

Local Ordinances



FactPack – P119



Center for Health, Environment & Justice
P.O. Box 6806, Falls Church, VA 22040-6806
703-237-2249 chej@chej.org www.chej.org

Local Ordinances

Center for Health, Environment & Justice
FactPack - PUB 119
August 2012



Copyright 2012 by Center for Health,
Environment & Justice. All rights
reserved. For Permission to reprint, please
contact CHEJ. Printed in the U.S.A.

P.O. Box 6806 Falls Church, VA 22040-6806 703-237-2249 chej@chej.org www.chej.org



Center for Health, Environment & Justice

P.O. Box 6806 • Falls Church, VA 22040 • Phone: 703.237.2249 • Fax: 703.237.8389 • www.chej.org

Mentoring a Movement

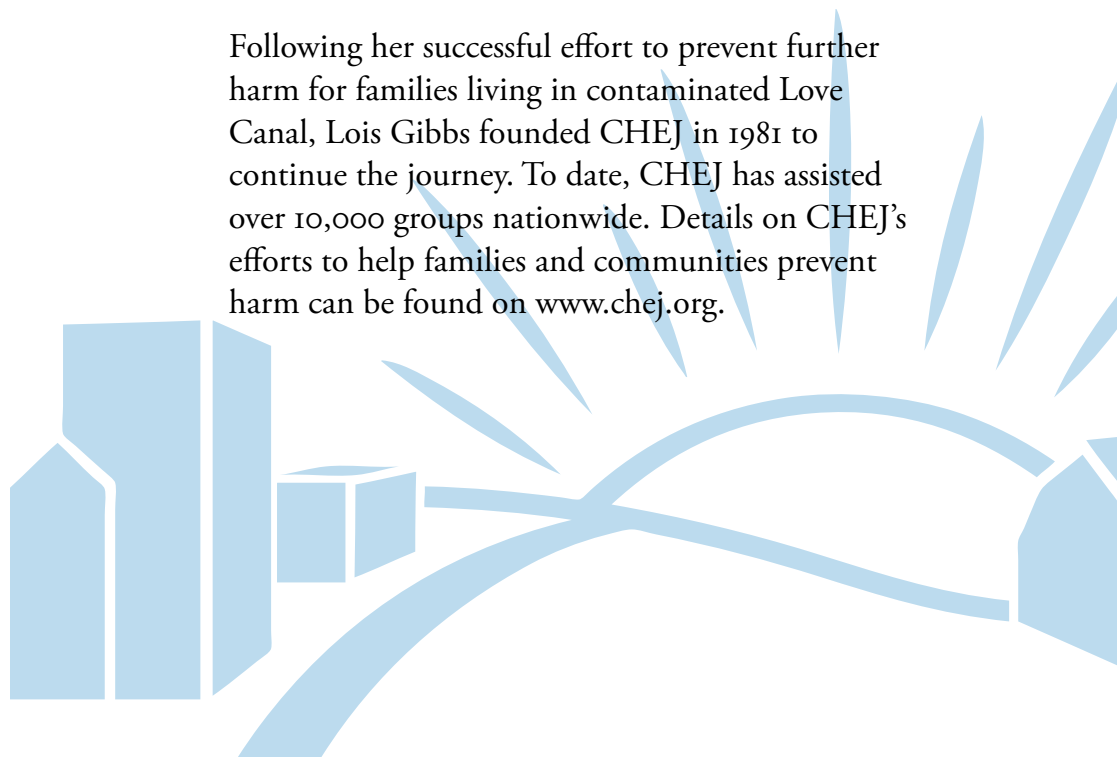
Empowering People

Preventing Harm

About the Center for Health, Environment & Justice

CHEJ mentors a movement building healthier communities by empowering people to prevent harm caused by chemical and toxic threats. We accomplish our work through programs focusing on different types of environmental health threats. CHEJ also works with communities to empower groups by providing the tools, direction, and encouragement they need to advocate for human health, to prevent harm and to work towards environmental integrity.

Following her successful effort to prevent further harm for families living in contaminated Love Canal, Lois Gibbs founded CHEJ in 1981 to continue the journey. To date, CHEJ has assisted over 10,000 groups nationwide. Details on CHEJ's efforts to help families and communities prevent harm can be found on www.chej.org.



Introduction

The Center for Health, Environment, and Justice has developed this fact pack on Local Ordinances in response to the numerous requests for information that we have had on this topic. This fact pack includes three types of information:

- How local ordinance can help empower your community.
- A list of ordinances available through CHEJ.
- Examples of ordinances used by communities.

We have considered materials from government agencies, consulting companies, newspapers, and journals in an effort to provide a thorough introduction to the issues. We have selected local ordinances that we believe would give you the best ideas and information. The Community Environmental Legal Defense Fund (<http://www.celdf.org>) is an excellent additional resource. The intention of this fact pack is to be used as a tool to assist you in educating yourself and others.

Our hope is that reading this fact pack will be the first step in the process of empowering your community to protect itself from environmental health threats. CHEJ can help with this process. Through experience, we've learned that there are four basic steps you'll need to take:

1. Form a democratic organization that is open to everyone in the community facing the problem.
2. Define your organizational goals and objectives.
3. Identify who can give you what you need to achieve your goals and objectives. Who has the power to shut down the landfill? Do a health study? Get more testing done? It might be the head of the state regulating agency, city council members, or other elected officials.
4. Develop strategies that focus your activities on the decision makers, the people, or person who has the power to give you what you are asking for.

CHEJ can help with each of these steps. Our mission is to help communities join together to achieve their goals. We can provide guidance on forming a group, mobilizing a community, defining a strategic plan, and making your case through the media. We can refer you to other groups that are fighting the same problems and can provide technical assistance to help you understand scientific and engineering data and show you how you can use this information to help achieve your goals.

If you want to protect yourself, your family, and your community, you need information, but equally important is the need to organize your community efforts.

Thank you for contacting us.

Table of Contents

(page numbers are listed in upper right hand corner)

General Ordinance Information

Annotated List of Ordinances CHEJ has on file	1
Tool Kit to Pass a Local Ordinance – <i>Pacific Institute for Research and Evaluation</i>	6
Local Ordinance Drafting for Townships – <i>Community Environmental Legal Defense Fund</i>	12
Ordinances: Using Ordinances to Protect Natural Resources – <i>Association of New Jersey Environmental Commissions</i>	17
“All Power is Inherent in the People.” Community Enacts this Provision and More in Ordinance – <i>Citizen Action Monitor</i>	23

Landfill and Waste Ordinances

Waste Ordinance – <i>Wise County, Virginia</i>	26
Sample Ordinance to Establish a Volume-Based User Fee for Solid Waste Disposal – <i>Michigan Department of Natural Resources</i>	41
Local Regulation of Hazardous Material/Waste Transportation – <i>Legal Environmental Assistance Fund</i>	47
Memorandum on the Authority for City/Council Environmental Protection Ordinances - <i>Legal Environmental Assistance Fund</i>	52
Georgia Local Ordinance for Preventing the Siting of Municipal & Private Landfills - <i>Legal Environmental Assistance Fund</i>	53
Landfill Ordinance – <i>Lee County, South Carolina</i>	61
Sewage Sludge Ordinance – <i>East Brunswick Township, Pennsylvania</i>	62
Hazardous and Medical Waste Disposal Facility Zoning Ordinance – <i>Little Rock, Arkansas</i>	72
Sample High-Level Nuclear Waste Ordinance – <i>Blue Ridge Environmental Defense League</i>	78
Local Ordinances – <i>The Center to Expose & Close Animal Factories</i>	80

Water-Related Ordinances

Las Vegas, New Mexico, Adopts Community Bill of Rights; bans Corporations from Fracking for Shale Gas - <i>CELDF</i>	82
Model Ordinances to Protect Local Resources: Illicit Discharges – <i>U.S. EPA</i>	85
Erosion and Sediment Control Model Ordinance - <i>U.S. EPA</i>	88
Protection of the Public Drinking Water “Runoff Control” Ordinance – <i>Albermarle County, Virginia</i>	94
Buffer Protection and Management Ordinance – <i>Baltimore County, Maryland</i>	100
Pittsburgh Adopts Ordinance Banning Natural Gas Development Citing Fracking Threat – <i>Energy Boom</i>	110

