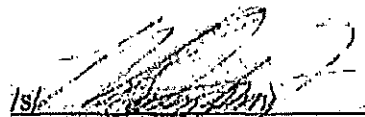
Steven A. Hann, Esquire
Counsel for East Coventry Advocacy
And 

/s/ 


Date: 4/24/24

Robert E. McDivitt III
PA I.D. No. 201180
Assistant Counsel
Southeast Regional Counsel
2 East Main Street
Norristown, PA 19401
Telephone: (484) 250-5859
Facsimile: (484) 250-5931
E-mail: 

Adam Bram, PA I.D. No. 78561
Regional Counsel
Counsel for the Department of Environmental
Protection

/s/ 


Date: 4/22/24

M. Joseph Clement, Esquire
PA I.D. No. 307813
Wisler Pearlstine, LLP
Blue Bell Executive Campus
460 Norristown Road, Suite 110
Blue Bell, PA 19422-2323
Telephone: (610) 825-8400
Facsimile: (610) 828-4887
Email: 

Mark A. Hosterman, Esquire
Counsel for East Coventry Township

/s/

Date: 4/24/24

James C. Clark, Esquire
PA I.D. No. 310900
Fox Rothschild
2800 Kelly Road, Suite 200
Warrington, PA 18976
Telephone: (215) 345-7500
Facsimile: (215) 345-7507
Email: 

Robert J. Schena, Jr., Esquire


HRMM[&]L

HAMBURG, RUBIN, MULLIN, MAXWELL & LUPIN, PC

www.HRMML.com
Lawyers@HRMML.com

32843-0002

December 13, 2024

Robert A. Willig, Esquire

Senior Deputy Attorney General
Office of the Attorney General
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA 15222

Re: Response to ACRE Complaint – East Coventry Township, Chester
County

Mr. Willig

Please be advised that this firm represents East Coventry Advocacy (hereinafter “ECA”), a non-profit 501(c)(4) entity established in 2022 with the purpose of protecting and restoring the environment and waterways in and around East Coventry Township. Kindly consider this letter ECA’s response to the request you received dated October 8, 2024 (hereinafter “Objection”) concerning East Coventry Township’s (hereinafter “Township”) Food Processing Residual Ordinance, ordinance number 2024-268 (hereinafter “Ordinance”).¹

Simply stated, the Ordinance does not violate the Agricultural Communities and Rural Environment Law (hereinafter “ACRE”) because the Township has express authority under the Second Class Township Code to protect public health and safety and the Solid Waste Management Act (hereinafter “SWMA”) does not preempt the Ordinance.

I. Applicable Standard of Review

Under Pennsylvania law and according to ACRE, a local government *may* limit a normal agricultural operation. 3 Pa.C.S. § 312. However, in order to do so, the local government unit must: (1) have expressed or implied authority under State

¹ As referenced in the Objection, ECA previously appealed the Department of Environmental Protection’s (hereinafter “DEP”) determination concerning the land application of food processing residual (hereinafter “FPR”) at land owned by the objector in the Township. *See Objection*, fn1. As a result of that appeal, the parties entered into a Stipulation of Settlement which, inter alia, required the objector to submit – to DEP and the Township – revised site plans before any FPR land application. A true and correct copy of the Stipulation of Settlement is incorporated herein and attached hereto as Exhibit “A.”
{03975995;v1 }

J. Edmund Mullin
Steven H. Lupin
Douglas I. Zelders
Carl N. Weiner
Mark F. Himsworth
Steven A. Hann
Steven B. Barrett
Christen G. Pionzio
Ethan R. O’Shea
Bernadette A. Kearney
Paul G. Mullin
John J. Iannozzi
William G. Roark
Lisa A. Shearman, LL.M.
Nathan M. Murawsky
Robert J. Iannozzi Jr.
Sean E. Cullen LL.M.
Michael S. Gill
Ron L. Woodman
Kevin M. McGrath
Kathleen A. Maloles
Steven J. English
Danielle M. Yacono
John F. McCaul
Zachary R. Morano
Brittany Ann Kane
Celso L. Leite
J. Braun Taylor
Grace Gelone
Mark Umansky
Gabriela Amado

