

Rush Township, Schuylkill County, Pennsylvania  
Ordinance No. 161 of 2006

AN ORDINANCE TO PROTECT THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS AND ENVIRONMENT OF RUSH TOWNSHIP BY BANNING CORPORATIONS FROM ENGAGING IN THE LAND APPLICATION OF SEWAGE SLUDGE; BY BANNING PERSONS FROM USING CORPORATIONS TO ENGAGE IN LAND APPLICATION OF SEWAGE SLUDGE; BY PROVIDING FOR THE TESTING OF SEWAGE SLUDGE PRIOR TO LAND APPLICATION IN THE TOWNSHIP; BY REMOVING CONSTITUTIONAL POWERS FROM CORPORATIONS WITHIN THE TOWNSHIP; BY RECOGNIZING AND ENFORCING THE RIGHTS OF RESIDENTS TO DEFEND THE RIGHTS OF NATURAL COMMUNITIES AND ECOSYSTEMS; AND BY OTHERWISE ADOPTING THE PENNSYLVANIA REGULATIONS CONCERNING THE LAND APPLICATION OF SEWAGE SLUDGE

**Section 1—Name**

This Ordinance shall be known and may be cited as the “Rush Township Sewage Sludge Ordinance.”

**Section 2—Authority**

This Ordinance is enacted pursuant to the authority granted to Rush Township by all relevant Federal and State laws and their corresponding regulations, and by the inherent right of the citizens of the Township of Rush to self-government, including, without limitation, the following:

The Declaration of Independence, which declares that people are born with “certain unalienable rights” and that governments are instituted among people to secure those rights;

The Pennsylvania Constitution, Article 1, Section 2, which declares that “all power is inherent in the people and all free governments are instituted for their peace, safety, and happiness;”

The Pennsylvania Constitution, Article 1, Section 26, which declares that “neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right;”

The Pennsylvania Constitution, Article I, Section 27, which provides for the “preservation of the natural, scenic, historic, and esthetic values of the environment;”

The provisions of The Second Class Township Code, as codified at 53 P.S. § 65101 *et seq.*, which authorizes Rush Township to provide for the protection and preservation of natural and human resources, to promote, protect, and facilitate public health, safety, and general welfare, and to preserve and protect farmland, woodland, and the recreational uses of land within the Township;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66506, which authorizes Rush Township to enact ordinances necessary for the proper management, care, and control of the township and its finances and the maintenance of peace, good government, health, and welfare of the township and its citizens, trade, commerce, and manufacturers;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66521, which empowers Rush Township to appropriate moneys toward insect, pest, and vector programs;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66527, which empowers Rush Township to adopt ordinances to secure the safety of persons or property within the township;

The provisions of The Second Class Township Code, Article XV, as codified at 53 P.S. § 66529, which empowers Rush Township to prohibit nuisances on private and public property and the carrying on of any offensive manufacture or business;

The provisions of The Second Class Township Code, Article XVI, as codified at 53 P.S. § 66601(e), which empowers Rush Township to adopt by reference all or any portion of a standard code as an ordinance of the Township;

The Solid Waste Management Act, 35 P.S. § 6018.101 *et seq.*, which preserves the rights and remedies of municipalities concerning solid waste within their borders;

Municipal Waste Regulations, 25 Pa. Code §§ 271 and 275, *et seq.*; and

Land Application of Sewage Sludge, 40 C.F.R. Part 503.

### **Section 3—Findings and Purpose**

In support of enactment of this Ordinance, the Board of Supervisors of Rush Township finds and declares that:

The land application of sewage sludge in Rush Township poses a significant threat to the health, safety, and welfare of the citizens and environment of Rush Township.

In April 2002, the Inspector General of the Environmental Protection Agency (EPA), which oversees state sewage sludge regulations, issued a report in which it concluded, “EPA cannot assure the public that current land application [of sewage sludge] practices are protective of human health and the environment.” Among the Inspector General’s concerns were the following: “failure to properly manage sludge may have adverse effects on human health and the environment”; “EPA does not have an effective program of ensuring compliance with land application requirements”; and state officials have criticized the lack of EPA oversight, staffing, and commitment toward ensuring the safety of land applied sludge.

In 1994, eleven-year-old Tony Behun from Rush Township, Centre County, Pennsylvania, died from a staph infection shortly after being exposed to sewage sludge. The following year, seventeen-year-old Daniel Pennock from Reading, Pennsylvania, died from a staph infection shortly after being exposed to sewage sludge. The U.S. Environmental Protection Agency (EPA) recognizes staph as a potential pathogenic component of sewage sludge.