Legal Issues Surrounding Waste and Property Values

Prohibitions on Contracting with Convicted Criminals – <i>Palmer, Massachusetts</i>	112
City Council Resolution Concerning the Purchase of Cement and Products Containing Cement Produced Without the Burning of Hazardous Waste – <i>Fort Collins, Colorado</i>	115

Anti-Corporate Waste Hauling Ordinance – <i>Schuylkill County, Pennsylvania</i>	117
---	-----

Reference

Policies, Ordinances & Taxes – <i>Sustainable Communities Network</i>	121
Bibliographic Information	126

ORDINANCE FACT PACK LIST

☒ Ordinances listed below may be obtained by contacting CHEJ, P.O. Box 6806, Falls Church, VA 22040 or calling 703-237-2249 or email at chej@chej.org

PREVENTING HARM

1. *Wingspread Statement on the Precautionary Principle* (1998)

The Rio Declaration of the 1992 United Nations Conference on the Environment, which the United States signed and ratified, asserts that a precautionary approach should be taken to protect the environment. At the Wingspread Conference on the Precautionary Principle, scientists, philosophers, lawyers and environmental activists drafted this statement on the importance of taking action even in the absence of scientific certainty. The precautionary principle can be applied to all policy and regulatory decisions in order to prevent threats of serious or irreversible damage to the environment.

<http://www.gdrc.org/u-gov/precaution-3.html>

2. *Anti-Vinyl, Anti-PBT and Anti-Dioxin Resolutions Adopted Across America and Around the World*

The 2001 Stockholm Convention on Persistent Organic Pollutants created a treaty (which the US has yet to ratify) to eliminate the worst of all Persistent Bioaccumulative Toxic chemicals (PBTs) known as the *Dirty Dozen*. Among the *Dirty Dozen* is dioxin, a byproduct of vinyl manufacturing, the incineration of municipal or medical waste, and barrel burning. This document catalogs many local resolutions that aim to eliminate incineration and purchasing of vinyl and other products (such as chemically treated wood poles and chlorine-bleached paper) that are linked to dioxin formation.

http://www.besafenet.com/pvc/documents/pvc_and_pbt_policies.pdf

SOLID WASTE DISPOSAL

3. *Solid Waste Collection and Disposal Ordinance* (Citrus County, Florida, 1992)

The ordinance describes the management, regulation, procedures and guidelines for the collection and transportation of solid waste as well as hazardous waste, infectious waste, and sludge.

4. *Ordinance for the Regulation of the Location, Operation, and Management of Commercial Incineration Facilities* (Lee County, North Carolina, 1989)

This ordinance regulates incineration facilities that deal with storage, transfer, treatment, and disposal of waste.

5. *Zoning Ordinance & Solid Waste Management Facility Prohibition and Siting Ordinance* (Lee County, Virginia, 1990)

Prohibits the operation of any sanitary landfills other than those operated by Lee County; prohibits the establishment/operation of any nuclear or hazardous waste disposal or management facility; prohibits the operation of any waste disposal incinerators for the disposal of waste generated at locations other than the incinerator site.

6. *Local Ordinance for Preventing the Siting of Municipal and Private Industry Solid Waste Landfills in Significant Groundwater Recharge Areas* (Georgia, 1990)

This model ordinance, created by the Legal Environmental Assistance Foundation, prohibits the operation of solid waste landfills that are located in areas in which water infiltrates the ground and reaches the zone of saturation.

7. *Waste Disposal Facility Zoning Ordinance* (Little Rock, Arkansas, 1992)

Requires a conditional use permit for hazardous, medical, and solid waste disposal facilities located in the city of Little Rock; provides for an application and review procedure.

8. *Resolution to Prohibit Commercial Hazardous Industry and Nuclear Waste Disposal* (Millard County, Utah, 1990)

The resolution amends the county code to prohibit commercial hazardous industry and nuclear waste disposal within Millard County and adopts guidelines for the location and disposal of non-commercial hazardous industry.

9. *Landfill Ordinance* (Lee County, South Carolina)

The ordinance regulates the operation of privately owned or operated landfills.

HAZARDOUS WASTE

10. *Privilege License Fee & Conditional Uses* (Little Rock, Arkansas, 1992)

These amendments to the city code provide for a privilege license fee to be assessed for operating hazardous or medical waste disposal facilities, and state that 'conditional use' includes both hazardous or medical waste disposal facilities and other industrial uses not expressly provided for in industrially-zoned areas.

11. *Model Local Ordinance for Addressing Disposal of Hazardous Waste.*

12. *Hazardous Waste Incineration Facility Siting Criteria* (Cass & Morris Counties, the cities of Daingerfield & Hughes Springs, Texas)

This proposal sets standards for hazardous waste incineration facilities to prevent threats to human health and the environment. When siting a facility, the following must be accounted

for: air quality, transportation of waste, siting in environmentally sensitive areas, protection of ground and surface water, structural (geologic) stability, and proximity to population.

13. *Regulation of Hazardous Waste Transport* (Chickasaw, Alabama, 1984)

Regulates the movement of hazardous wastes by motor vehicle truck in the city and protects the waters of the city from pollution by PCBs and other hazardous wastes.

14. *Hazardous Waste Management Amendment* (Tennessee, 1983)

This amendment to the state code provides a coordinated statewide hazardous waste management program.

15. *California Government Programs to Control Hazardous Material* (California, 1982)

A partial survey of local programs of hazardous materials management, including: an ordinance for hazardous materials disclosure; state programs to collect hazardous materials information; the disclosure policy of the Department of Health Services Carcinogen Registration Form and the Department Of Industrial Relations Requirements for Carcinogen Use under CAL/OSHA standards.

16. *Hazardous Waste Regulation and Disposal* (Terrebonne Parish, Louisiana)

This section of the parish code regulates the storage and disposal of hazardous waste by establishing certain areas where no waste may be stored or disposed of and requiring permits for the storage and disposal of hazardous waste in other areas and the development of new facilities; includes a section on PCBs and toxic waste.

17. *Ordinance for the Management of Hazardous and Low-Level Radioactive Waste* (Anson County, North Carolina, 1982)

The ordinance regulates the location, operation, and care of hazardous and low-level radioactive waste management facilities dealing with the storage, transfer, treatment, or disposal of hazardous and/or low-level radioactive waste within the county; deals with issues of reuse, recycling, and detoxification.

18. *The Santa Clara Ordinance to Regulate the Storage of Hazardous Materials* (Santa Clara County, California 1984)

In response to the toxic hazardous waste found in Silicon Valley, Santa Clara County developed new permit requirements for all above and below ground facilities, including requirements for double containment, a soil and groundwater monitoring program, and a Hazardous Materials Management Program for all facilities.

19. *Model State Law* (1985)

Written by the Environmental Policy Institute (EPI), this model law focuses on the transportation of hazardous (including nuclear) materials; also contains provisions specific to the storage of hazardous cargoes and to the routing of hazardous wastes.

20. *Containment Ordinance*

Deals with issues of variance from the requirement for secondary containment, overfill protection, separation of materials, drainage system, monitoring of existing and out of service storage facilities for hazardous waste.

21. *Acquisition of Sites for Hazardous Waste Facilities* (Minnesota, 1982)

A bill enacted by the state legislature prohibiting the use of eminent domain proceedings for acquiring land and property rights for hazardous waste facility sites.

WATER

22. *Pollution Control Pertaining to Public Water Supply* (Dayton, Ohio, 1987)

This ordinance institutes rational and objective standards/criteria for the control of toxic or otherwise hazardous substances within specifically defined geographic areas to protect the public water supply.