OF COUNSEL:

Jonathan Samuel, LL.M.
John C. Rafferty Jr. Senator
Noah Marlier

LANSDALE

1684 S. Broad Street
Suite 230
Post Office Box 1479
Lansdale, PA 19446-5422
Phone 215-661-0400
Fax 215-661-0315

PHILADELPHIA

123 S. Broad Street
Suite 2102
Philadelphia, PA 19109

law to adopt the ordinance; and (2) not be prohibited or preempted under State law from adopting the ordinance. *Id.* Here, the Township satisfies both requirements. Therefore the Ordinance is not an “unauthorized local ordinance” as that term is defined by ACRE. *Id.*

II. The Township is Expressly Authorized to pass the Ordinance.

First, the Township has the express authority under State law to adopt the Ordinance. Pennsylvania’s Second Class Township Code expressly authorizes a board of supervisors to pass ordinances “in which general or specific powers of the township may be exercised.” 53 P.S. § 66601. Further, the Township, acting through its board of supervisors:

may make and adopt any ordinance...not inconsistent with or restrained by the Constitution and laws of this Commonwealth necessary for the proper management, care and control of the township...and the maintenance of peace, good government, health and welfare of the township and its citizens, trade, commerce and manufacturers.

53 P.S. § 66506. And here, the Township “recognize[d] that it has an obligation to protect safety and to minimize the adverse effects of ...land application of FPR through the standards set forth...” *Ordinance*, § 10-601. Therefore, the Ordinance is a proper exercise of the Township’s authority to protect the health and welfare of its residents.

To the extent the Objection argues the Ordinance is “inconsistent” with the laws of this Commonwealth, such argument lacks merit. Here, the only law alleged to be violated by the Ordinance is the Solid Waste Management Act (hereinafter “SWMA”). *See Objection*, pg. 2 (“PADEP oversees and implements environmental waste regulations under SWMA”).² As discussed in greater detail below, the Ordinance does not violate the SWMA, but instead furthers that statute’s stated purpose of intergovernmental coordination and cooperation.

² The Objection also vaguely alleges the Ordinance is in violation of Section 603 of the Municipalities Planning Code (hereinafter “MPC”). *See Objection*, pg. 4. However, as the Objection admits, Sections 603 only limits a municipality’s ability to pass zoning ordinances “regulating activities related to agricultural production in a manner that exceeds requirements imposed under state law.” *Id.* (emphasis added). Here, the Ordinance does not impose requirements in excess of those provided by state law. Instead the Ordinance only tracks the guidance provided for in the FPR Manual, which the Objection admits does not have the effect of law. Therefore, any alleged conflict with the FPR Manual would not “exceed requirements imposed under state law.”

III. The SWMA does not Preempt the Ordinance.

As a general matter, “the state is not presumed to have preempted a field merely by legislating in it.” *Hydropress Env'tl. Servs. v. Twp. of Upper Mount Bethel*, 836 A.2d 912, 918 (Pa. 2003). Indeed, only when the General Assembly “clearly express[es] its intent to preempt a field in which it has legislated” will preemption be found. *Id.* The test for preemption is “well established” and is as follows:

Either the statute must state on its face that local legislation is forbidden, or indicate an intention on part of the legislature that it should not be supplemented by municipal bodies.

Id. (citing *Western Pennsylvania Restaurant Association v. Pittsburgh*, 77 A.2d 616, 620 (Pa. 1951)). The reason for this rigid test is because “[t]he consequence of a determination of preemption is severe.” *Id.*

Pennsylvania’s Supreme Court has previously held the SWMA does not preempt local regulation. In *Hydropress env'tl. Servs. v. Twp. of Upper Mount Bethel*, a company engaged in the business of processing municipal sludge and residuals filed a declaratory judgment action seeking to declare illegal a local ordinance which regulated waste materials. 836 A.2d 912 at 914. As explained by the Supreme Court, the company:

alleged in its declaratory judgment action that the [o]rdinance is illegal because the General Assembly has, by enacting the SWMA, preempted all local regulation of the land application of sludge-derived products and that the nature of the solid waste industry demands uniform statewide regulation.

