

[REDACTED]

[REDACTED]

[REDACTED]

October 2, 2024

Via Email to ACRE@attorneygeneral.gov
and via First Class Mail

Pennsylvania Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

Re: ACRE Complaint – Plainfield Township Sewage Sludge Land Application Ordinance

Dear Attorney General Henry:

We represent [REDACTED] the owner of an approximately 83.88 acre tract of land located in Plainfield Township, Northampton County, Pennsylvania known as the [REDACTED] Farm property. [REDACTED] applied for, and received, a permit from the Pennsylvania Department of Environmental Protection (“PaDEP”) for the beneficial use of biosolids by land application. In response to [REDACTED] Notice of First Land Application of Sewage Sludge for [REDACTED] Farm, on September 18, 2024, the PaDEP determined that [REDACTED] Farm is suitable for land application of biosolids.

On September 26, 2024, the Plainfield Township Board of Supervisors adopted the Ordinance titled the “Plainfield Township Sewage Sludge Land Application Ordinance (“Ordinance”). A copy of the Ordinance is attached to this letter.¹ The Ordinance passed by Plainfield Township is an improper regulation of the land application of biosolids (or sewage sludge), an undisputed normal agricultural operation under Pennsylvania law, and is therefore illegal pursuant to the Agricultural Communities and Rural Environmental law (“ACRE”). *See Gilbert v. Synagro Cent., LLC*, 131 A.3d 1 (Pa. 2015). Under ACRE, Plainfield Township is prohibited from enacting and enforcing an ordinance that prohibits or limits the normal agricultural operation of land application of biosolids where the ordinance violates or is preempted by state law. Yet, that is exactly what Plainfield Township’s Ordinance purports to do.

Indeed, the purpose and effect of the Ordinance is for Plainfield Township to prohibit the land application of biosolids within the Township. For example, the Ordinance blanketly prohibits the land application of biosolids on *any* land in Plainfield Township with soils rated by the USDA’s Web Soil Survey tool as having “very limited” suitability for land application of biosolids. (*See* Ordinance at p. 8). According to the Ordinance, that prohibition alone results in prohibiting the

¹ [REDACTED] is in the process of obtaining an executed copy of the Ordinance and will supplement its request with the same upon receipt.

land application of biosolids on 64.6% of land within Plainfield Township. (See Ordinance at p. 5). The Ordinance also blanketly prohibits the land application of biosolids within 1,000 feet of an exceptional value wetland and within 1,000 feet of a potable water well. For any remaining lands within Plainfield Township, the Ordinance prohibits the land application of biosolids unless an applicant is able to satisfy the onerous, arbitrary, and unreasonable sampling, testing, and ceiling concentration requirements of the multiple constituents listed therein. (See Ordinance at p. 8-10).

Pennsylvania courts have made clear that municipal ordinances regulating the land application of biosolids, like the Ordinance at issue here, are preempted by the Solid Waste Management Act ("SWMA") and the associated PaDEP regulations. See *Liverpool Township v. Stephens*, 900 A.2d 1030 (Pa. Cmwlth. 2006) (holding that the Liverpool Township's ordinance regulating the treatment and disposal of sewage sludge not only conflicted with the SWMA and but also "interfere[d] with the General Assembly's goal of a uniform and comprehensive scheme of regulation of municipal sewage treatment that leaves no room for side-by-side municipal regulation"). Because Plainfield Township's Ordinance is preempted by the SWMA and the associated regulations, it violates ACRE and is therefore invalid and unenforceable.

Additionally, the Office of Attorney General has long held the view that municipal ordinances similar to Plainfield Township's Ordinance that improperly attempt to regulate the land application of biosolids are preempted by the SWMA and the associated PaDEP regulations, and are therefore invalid under ACRE. Enclosed with this letter are two (2) letters written by your Office acknowledging the clear invalidity of local government regulation of biosolids. [REDACTED] submits that Plainfield Township's Ordinance is likewise illegal under ACRE.

In summary, Plainfield Township's Ordinance purports to prohibit that which the Commonwealth allows and is contrary to the Commonwealth's comprehensive and uniform regulatory scheme for the beneficial use of biosolids by land application. The Ordinance passed by Plainfield Township is yet another example of a municipality's unlawful attempt to regulate the beneficial use of biosolids in a manner contrary to well-established Pennsylvania law. Pursuant to 3 Pa.C.S. § 314(a), [REDACTED] respectfully requests that the Office of Attorney General review the Ordinance and bring prompt legal action to invalidate it under ACRE.

Please contact me if you require any additional documents or information.

Respectfully submitted,

[REDACTED]