23. *Runoff Control Ordinance* (Albemarle County, Virginia, 1990)

The ordinance requires that runoff control permits be required for any new development. It also provides the permit procedure and the standards for review (inspections, enforcement, penalties).

24. *Water Resource Protection Areas Ordinance* (Albemarle County, Virginia, 1991)

The ordinance provides for vegetated buffers along all perennial streams and contiguous non-tidal wetlands.

AIR

25. *Open Burning Rule* (Virginia, 2006)

The model local ordinance regulates open burning (both commercial and residential) in order to meet air quality standards.

26. *Toxic Gas Model Ordinance* (Santa Clara County, California, 1986)

The model ordinance regulates the operations of toxic gas industries through prevention and standards (redefines which gases are to be regulated, changes containment standards, requires annual maintenance certification for toxic gas safety systems, etc.).

GOVERNMENT

27. *Chicago Substitute Ordinance* (Chicago, Illinois, 1987)

The ordinance requires the fees for inspection of plans and issuing of permits--filing fees, installation, boilers, fuel-burning equipment, refuse-burning equipment, etc. Sets up the Environmental Control Fund, which is to be constituted from the fees collected.

28. *Public Utility Environmental Impact Statement Requirement* (Washington, D.C., 1989)

Requires a public utility to prepare an environmental impact statement whenever it proposes an action that would, if implemented, be likely to impact on the quality of the environment.

29. *Civil Practice Law and Rules* (New York, 1985)

A state legislative act to amend the civil practice law and rules, the estates, powers and trusts law and the court of claims act, in relation to the time in which an action must be brought for damages caused by exposure to certain substances.

30. *The Borough Code* (Pennsylvania, 1992)

Revises the procedures for incorporating land into existing boroughs.

TOOL KIT TO PASS A LOCAL ORDINANCE

Underage Drinking Enforcement Training Center
A Project of Pacific Institute for Research and Evaluation

“Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has.” - Margaret Mead

Gather your group together, no matter how many or how few, to begin work to pass an ordinance limiting corporate power. The initial meeting can be in someone’s living room, a coffee shop, or a full-blown meeting room. The first meeting takes only a desire and a few phone calls or emails to get started.

This “tool kit” is intended to be a resource that describes the steps you’ll need to undertake to pass an ordinance in your town, city, or county. Limiting corporate power requires baby steps creating small incremental change. There’s no better time to start than the present and you’ll make new friends and learn new skills along the way. How soon can you start?

1. Meet Regularly from the Start

Locate a convenient and comfortable place to meet to work on your ordinance. There should be adequate seating and a surface on which to write or take notes. It is important to meet regularly, at the same time and the same place. Meetings probably should take place weekly at first in order to maintain momentum.

2. Strategy, Your First Major Decision

Every community is different. The mix of elected officials, mayors, city councilpersons, and county commissioners may be progressive, conservative, liberal, or somewhere in between. They may be open to new ideas or closed to changing the status quo. Your locale may be rural, suburban, or inner-city. Your group will need to decide how receptive your local government will be to your ordinance. The degree of receptivity will determine your strategy. In some communities, it may be enough to speak personally with the mayor and a few commissioners to ensure the passage of your ordinance. Other communities may require extensive organizing, petition signing, and a massive publicity effort to pass an ordinance. Consider who might be open to the goals of your ordinance or resolution. Sometimes it may be a good idea to let some of your city or county commissioners know what you are doing before presenting your ordinance. They may have helpful observations that can make your efforts easier. Others may find it best to involve councilpersons as little as possible until your ordinance is brought before the full commission. These considerations should be part of your early strategic planning.

3. Networking – Identify Friends and Foes

Identify your friends and foes. Make a list of individuals, groups, and organizations that are willing to work with you on your effort. If someone in your group knows someone in another group or organization, ask that person to contact the potential ally. Friendly groups can expand your efforts in gathering signatures, include your articles in their newsletters, or they can supply warm bodies to help your efforts. In some cases they can do all three.

Similarly, make a list of individuals and organizations that are likely to work against your efforts. It's important to know who your detractors are and what their arguments are likely to be. Strategies can be developed to minimize or marginalize your opposition or to respond to their arguments.

4. Funding your Efforts

You will need money. Funding may be needed for flyers, postcards, petitions, ads (newspaper, radio, television), website, posters, billboards, and meeting rooms. Most efforts to pass ordinances are self-funded, that is, the people working to pass the ordinance supply the needed funding. Sometimes there are supportive people with deep pockets in the community that can be counted on to help. Identify these folks and include them in your efforts from the start.

Look for ways to save money such as a friendly employee at a local copy/printing shop or businesses and organizations that offer the use of their copying machine free of charge or for cost only. Always place a jar labeled "Donations" on a table with your materials. Don't hesitate to ask for contributions.

It is important to have a realistic budget. Make changes to the budget as new information is gathered or as strategies change.

5. "To Do" List

There can be lots of "to do" items to accomplish your goal. Some of the tasks might include:

Meeting agendas	Find and reserve meeting rooms
Public relations / Press releases	Find and contact program speakers
Public Service Announcements (PSAs)	Set up meeting room
Create newsletter or educational materials	Break down and clean up meeting room
Fundraising	Draft petition or resolution
Maintain database	Make postcards
Make flyers (8.5x11)	Make labels
Fact sheet	Create brochure
Action alerts	Create petition
Make posters	"Tabling" ¹
Set up and manage e-mail list	Buttons
Bumper stickers	Phone calling

It's important to have small, short-term, well-defined tasks for volunteers to do. It is difficult to maintain volunteer interest in open-ended or poorly defined tasks. Be specific!

You may or may not want to form committees to address these and other tasks. Larger groups may need committees whereas individuals in smaller groups simply may volunteer for several tasks. Examples of committees might include:

- Coordinating Committee
- Program Committee
- PR Committee
- Statement/Petition Committee
- Fundraising/Sponsorship/Organizing Committee

6. Community Outreach

The benefits of community outreach are:

- More bodies to join in the effort to pass an ordinance;
- Larger audience for distribution of posters and petitions;
- Larger pool of people who can speak in favor of the resolution at important community meetings or write letters to the editor of your local newspaper;
- More credibility showing broad support and appeal for your resolution because endorsers from the community are listed on posters and programs.

Effective outreach sparks community dialogue and raises the visibility of your resolution.

Prepare a presentation that can be given as a program to organizations and groups that are potential allies. Many groups have regularly scheduled meetings, such as monthly brown bag lunches, breakfasts, or membership meetings, and are looking for programs. Presentations should make good use of audio/visual tools to keep interest level high. Be prepared with sign-up sheets, fact sheets, postcards, petitions, action sheets, or other materials.

Sources for support and outreach include individuals, businesses, and nonprofits such as ACLU, Sierra Club, Kiwanis Club, local smart growth/sustainable growth organizations, AARP, Audubon Society, AAUW (American Association of University Women), political party meetings, PTA, Alliance for Democracy, faith-based groups, etc. High school and college students can be especially helpful in collecting signatures or tabling at various locales.

¹ "Tabling" is setting up a small table (card table for example) with literature, postcards, petitions, and sign-up sheets for people to read or take with them. This allows you to more effectively get the word out to

people in your community.

Important: Take a volunteer sign-up sheet to every meeting. Include spaces on the sign-up sheet for name, address, phone, email, and a box to check for interest in volunteering. Enter this information into a computer file or database immediately after a meeting, a forum, or a day of gathering signatures has taken place. Use any software program that allows you to organize and track the information you are gathering, such as Excel, Word, Access, or FileMaker Pro. All of these programs allow you to create mailing labels easily.

7. Distributing Educational Materials

Set up a table to distribute your materials at local events and businesses whenever possible. Materials can often be placed in coffee shops, book stores, local co-op grocery stores, or wherever a sympathetic audience may shop. Forums, meetings, and presentations are all good opportunities to make educational material available to the public. Fact sheets, literature and articles, petitions, donation jar, and sign-up sheets, all should be available. Bumper stickers and buttons can be made available for a donation.