Id. The trial court granted the company’s motion for summary judgment and determined “that local regulation of the land application of waste material such as biosolids, septage or sewage sludge is preempted by the SWMA.” *Id.* at 916. After the Commonwealth Court affirmed the trial court’s order, the Supreme Court granted allowance of appeal to address, *inter alia*, “whether the Solid Waste Management Act (SWMA) preempts the [o]rdinance.” *Id.* at 913.

The Supreme Court overturned the holdings below and concluded as a matter of law the SWMA does not preempt local ordinances. In so doing, the Supreme Court highlighted:

[t]he SWMA contains no express preemptive mandate. Just to the contrary, the primary legislative purpose of the SWMA, contained in 35 P.S. § 6018.102(1), is to

“establish and maintain a cooperative State and local program....”

Hydropress, 836 A.2d at 918-19 (emphasis added). Moreover, the Supreme Court identified numerous provisions of the SWMA which would instruct against preemption. For example, DEP’s “delegated duties include cooperation with local units of government....and the training of local municipal personnel.” *Id.* at 919 (citing 35 P.S. §§6018.104(2)-104(3)). The Supreme Court continued:

County health departments are expressly delegated powers of administration and enforcement. 35 P.S. § 6018.106(a). Local municipalities are expressly charged with planning responsibilities, 35 P.S. § 6018.201, as well as permit review and comment functions. 35 P.S. § 6018.504. Finally, municipal solicitors are expressly authorized to commence actions at law and in equity to restrain violations of the SWMA, 35 P.S. § 6018.604(b), and it is declared to be the purpose of [the Act] to provide additional and cumulative remedies....” 35 P.S. § 6018.607.

Hydropress, 836 A.2d at 919. Ultimately, the Supreme Court concluded that the SWMA did not, as a matter of law, preempt local ordinances. As the Supreme Court succinctly stated, the SWMA includes **“language of intergovernmental coordination and cooperation, not of preemption.”** *Id.* (emphasis added).³

Respectfully, your decision should be guided by the Supreme Court’s holding in *Hydropress*. That case dealt with local ordinances seeking to impose limitations on municipal waste and sewage sludge processors. The SWMA provides for **far greater** regulatory oversight and scrutiny on those processors than that which is imposed on FPR operators. Because unlike municipal waste processors, FPR operates in a regulatory grey-area in Pennsylvania. *See Objection*, pg. 2 (“However, both the SWMA and Chapter 287 make clear that the use of FPR is exempt from permitting provided that the use consistent with [DEP’s] ‘Best Management Practices....In this case, that means [DEP’s] FPR Manual...To be clear, the FPR Manual is a guidance document. It is not to be interpreted as a prescriptive regulation). *See also Objection*, pg. 3 (“The recommendations discussed and listed in the Manual are just that – recommendations for the land application of FPR to assist farmers and encourage good practices. Unlike a promulgated regulation, a [DEP] guidance document does not have the force and effect of law.”). Therefore, if the Supreme Court concluded that the SWMA did

³ *Hydropresses*’ holding overturned in part and affirmed in part the Commonwealth Court’s opinion. While the Supreme Court unequivocally concluded that the SWMA does not, as a matter of law, preempt local ordinances, the Court did conclude in that particular case that certain components of Upper Mount Bethel’s ordinance were beyond the police powers afforded in the Second Class Township Code. *See Hydropress*, 836 A.2d at 920.
{03975995;v1 }

not, as a matter of law, preempt a local ordinance dealing with the processing of municipal waste, then it would reach a similar conclusion here. The SWMA does not, as a matter of law, preempt a local ordinance addressing the application and storage of FPR.