In spite of these risks, Rush Township has been rendered powerless by the state and federal government to prohibit the land application of sewage sludge by persons that comply with all applicable laws and regulations.

In order to protect the health, safety, and welfare of the residents of Rush Township, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, the Township finds it necessary to ban corporations and other limited liability entities from engaging in the land application of sewage sludge. It is recognized that a small number of waste management corporations control the vast majority of sludge hauling and land application, and that corporate concentration enables those corporations to define waste management practices at the State level to the detriment of municipal communities. It is also recognized that limited liability shields prevent financial recovery (and accountability) for damages caused by business entities because limited liability insulates the persons managing the corporation from harms caused by their decisions. Finally, the Township recognizes that corporations wielding government-conferred constitutional powers against the municipal government renders the Board of Supervisors unable to guarantee to its citizens a republican form of government in the Township.

In order to protect the health, safety, and welfare of the residents of Rush Township, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, it is necessary to test each load of sewage sludge to be applied by persons before it is land applied within the Township to determine if the level of pollutants, pathogens, or vector attractants exceed the levels allowed under applicable laws and regulations.

DEP does not possess sufficient funding or personnel to ensure that persons land applying sewage sludge in Rush Township are doing so in compliance with state laws and regulations, so Rush Township must have the option of enforcing those laws and regulations itself.

Rush Township's cost of testing sewage sludge prior to land application shall be borne by those persons land applying sewage sludge in the Township.

#### **Section 4—Interpretation**

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Sections 2 and 3 over such considerations as economy, efficiency, and scheduling factors.

#### **Section 5—Definitions**

The following terms shall have the meanings defined in this section wherever they are used in this Ordinance.

**Beneficial Use:** Use or reuse of residual waste or material derived from residual waste for commercial, industrial, or governmental purposes where the use or reuse does not harm or threaten public health, safety, welfare, or the environment, or the use or reuse of processed municipal waste for any purpose where the use or reuse does not harm or threaten public health, safety, welfare, or the environment. (*See* 25 Pa. Code Chapter 271, Subchapter A, § 271.1.)

**Corporation:** Any corporation organized under the laws of any state of the United States or under the laws of any country. The term shall also include any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or under the laws of any country, and any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. The term



shall also include a municipality or municipal authority. The term shall also include any business entity in which one or more owners or partners is a corporation or other entity in which owners, directors, officers and/or managers possess limited liability attributes.

**DEP:** The Pennsylvania Department of Environmental Protection.

**Laboratory or Qualified Laboratory:** A facility that tests sewage sludge samples for pollutants, pathogens, and vector attractants in compliance with DEP regulations, including, without limitation, those regulations (*see* 25 Pa. Code § 271.906) that dictate approved methodologies for conducting such tests.

**Land Applicant or Sewage Sludge Applicant:** Any person responsible for complying with all Federal, State, and local laws and regulations concerning the land application of sewage sludge.

**Land Application or Land Apply:** The spraying or spreading of sewage sludge onto the land surface for beneficial use; the injection of sewage sludge below the land surface for beneficial use; or the incorporation of sewage sludge into the soil for beneficial use so that the sewage sludge can either condition the soil or fertilize crops for vegetation grown in the soil. (*See* 25 Pa. Code Chapter 271, Subchapter J, § 271.907.) The term shall also include the spraying, spreading, injection, or incorporation of sewage sludge onto, into, or below the land surface for reclamation of previously mined lands.

**Ordinance:** The Rush Township Sewage Sludge Ordinance.

**Person:** A natural person, or an association of natural persons that does not qualify as a corporation under this Ordinance.

**Sewage Sludge or Sludge:** Liquid or solid sludge and other residue from a municipal sewage collection and treatment system, and liquid or solid sludge and other residue from septic and holding tank pumpings from commercial, industrial, or residential establishments. The term includes material derived from sewage sludge. The term does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator, grit and screenings generated during preliminary treatment of sewage sludge at a municipal sewage collection and treatment system, or grit, screenings, or inorganic objects from septic and holding tank pumpings. (*See* 25 Pa. Code Chapter 271, Subchapter A, § 271.1.)

**Sewage Sludge Applicant:** *See* Land Applicant

**SOUR:** Specific oxygen uptake rate, which is the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

**Substantially Owned or Controlled:** A person, corporation, or other entity substantially owns or controls another person, corporation, or other entity if it has the ability to evade the intent of Section 11.6 of this Ordinance by using that person, corporation, or other entity to land apply sewage sludge in Rush Township.

**Township:** Rush Township in Schuylkill County, Pennsylvania, its Board of Supervisors, or its representatives or agents.