8. Drafting your Resolution

There are several resources on the Internet where you can copy existing ordinances and resolutions as a starting point, altering them to meet your needs. The attachment titled “Local Ordinances” lists some of the more common resolutions dealing with corporations and corporate power that you can amend for your own needs.

After drafting your resolution, meet with the City Council sponsor of your draft resolution (or city manager or city attorney) to determine if your document is one that will have a majority of support. This effort will be much like drafting a bill for your state legislature. You’ll need a sponsor and you’ll need to have it reviewed to make sure it passes legal muster.

9. Communicating with Supporters

Communication with supporters is as important as communication with the media.

The easiest way to communicate with supporters is via email. Creating an email discussion group is a great way to keep everyone informed and to notify your supporters of events and opportunities, especially fast-breaking news. There are several sources for establishing a free email list. The most common are Yahoo Groups and Topica. Have a sign-up sheet with you at all times (sample attached). **Set the example for others to follow by signing the sheet first.**

It’s helpful to find one or two people who can keep your lists current -- both database and email discussion list. Perhaps one person can do it all if you have a small group. If your effort is larger, it may be easier to have one person maintain the database list and another to add people to the email discussion group.

Backup your files! Store a copy of your list or database at a friend's house.

10. Communicating with Media, Getting the Word Out

Brainstorm with others to identify all known media outlets. These include radio and TV stations, newspapers, community newspapers, and weekly publications. Don't forget university newspapers and radio stations. Identify the publications of various organizations as well. Call each outlet to ask for a fax number and an e-mail to which press releases, articles, op-ed pieces, or letters to the editor are sent.

After sending out a press release, make a follow-up phone call to verify receipt of the fax or email.

The cheapest form of communication with the public is letters to the editor. The more letters people send in, the more support demonstrated for your ordinance.

11. Petition Drive

In some locales, organizing a petition drive and obtaining signatures may be the only way to get the commission, mayor, or council's attention to pass an ordinance. If your group determines there is need for a petition, there are several good sources of collecting signatures for petitions.

Attend meetings where the audience is likely to be receptive to your efforts. Come to the meeting with educational materials, including fact sheets, "what you can do" sheet, signup sheet, and petitions. Set up a display table with your educational materials. Ask ahead of time if you can have a minute to describe your effort and pass around a petition at the meeting, otherwise stand next to your display and talk to people, asking them to sign your petition.

Consider tabling at local businesses where the clientele is likely to be supportive of your efforts. For example a health food store, grocery store, coop, farmers' market, or local organic food store are good places to set up a table.

If the weather is nice, you can set up a table or collect signatures for a petition in front of your post office or local grocery store.

12. Postcard Campaign:

If letters, signatures, or turnout at an event or forum is needed, postcards can be helpful. Use your sign-up sheets, or even the membership list of other organizations, for enlarging the pool of people you reach. Outreach to other organizations can be very helpful. Organizations that are sympathetic to your cause may give you their mailing list outright, or sell it to you for a reasonable fee.

13. Lobbying Efforts:

Make sure each city councilor, county commissioner, and mayor is contacted by their constituents at the appropriate time.

Ask those community supporters of your resolution to call or write their City or County Commission members or legislator to ask for their support. If email is used for communication, verify that your commissioners have, use, and read their email! Often a letter or phone call carries more weight than an e-mail message. Urge your supporters to attend the City or County Commission meeting and to speak in favor of the resolution during the "public comment" period. (Don't overlook high school and college students as speakers!)

14. Following Through to the End . . .

It is common that city councilors, county commissioners, or mayors need coaxing. Several meetings may take place before a vote is taken. A resolution might be tabled indefinitely. Or a resolution might fail when the voting does finally take place. Don't allow your working group to be discouraged. Assess the current situation, review the reasons your resolution didn't pass, then try again when the time is right. This may happen several times before finally succeeding. However, don't be discouraged and don't give up. You've made new friends, your confidence is bolstered, and your entire working group has been empowered.



Local Ordinance Drafting for Townships by the Legal Defense Fund



The Legal Defense Fund continues to provide a Local Ordinance Drafting service for municipal governments in Pennsylvania. This project has been immensely successful at bringing community empowering ordinances to local governments. Two popular ordinances drafted by the Fund are: (1) The Southampton Township Farm Ownership Ordinance - modeled after the statutes of eight mid-western states (**Anti-Corporate Farming Laws in the Heartland**) which prohibit corporate ownership of farms; and (2) The Wayne Environmental Protection Ordinance - which grants the power to the Township Supervisors to exclude corporations with criminal histories from operating within the Township. The Wayne Ordinance was passed in 1998 by Wayne Township, Mifflin County. The

Southampton Ordinance was developed in March of 1999, and has become law in a dozen townships. CELDF ordinances have been presented for passage to local governments in Ohio, Virginia, New Hampshire and Oregon.

Other ordinances available for passage include (1) The Corporate Ownership and Disclosure Ordinance - requiring corporations doing business in a local area to file their articles and bylaws with the local government, (2) The Solar Ordinance - requiring the installation of solar hot water heaters in any new residential housing developments; (3) The Recycling Ordinance - requiring local governments to use high content, chlorine-free recycled paper for office operations; and (4) The Noxious Odors Control Ordinance - regulating noxious odors released from large agricultural operations.

The Legal Defense Fund not only incorporates progressive statutes and language into local Ordinances for passage at the local government level, but also accepts requests from Townships for customized Ordinances that they can present for passage.

Currently, the Environmental Protection Ordinance is listed with the Pennsylvania State Association of Township Supervisors (PSATS) as a Model Ordinance for passage by Township Supervisors and Borough Councils in Pennsylvania.

Through this program area, CELDF has drafted the following Ordinances for use by local governments and grassroots community organizations (click on Ordinance title to read full text):

CHEJ Local Ordinance FP - 13

Mahanoy Township Sustainable Energy Ordinance - sets up a local energy policy that prohibits any new unsustainable energy production within the municipality, and commits the community to a gradual transition to sustainable energy production for homes and businesses.

Montgomery County Anti-Corporate Takings and Securing Local Self-Governance Ordinance - Prohibits corporations from taking private property by power of eminent domain.

Blaine Township Corporate Land Development Ordinance - Prohibits use of corporations for land development, with limited exceptions .

Blaine Township Corporate "Rights" Ordinance - eliminates constitutional privileges from corporations at the municipal level. The Ordinance, in effect, eliminates Fourteenth Amendment protections. Prohibits corporate contributions to candidates for elected office within the Township.

Blaine Township Corporate Mining and Democratic Self-Governance Ordinance - prohibits mining corporations from purchasing mineral rights or land for mining, and prohibits mining corporations from interfering with the civil rights of residents, including residents' right to self-government.

New Ordinance Prohibiting Land Application of Sewage Sludge - Updated and more powerful than **The Rush Township Sewage Sludge Ordinance**, this new Ordinance was drafted with municipal government and citizen input in Schuylkill County, Pennsylvania. It bans corporations from engaging in the land application of sewage sludge, recognizes citizen right to sue on behalf of ecosystems and codifies the right of citizen enforcement.

Southampton Anti-Corporate Farming Ordinance - (The Southampton Family Farm Protection Ordinance) - prohibits agribusiness corporate ownership of farmland and limits corporate involvement in farming. Adopted by ten local governments in Fulton, Bedford, Bradford, Indiana, and Cumberland Counties in Pennsylvania.

FAQ: Southampton Anti-Corporate Farming Ordinance

Wayne Township Environmental Protection Ordinance - (The Wayne "Three Strikes and You're Out" Ordinance) - enables local governments to prohibit corporations from doing business in certain localities if the corporation has a history of violating statutory and regulatory laws. Adopted by local governments in Fulton and Mifflin Counties in Pennsylvania. A version of this Ordinance is under review by groups in Humboldt County, California as the model for a potential Countywide referendum.

Summary of Wayne and Southampton Ordinances - Local Control and Corporate Power - an overview of the two ordinances listed above.