Therefore, you should conclude that the Ordinance is not an "unauthorized local ordinance" as that term is defined in ACRE. Not only is the Township authorized to pass the Ordinance under the Second Class Township Code, but the Ordinance is not preempted by the SWMA.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By:



WILLIAM G. ROARK

WGR:tap

Enclosure

EXHIBIT “A”



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



EAST COVENTRY ADVOCACY, and
[REDACTED] Appellants, and
EAST COVENTRY TOWNSHIP BOARD
OF SUPERVISORS, Intervenor

v.

EHB Docket No. 2023-008-CS

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and [REDACTED]
[REDACTED] and [REDACTED],
Permittees

ORDER

AND NOW, this 26th day of April, 2024, in consideration of the Parties' correspondence of April 25, 2024, informing the Board that the Parties have agreed to the dismissal of this appeal in accordance with the terms of a Stipulation of Settlement, the parties having provided the Board with a copy of the Stipulation of Settlement for inclusion in the record of this appeal, a copy of which is attached to and made a part of this Order, the above-captioned appeal is hereby dismissed without prejudice.

ENVIRONMENTAL HEARING BOARD

s/ Sarah L. Clark
SARAH L. CLARK
Judge

DATED: April 26, 2024



c: For the Commonwealth of PA, DEP:

Adam N. Bram, Esquire
Robert Elsen McDivitt III, Esquire
(via *electronic filing system*)

For Appellants:

William G. Roark, Esquire
Steven A. Hann, Esquire
(via *electronic filing system*)

For Permittees:

Robert J. Schena, Esquire
James Clark, Esquire
(via *electronic filing system*)

For Intervenor:

Michael Joseph Clement, Esquire
Mark Andrew Hosterman, Esquire
(via *electronic filing system*)



COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD

EAST COVENTRY ADVOCACY and
[REDACTED] **Appellants, and**
EAST COVENTRY TOWNSHIP BOARD
OF SUPERVISORS, Intervenor

EHB Docket No. 2023-008-CS

v.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
[REDACTED] **and**
[REDACTED]
Permittees

STIPULATION OF SETTLEMENT

1. WHEREAS, East Coventry Advocacy ("ECA") and [REDACTED] (collectively "Appellants") filed an appeal on January 11, 2023 ("Appeal"), challenging the spreading and storage of food processing residual ("FPR") at [REDACTED]

[REDACTED] and 070 [REDACTED]
[REDACTED]

2. WHEREAS, [REDACTED] and [REDACTED] (collectively "Farms") are owned and operated by [REDACTED]

3. WHEREAS, [REDACTED] and [REDACTED] are collectively referred to herein as "Owner/Operator").

4. WHEREAS, Appellants, Owner/Operator, Township (hereinafter defined) and the Commonwealth of Pennsylvania Department of Environmental Protection ("Department") (hereinafter, collectively identified as "the Parties") are parties to the Appeal.



5. WHEREAS, on February 3, 2023, the East Coventry Township Board of Supervisors ("Township") joined in the Appeal and filed a petition to intervene.

6. WHEREAS, the Parties wish to amicably resolve the matters raised in the Appeal by entering into this Stipulation of Settlement ("Stipulation") and agree to terminate the above-captioned docket pursuant to 25 Pa. Code § 1021.141.

NOW, THEREFORE, the Parties intending to be legally bound do, hereby, agree to the following:

I. REVISED SITE PLAN AND FPR MANAGEMENT PLAN:

A. Owner/Operator will not spread FPR at the Farms without first preparing a revised site plan and/or food processing residual management plan for both [REDACTED] and [REDACTED] in accordance with the guidelines set out in the Department's Food Processing Residual Management Manual, as may be updated or amended from time to time (the "Manual"). A copy of said plan(s) shall be provided to Appellants, the Department, and the Township. Said plan(s) shall show, at a minimum, the following:

1. Setback requirements in accordance with the guidelines in Chapter 8, Table 8.11 the Manual, including for the following features, if applicable:
 - i. Property line(s);
 - ii. Occupied building(s);
 - iii. Individual (private) water well(s);
 - iv. Public water well(s);
 - v. Upgradient of a surface water source(s);
 - vi. Intermittent stream(s);
 - vii. Perennial stream(s);
 - viii. Exceptional value wetland(s);
 - ix. Sinkhole(s);
 - x. Area draining to a sinkhole(s);
 - xi. Perimeter undrained depression(s); and
 - xii. Bedrock outcrop(s).
2. Applicable setback isolation distances may be reduced with written permission of the owner of the site feature; and
3. General site criteria requirements in accordance with the guidelines in Chapter 8, Table 8.10 of the Manual.