The Thompson Corporate Personhood Ordinance - eliminates constitutional privileges from corporations at the municipal level. The Ordinance, in effect, eliminates Fourteenth Amendment protections from corporations in a municipality, and will be used to establish a test case for corporate personhood in the U.S. Supreme Court. One

Anti-Corporate Water Withdrawal - prohibits corporations from owning, withdrawing, or hauling water from the community. Eliminates constitutional privileges from corporations at the municipal level.

The Rights of Nature Ordinance -- asserts that natural communities and ecosystems possess inalienable and fundamental rights to exist and prosper and prohibits corporations or business entities – or persons acting in corporate or business capacities – from denying those rights, or interfering with the vitality or functioning of those communities or ecosystems. It further prohibits the Township from enforcing any law which would abridge the rights of natural communities and ecosystems.

The Rush Township Sewage Sludge Ordinance - Authorizes a municipal government to assess a fee for every ton of sewage sludge applied by sludge corporations to farmland or mine reclamation sites in a municipality. The fee is then used to test whether the content of the sewage sludge meets state regulatory requirements. This Ordinance has been adopted by more than seventy communities across Pennsylvania. However, industry influence in the state assembly threatens to preempt local democracy and perhaps nullify the Ordinance. The Legal Defense Fund has developed a **New Ordinance Prohibiting Land Application of Sewage Sludge**, which is designed to challenge such usurpations and assert local control.

Sewage Sludge Land Application Registration Form (*PDF File)

Saint Thomas Township Surface Mining Ownership and Control Ordinance - prohibits non-family owned corporate or syndicate ownership of any real estate used for surface mining, or corporate engagement in surface mining in the Township, and provides for certain limited exceptions to corporate or syndicate ownership, and for enforcement and penalties for violation of the Ordinance.

Windsor Township Product Retailing Ordinance - prohibits persons from using certain corporations or syndicates for the retail selling of products; provides for certain limited exceptions, and provides for enforcement and penalties for violation of the Ordinance.

Windsor Township Corporate Land Development Ordinance - prohibits persons from using certain corporations or syndicates for land development; provides for certain limited exceptions, and provides for enforcement and penalties for violation of the Ordinance.

Township Ownership and Control Disclosure Ordinance - requires corporations doing business in local government jurisdictions to file copies of the corporation's articles of incorporation and bylaws with the local governing authority. This Ordinance is currently under review by two local governments in Pennsylvania.

Township Defense of Civil Liberties Ordinance - nullifies authority granted to federal agencies illegitimately conferred by Congress under the authority of the USA PATRIOT Act that infringe upon the civil liberties and civil rights of the residents of the Township. Nullifies the USA PATRIOT Act, the Homeland Security Act, and regulations and Executive Orders implemented under the authority of those laws for residents of the Township, the Township Supervisors, and employees of the Township. It further prohibits Township employees from engaging in unlawful detentions or profiling of citizens in violation of their rights and liberties as defined by the Fourteenth Amendment and prohibits Township employees from voluntarily cooperating in the violation of those rights.

National Animal Identification System Ordinance - Nullifies the National Animal Identification System (NAIS) at the municipal level; eliminates ability of agribusiness corporations to privately enforce the NAIS; eliminates all corporate claims to constitutional "rights" and powers; recognizes right for independent family livestock farmers to make a living from farming.

CHEJ Local Ordinance FP - 15

Sustainable Energy Ordinance - Prohibits unsustainable energy production within a municipality, defined as energy produced from fossil fuels and nuclear sources; establishes a Sustainable Energy Policy at the municipal level; mandates transition towards renewable energy use within the municipality; provides municipal monies for that transition; eliminates all corporate claims to constitutional "rights" and powers.

Corporate Chemical Trespass Ordinance - Recognizes the right of people to be free from involuntary corporate chemical trespass; requires a municipality to sue corporations and corporate managers for compensation for trespass; eliminates all corporate claims to constitutional "rights" and powers; creates a category of criminal violation for chemical trespass; provides municipal monies for chemical testing.

Anti-Corporate Waste Hauling Ordinance - Prohibits corporations from hauling certain types of toxic, hazardous, and nuclear waste through a municipality; eliminates all corporate claims to constitutional "rights" and powers.

The Monroe Odor Control Ordinance - requires agribusiness corporations to use best management practices to control noxious odors emanating from their facilities. This Ordinance is currently under review by two local governments in Pennsylvania.

Rockland Township Water Supply Protection Act - (The Rockland Water Usage Ordinance)- requires any new, corporate, large users of water supplies within a local jurisdiction to prepare a Water Impact Study to show that industrial and commercial use of water will not have an adverse impact on groundwater supplies. This Ordinance has been adopted by five local governments in Pennsylvania and is under consideration by three other local governments.

Fly Control Ordinance - Requiring Best Management Practices - requires all new large-scale agricultural operations to adopt a management plan for the management of flies, and to pay a permit fee that enables the municipality to create an oversight and enforcement authority for those facilities.

Ordinance Banning Genetically Modified Crops, and Vindicating Local Self-Government - bans the use, sale, and transfer of genetically modified crops within a municipality, and eliminates the authority of agribusiness corporations to sue the municipality over the local law.

Township Environmental Impact Statement Ordinance - requires all corporations proposing a particular project within a particular municipality to draft an Environmental Impact Statement, and then select the "most environmentally sound" alternative to the project being proposed.

Ordinance Establishing Preferential Bidding for Locally Owned Businesses - enables a local government to select an entity other than the "low-bidder" for the awarding of contracts and bids, enables a local government to prefer locally owned businesses over other business entities submitting bids for particular projects.

Recycling Ordinance - requires a municipality to use a certain percentage of recycled paper products.

Solar Ordinance - requires new housing developments to install solar-powered hot water heaters within those residences.

CHEJ Local Ordinance FP - 16

Ordinance Creating an Environmental Advisory Council to the Township - creates an Advisory Council within a local government to advise the local government on environmental issues.

Sunshine Act Local Ordinance - creates a higher standard for local government than under State Sunshine Act laws, for the production of documents by a local government to a requesting resident of that municipality.

"The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in essence, is fascism - ownership of government by an individual, by a group, or by any other controlling power. Among us today a concentration of private power without equal in history is growing."

-- **President Franklin Delano Roosevelt. (One Thousand Americans, George Seldes, page 5.)**

Contact Us

Smart Growth Survival Kit

Practical approaches to managing growth



http://www.anjec.org/pdfs/SG_Ordinances.pdf

Ordinances:

Using Ordinances to Protect Local Natural Resources

ANJEC's Smart Growth Survival Kit

- **Introduction**
- **The Environmental Resource Inventory: ERI** (ANJEC Resource Paper)
- **A Vision Statement: A Must for All Communities**
- **Planning: Build-Out and Capacity Analysis**
- **Affordable Housing: Meeting a Town's Affordable Housing Obligation while Protecting Natural Resources**
- **Open Space Plan** (ANJEC Resource Paper)
- **The Master Plan: Smart Growth, the Master Plan & Environmental Protection**
- **Ordinances: Using Ordinances to Protect Local Natural Resources**

New sections may be added in the future



Association of New Jersey Environmental Commissions

PO Box 157, Mendham, NJ 07945

Tel: 973-539-7547 • Fax: 973-539-7713 • Email: info@anjec.org • Web: www.anjec.org

As part of their broad home rule powers, elected local officials have the awesome responsibility of developing and enforcing a code of behavior to protect the public interest in natural resources in their community. Because we will never be able to buy all the land we need to insure clean air, clean water, and open space for future generations, ordinances, especially those that regulate the use of the land, are natural preservation tools. Adopted by the municipal governing body or board of health,¹ ordinances are key to protecting local quality of life.

Well-written ordinances with strict and clear environmental standards form a framework for local boards and professionals to conduct fair and effective reviews of development applications. They cover a broad range of issues including zoning, planting of trees, management of storm water, and preservation of stream buffers.

Local officials use ordinances to establish policies and standards that will endure beyond the life of the governing body or board of health that creates them. Ordinances are the body of public law that implement the goals of the local master plan and protect public assets like special environmental features identified in the environmental or natural resource inventory (ERI or NRI). In short they carry out the public desire for an orderly and ethical society.

If properly enforced, ordinances create significant, long-lasting changes in a municipality. Because ordinances often place restrictions on private activities, they must be based on sound data and ensure the broadest protection of the public health, safety and welfare. Environmental commissioners, other municipal officials and interested citizens should understand the basics of drafting and passing creative and fair ordinances that will preserve or improve their community's environment and quality of life.

New ordinances are generally an outgrowth of problems identified by the public or local officials in their day-to-day work. Ideas originate with environmental commissions, planning boards, the governing bodies, boards of health or a group of citizens. Generally, once

there is general agreement on the major concepts, an attorney prepares a draft and submits it for review to the governing body and appropriate professionals like the municipal planner or engineer. Since the elected officials on the governing body must pass most ordinances, it is very important to involve and inform them as early in the process as possible. Governing bodies and boards of health often turn to environmental commissions and planning boards for advice on specific issues.

Just because an ordinance is a good idea doesn't mean the governing body will necessarily adopt it. Drafting an ordinance is just part of the process. Convincing elected officials to enact a particular ordinance takes at least as much time and effort. Several approaches can help gain the governing body's support. First, if possible, identify a key elected official who has an interest in the subject. Include that person in discussions from the very beginning. Once you have agreement on the major issues the ordinance should cover, arrange a presentation at a work session of the governing body to discuss the concepts. Keeping the governing body informed can help build support. It is helpful to identify a member of the planning board or governing body who supports the ordinance so this person can speak out at planning board and town council meetings. It will also help identify areas where you may have to modify specific ordinance provisions. You also need to build political support for a new ordinance among citizens, planning board members, local professionals (municipal and planning board attorneys, planner, engineer), local watershed associations and land trusts.

All proposed changes in local regulations, whether they involve such matters as raising a tax for open space acquisition, bonding to cover expenses, restoring a road surface, saving trees or changing land use patterns, should be critically reviewed for potential impacts on natural resource protection. Close attention to the process can prevent unintended consequences of casually adopted ordinances.

¹ Boards of health can enact ordinances dealing with air and water pollution, hazardous substances, solid waste, and noise.

Zoning Ordinances to Help Preserve Open Land and Critical Areas

Carrying capacity zoning: Based on the ability of an area to accommodate growth and development within the limits defined by existing infrastructure and natural resource capabilities, this approach requires a comprehensive environmental inventory for implementation. Determining carrying capacity can be a difficult process, subject to differing opinions. For example the need for sewage disposal can limit the land's carrying capacity. If a residential subdivision can connect with a sewage treatment plant, the plant's capacity will dictate the number of new homes possible. If homes must rely on septic systems, a nitrate dilution model will determine the number of septs an area can handle. (See *Build-Out and Carrying Capacity Analysis*.)

Cluster zoning: By maintaining the regular zoning's ratio of housing units to acreage and permitting clustered development through under-sized lots, this technique allows for open space preservation. A Planned Unit Development provision in the MLUL (N.J.S.A. 40:55D-39b-c) allows clustering for a large, mixed-use development. Flexibility in siting allows preservation of open space areas within a development site and reduces construction and infrastructure costs. Without comprehensive planning, cluster ordinances result in small pieces of unlinked preserved open space, with no connection to an open space system. They may also increase processing time for development approval.

Floor area ratio: Setting a standard for the ratio of total floor area to the area of the lot adds some flexibility to zoning regulations while still controlling the intensity of development. It also can be applied directly to the building design and adapted to many architectural designs.

Large lot zoning: Large minimum lot sizes can help maintain low densities and protect water

resources, particularly in rural areas. However, since zoning is subject to change, large lots are not an effective device for permanent preservation. Large lots generally increase real estate values and infrastructure costs and foster sprawl.

Lot size averaging: The density remains the same overall but lot sizes can vary. This improves planning for critical areas and keeps land in private ownership.

Overlay zone: An overlay zone is a mapped zone that imposes a set of requirements in addition to those of the underlying zoning district. Municipalities use overlay zones when a special public interest such as a stream corridor, aquifer, ridge or steep slope does not coincide with the underlying zone boundaries. In the overlay zone, the land is simultaneously in two zones and may be developed only under the conditions and requirements of both zones. The overlay zone is part of the municipal zoning ordinance. Because the overlay zones are site specific, they add an opportunity to implement site specific public policies, especially with environmental protection.

Performance zoning: A list of permitted impacts (based on natural resource data and design guidelines) as opposed to permitted uses define these zones and direct development to appropriate places based on a comprehensive, environmentally based plan. However, environmental impacts may be hard to measure and criteria hard to establish. The plan can be expensive to prepare.

Special zoning district: With development restrictions to protect agriculture, natural and historic areas, scenic views and neighborhood character, an ordinance establishing a special district should be specific enough to avoid varying interpretations.

A General Approach for Drafting an Ordinance

Clearly, the first step is to pinpoint the specific issue or concern. Master plan amendments often require new or amended regulations for their implementation. For example a recommendation to protect stream corridors may require amendments to land use and stormwater control ordinances. Specific environmental concerns like the abatement of lead paint or emissions from idling trucks may lead to ordinance changes by the board of health.

Second, conduct a critical review of all existing ordinances to determine a) if the issue is simply one of lack of enforcement of existing law or b) if existing ordinances can be amended to solve the problem. Amending an existing ordinance is easier than gaining support for an entirely new concept.

Third, review existing state law to determine if an existing statute supports the proposed solution. The NJ Constitution delegates certain powers to municipalities. For example, the Municipal Land Use Law puts the power of zoning and land use regulation in the hands of local government.²

The state has enacted laws to protect some critical areas like wetlands and flood plains. The 1987 Freshwater Wetlands Protection law, for example, preempts municipalities from regulating wetlands although wetland areas are generally zoned for some use. Local zoning ordinances should refer to the state mandates of these laws, by requiring, for example, a wetlands Letter of Interpretation before the Planning Board or Board of Adjustment will consider applications for subdivision and site plan review.

Local land use regulations should also insure that land preserved at public expense is sufficiently buffered to protect its important environmental qualities. For example, allowing dense condo development around a preserved farm provides the developer with added value and limits the use of the preserved prop-

erty for its major purpose. Condos surrounding a farm generally result in complaints that can limit the farmer's ability to produce crops. Similarly, condos around a public ball field generally lead to conflicts over traffic and noise.

Fourth, gather background information about the issue of concern. Accurate information will help in drafting and defending the ordinance during public meetings. It is also very important to have a solid factual basis to fend off potential court actions once the ordinance is enacted. Sources of background information include the ERI, scientific studies, ANJEC publications, NJDEP documents, EPA technical reports, the State Plan, scientific and academic studies. Contact the ANJEC Resource Center at resourcecenter@anjec.org or 973-539-7547 for additional guidance.

A review of related ordinances and initiatives adopted in other municipalities can provide a great deal of useful information. Few municipal governments want to be the first to adopt a new type of ordinance. Using other community initiatives as examples often helps convince local officials to move into new areas.

ANJEC has developed a database of more than 500 environmental ordinances that have been adopted by communities around the state. These ordinances reflect local environmental conditions and political realities. Copies are available to ANJEC members. To request an environmental ordinance from ANJEC's database, visit ANJEC's website at www.anjec.org, review the ordinance topics and email a request to resourcecenter@anjec.org or call the Resource Center directly at 973-539-7547. See page 9 for a list of available topics.

A number of organizations also have model ordinances available on-line. While local officials rarely

² The NJ Municipal Land Use Law sets the standards for the contents of the zoning (N.J.S.A. 40:55D-62, 63,64,65,66,67,68), subdivision and site plan ordinances (N.J.S.A. 40:55D-38, 39,40,41,42,43). It's a good idea to review these sections of the law as a first step.

adopt a complete model ordinance, they often will accept specific concepts or sections.