- B. Owner/Operator shall comply with all applicable rules, regulations, statutes and laws governing the land application, storage, disposal and transportation of FPR including, without limitation, all duly enacted local ordinances.

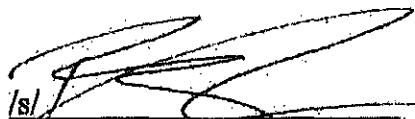
II. FPR TESTING AND STANDARDS

- A. FPR land applied at the Farms should be characterized and applied according to the recommended guidance in the Manual.
- B. FPR land applied at the Farms must not contain any "hazardous waste," as defined in 40 C.F.R. Chapter I, Subchapter I, Part 261.


III. MISCELLANEOUS


- A. The Appellants and the Township agree to withdraw the Appeal, subject to the conditions of this Stipulation and as provided in the attached proposed Order.
- B. The Parties agree that the withdrawal of the Appeal shall be without prejudice to the Appellants and the Township's rights to raise any and all factual or legal issues in the Appeal in any future appeal, unless the issue is litigated and determined. The other parties shall retain their rights to raise defenses to any such appeal; however, the other parties specifically agree that they will not, on the basis of this dismissal, raise claims of administrative finality as a bar to any such future appeal.
- C. The Parties agree to bear their respective attorney's fees, expenses, and costs associated with this matter.
- D. This Stipulation constitutes the entire agreement between the Parties with respect to the instant litigation, and no alteration, additions, or amendments to this Stipulation shall be valid unless mutually agreed to by each of the Parties on behalf of a person authorized to represent that party, set forth in writing, and duly executed by all of the Parties.
- E. The Parties stipulate to the entry of the attached proposed Order, if satisfactory to the Environmental Hearing Board, resolving this appeal.
- F. By their signatures below, the Parties consent to the terms of this Stipulation and represent that they are authorized to execute this agreement on behalf of the party for whom they sign.



/s/ 


Date: 4/24/24

William G. Roark, Esquire
PA I.D. No. 203699
Hamburg, Rubin, Mullin, Maxwell
& Lupin, PC
1684 S. Broad Street, Suite 230
P.O. Box 1479
Lansdale, PA 19446-542
Telephone: (215) 661-0400
Facsimile: (215) 661-0315
Email: 

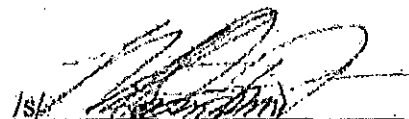
Steven A. Hann, Esquire
Counsel for East Coventry Advocacy
And 

/s/ 


Date: 4/24/24

Robert E. McDivitt III
PA I.D. No. 201180
Assistant Counsel
Southeast Regional Counsel
2 East Main Street
Norristown, PA 19401
Telephone: (484) 250-5859
Facsimile: (484) 250-5931
E-mail: 

Adam Bram, PA I.D. No. 78561
Regional Counsel
Counsel for the Department of Environmental
Protection

/s/ 


Date: 4/22/24

M. Joseph Clement, Esquire
PA I.D. No. 307813
Wisler Pearlstine, LLP
Blue Bell Executive Campus
460 Norristown Road, Suite 110
Blue Bell, PA 19422-2323
Telephone: (610) 825-8400
Facsimile: (610) 828-4887
Email: 

Mark A. Hosterman, Esquire
Counsel for East Coventry Township

/s/

Date: 4/24/24

James C. Clark, Esquire
PA I.D. No. 310900
Fox Rothschild
2800 Kelly Road, Suite 200
Warrington, PA 18976
Telephone: (215) 345-7500
Facsimile: (215) 345-7507
Email: 

Robert J. Schena, Jr., Esquire