- Center for Watershed Protection – www.cwp.org
- EPA Office of Water – www.epa.gov/owow/nps/ordinance/
- Ten Towns Great Swamp – www.tentowns.org
- Stony Brook–Millstone Watershed Association – www.thewatershed.org for model stream corridor protection ordinance
- The Stormwater Manager’s Research Center – www.stormwatercenter.net/
- US Department of Energy, Smart Communities Network – www.sustainable.doe.gov/landuse/lucodtoc.shtml#top

Tips for Writing an Ordinance

By Rodney C. Nanney, Ypsilanti Charter Township, Michigan

Brevity and clarity are key to effective local codes

Touch up definitions. Look for duplications (like “main building” and “principal building”), and for definitions that are outdated, poorly written or no longer referenced in the ordinance.

Add subject headings and titles in italicized or bold fonts.

Consolidate subject areas into a single section: Pick a topic (like “landscaping”), try to find all references, and put them in the same section.

Eliminate unnecessary words and phrases like herewith, deemed to be, and double negatives.

Write new ordinances with the following questions in mind:

Can it be stated in fewer words?

Does the text clearly reflect the intent of the ordinance?

Could lengthy text be replaced by an illustration?

Remember, a picture is worth 1,000 words.

Ordinance Structure

Once the necessary information has been collected and thoroughly examined, and the governing body has agreed in principle with the concept, the process of drafting the ordinance can begin. A typical ordinance generally contains several major sections including the (1) Title, (2) Purpose, (3) Definitions, (4) Standards, (5) Applicability, (6) Submittals, and (7) Penalties and Fees.

The **TITLE**, or legal name by which an ordinance can be cited, states the scope and identification number of the document, as well as the name of the municipality.

The **PURPOSE** should clearly describe the main objectives of the ordinance, including the reason(s) why the ordinance should be adopted. Background information gathered during the pre-drafting process can prove very useful at this time. Should the ordinance be challenged in the courts, the purpose section justifies its existence. For this reason, this section should be as detailed as possible and the wording should be clear and concise. It should also reflect the master plan goals and objectives. Most importantly, it must contain accurate information that clarifies the purpose of the ordinance. *See page 7 for examples.*

The **DEFINITIONS** section describes key terms used within the ordinance. Definitions should be clear and understandable since they are the fundamental building blocks for other sections of the ordinance. Any special terms introduced within an ordinance should be thoroughly explained in this section. A few towns have used graphics effectively to clarify the definitions such as a cross-section of a stream corridor to define the zones. *See page 8 for examples.*

STANDARDS are the specific details that guide local officers and agencies as they implement and enforce the ordinance. Standards should be based on science. For example Cook College’s 1989 *Watershed Management Strategies for New Jersey* provides a solid foundation for requiring a stream buffer of 150 to 300 feet for nutrient and pollutant removal. If you have

sufficient background data, you will be better prepared to defend standards during the drafting process. Well-written standards also will help with enforcement. *See page 8 for examples.*

APPLICABILITY describes precisely “who” and “what” the ordinance will govern. Perhaps the ordinance applies only to developments or subdivisions over a certain size, or in specific zones, or creates overlay zones for sensitive environmental features like ridgelines or aquifer recharge areas.

The **SUBMITTAL** section sets out the information and plans required of anyone proposing a project or development covered by the ordinance. A well thought out and written submittal section can help insure that the municipality receives enough data to be able to assess the impacts of a particular proposal. Be careful to require a reasonable amount of data. Otherwise, applicants will probably request waivers and/or ignore some requirements.

For example, the required elements of an Environmental Impact Statement can be listed in this section: flora and fauna inventory, lighting and noise studies, etc. Set high standards for the most important issues by asking for specific details so the applicant knows to submit worthwhile information rather than boilerplate text. For instance, a stream corridor ordinance can require the submittal of a hydrologic report that shows the effects of development on drainage in the buffer area, but few stream corridor ordinances do so currently. *See page 9 for examples.*

FEES required of applicants **AND PENALTIES** that may result from the violation of an ordinance are specified within the individual ordinance or as a general condition of the Land Use Regulations. Since local officials will refer to this section when enforcing the ordinance, it should be clear and comprehensive to insure that it covers all applicable cases. This section should set out who will enforce the ordinance (for example the zoning officer or building code official), what the penalties are, how the property owner will be notified of a violation, and any relevant time frames.

An ordinance should reflect the local conditions of a municipality. Model ordinances can be very helpful, but one that is not tailored to a particular municipality’s needs may be worse than no ordinance at all. Topography, hydrology, population, industrial development, and species diversity are some of the factors that vary widely between municipalities. Unique physiographic features found in specific regions of NJ, such as the sand dunes along the coastal zone, or underground limestone deposits in the northwestern part of the state, also require special protection.

Ordinance Approval Process

Under NJ law, the municipal governing body or board of health has to follow specific timetables when adopting an ordinance. (N.J.S.A. 40:49-2) Every meeting where either of these agencies is taking formal action on a new ordinance must comply with all requirements of the Open Public Meetings Act (N.J.S.A. 10:4-7 et seq.).

To start the process, the proposed ordinance is introduced in a **first reading** at a publicly advertised meeting. The governing body must agree by a majority vote to proceed and determine the date for a **second reading** and public hearing at that time. The complete text or title and summary of land use ordinances must be advertised in the municipality’s official newspaper at least 10 days before the public hearing and posted on the municipal bulletin board. Notice of amendments to zoning ordinances must be sent to all owners within 200 feet of all boundaries of the district (unless the change is implementing a change in the Master Plan). Copies of the ordinance must also be made available to the public through the municipal clerk. If the ordinance relates to land use, the governing body must send a copy of the ordinance to the planning board for review. The planning board has 35 days after the first reading to comment on the proposed ordinance’s consistency with the master plan.

The **second reading** or public hearing gives local officials, residents and all other interested parties the

Citizen Action Monitor

“All power is inherent in the people.” Community enacts this provision and more in Ordinance.

25 Jul

No 228 Posted by fw, July 25, 2011

How would you like to live in a community that enacts an enforceable **Bill of Rights** that includes the following protections? –

- Recognizes the right of the people to a form of government where they live “**which recognizes that all power is inherent in the people**, that all free governments are founded on the people’s authority and consent, and that neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.”;
- Establishes specific rights of residents, including the **Right to Water**, the **Rights of Natural Communities**, the **Right to a Sustainable Energy Future**, and the **Right to Community Self-Government**;
- Asserts that “**Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction shall not have the rights of “persons” afforded by the United States and States’ Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of States’ Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of States’ Constitutions.**”; and
- Makes it **unlawful for any corporation to engage in the extraction of natural gas** with the exception of gas wells installed and operating at the time of enactment of this Ordinance

Well, the Wilkinsburg Borough Council (PA) unanimously adopted a community rights Ordinance that includes these very provisions. [The Community Environmental Legal Defense Fund](#) (CELDF) helped the community draft the Ordinance.

Here’s CELDF’s July 20, 2011 Media Release announcing the news –

[Wilkinsburg Borough Council Unanimously Adopts Community Rights Ordinance That Bans Gas Drilling](#)

“You just have to look at Washington County and what they’ve done with long wall mining – destroying houses and highways and watersheds and the state has done really almost nothing to protect us. So I don’t know there is a lot we can do but I think we need to continue on, after we pass this, to look for additional ways to protect our residents.” — Jason Cohn, Vice President of Borough Council

By a unanimous vote, the Borough Council of Wilkinsburg, Allegheny County, Pennsylvania, adopted ordinance number 28-70 that **enacts an enforceable Local Bill of Rights, along with a prohibition on natural gas extraction to protect those rights.**

The bill, titled ***Wilkinsburg Borough’s Community Protection from Natural Gas Extraction Ordinance*** establishes specific rights of Borough residents, including the **Right to Water, the Rights of Natural Communities, the Right to a Sustainable Energy Future, and the Right to Community Self-Government.**

The Ordinance was drafted in consultation with the Community Environmental Legal Defense Fund (CELDF).

The key prohibition enacted to protect the rights enumerated states: ***“It shall be unlawful for any corporation to engage in the extraction of natural gas within Wilkinsburg Borough, with the exception of gas wells installed and operating at the time of enactment of this Ordinance.”***

The ordinance goes on to assert: ***“Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction shall not have the rights of “persons” afforded by the United States and Pennsylvania Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the Pennsylvania Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution.”***

The bill also recognizes the right of the people to a form of government where they live ***“which recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority and consent, and that neither individuals nor corporate entities and their directors and managers shall enjoy special privileges or powers under the color of state law which purports to make community majorities subordinate to them.”***

The bill was modeled after the Ordinance drafted by CELDF and adopted on November 16th of last year by the City of Pittsburgh, Pennsylvania. West Homestead Borough adopted virtually the same Ordinance on May 10th, followed by Baldwin Borough on June 21st. Both municipalities are in Allegheny County, Pennsylvania. Mountain Lake Park, Maryland adopted the Community Rights gas drilling ban on March 6th of this year, and Wales, New York did so on June 14th, 2011. A similar Community Rights Ordinance prohibiting the depositing or storage of frack-water was enacted last October by Licking Township in Clarion County, Pennsylvania.

At the hearing prior to the Council's vote, four residents spoke in favor of the community rights gas extraction ban, and **no residents spoke against it**. Terri Supowitz, who consulted with CELDF and introduced the legislation to Council, **reiterated the need for local self-governance in the face of corporations licensed and permitted by the State to violate the rights of residents and nature.**

The final testimony came from a man who recently moved with his family to Wilkinsburg. He noted that he would never move to any place that allowed this form of gas drilling within its boundaries, commenting ***"Please approve any ordinance that would ban the drilling of Marcellus Shale gas drilling in Wilkinsburg. There is really no room for such environmentally devastating practices in our urban areas."***

The measure was introduced on a motion by Councilwoman Pamela Macklin, and seconded by Councilman Carl Lewis.

Jason Cohn, Vice President, commented ***"I think it's great that we're passing this tonight. The one thing that I want to point out to Council is that I don't think it ends our responsibility in monitoring this situation. I'm not sure what else we can do, but I'm pretty concerned. Every day there is new information that's pretty scary – some of the discussion they are having about permitting drilling to happen horizontally underneath people's property against their will, we've made that an institution in Pennsylvania. You just have to look at Washington County and what they've done with long wall mining destroying houses and highways and watersheds and the state has done really almost nothing to protect us. So I don't know there is a lot we can do but I think we need to continue on after we pass this to look for additional ways to protect our residents."***

Following a "yea" vote of 9-0, Council thanked Terri Supowitz for bringing the issue to the attention of the community, as well as residents Joni Rabinowitz and Caludia Detwiler. President of Council, Eugenia Moore commented ***"I would like to reiterate that not only should one Council member be thanked, or one resident, but the entire group of us."*** Those in attendance applauded enthusiastically and there were lots of smiles.

Eric Belcastro of the Community Environmental Legal Defense Fund applauded the Council, saying, ***"This is the culmination of a lot of work, study and soul-searching. Members of Council took a stand on behalf of community rights. State law licenses corporations to 'legally' violate the rights of the people, and then pretends to preempt municipalities from protecting the health, safety and welfare of the community. But the State does not have the authority to make it illegal for Council members to honor their oaths of office...not in Wilkinsburg, and not in any community."***

The Community Environmental Legal Defense Fund, headquartered in Chambersburg, has been working with people in Pennsylvania since 1995 to assert their fundamental rights to democratic local self-governance, and to enact laws which end destructive and rights-denying corporate action aided and abetted by state and federal governments.

Ordinance No. 7-1988**ARTICLE 1. DEFINITIONS**

- (1) *Aquifer* means a geologic formation, group of formations, or a portion of a formation capable of yielding usable quantities of groundwater to wells or springs.
- (2) *Ash* means waste material produced from an incineration process or any combustion. Ash types include: Fly ash, bottom ash, and incinerator residue.
- (3) *Board* means the Wise County Board of Supervisors.
- (4) *Bottom ash* means the ash or slag remaining in an incinerator or boiler unit after combustion.
- (5) *By-product material* means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. By-product does not include a co-product that is produced for the general public's use and is ordinarily used in a form that is produced by the process.
- (6) *Commercial chemical product* means a chemical substance which is manufactured or formulated for commercial, agricultural or manufacturing use. This term includes a manufacturing chemical intermediate, off-specification chemical product, which, if it met specification, would have been a chemical product or intermediate. It includes any residues remaining in the container or the inner liner removed from the container that has been used to hold any of the above which have not been removed using the practices commonly employed to remove materials from that type of container and has more than one inch of residue remaining.
- (7) *Commercial waste* means all solid waste generated by establishments engaged in business operations other than manufacturing. This category includes, but is not limited to solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers and similar commercial facilities.
- (8) *Construction/demolition/debris landfill* means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, inert waste, or combinations of the above solid wastes.
- (9) *Construction waste* means the waste building material refuse and other largely inert solid waste resulting from construction, remodeling, repair operation on houses, commercial buildings, pavements, and other structures. Construction waste includes lumber, wire, sheetrock, broken brick, shingles, glass pipes, asphalt, concrete, and other nonhazardous, nonsoluble unwanted or unused construction material. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids are not construction wastes. A mixture of construction waste with any amount of other type of solid waste will cause it to be classified as other than construction waste.

- (10) *Contamination* means the degradation above background of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activity.
- (11) *Corrosivity* means solid waste which is acidic and is capable of corroding metal (such as tanks, containers, drums and barrels).
- (12) *Debris waste* means inert solid wastes such as stumps, wood chips, brush, leaves from land clearing operations, brick and block.
- (13) *Demolition waste* means that solid waste which is largely inert, resulting from the demolition or razing of buildings, roads, and other manmade structures. Asbestos waste is not demolition waste.
- (14) *Disposal* means the intentional discharge, deposition, injection, dumping, spilling, leading, or placing of any solid waste into or on land or water so that the solid waste or any constituent thereof may enter the environment (i.e.: air, soil, surface water, or ground water) or to otherwise discard.
- (15) *EPA* means the United States Environmental Protection Agency.
- (16) *Facility* means a solid waste management processing, treatment, storage, disposal site, or resource recovery site, including any and all contiguous land, structures, and other appurtenances, and improvements thereon used for solid waste disposal or solid waste storage, and associated activities. Facility types include: sanitary landfills, construction/demolition/debris landfills, industrial waste landfills, long-term retrievable storage facilities, resource recovery systems, storage facilities, temporary storage facilities, surface storage facilities, treatment centers, transfer stations, underground storage facilities, incinerators and composting operations. A facility may consist of more than one operational unit.
- (17) *Fly ash* means ash particle collected from air pollution attenuation devices on combustion units, such as those that burn fossil fuels or incinerate solid waste.
- (18) *Garbage* means all putrescible wastes, including discarded materials composed of vegetable or other organic matter, animal offal and carcasses and recognizable industrial by-products, but excluding sewage and human waste.
- (19) *Ground water* means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state: whatever may be the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.
- (20) *Hazardous waste* means any solid waste, garbage, refuse, or sludge or any other waste material and can be solid, solids, semi-solid, semi-solids, liquid, liquids, sludge, sludges, or a contained gas: and because of its quantity, concentration, or physical, chemical, or infectious characteristics, (it) may:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Hazardous waste may include any of the following: ignitability, corrosivity, reactivity, and toxicity. Hazardous waste includes those described as "hazardous waste" by the Virginia Hazardous Waste Regulation or the EPA.

(21) *Hazardous waste facility* means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of hazardous waste.

(22) *Hazardous waste generation* means the act or process of producing hazardous waste.

(23) *Hazardous waste landfill facility* means any facility or any portion of a facility for disposal of hazardous waste on any portion of a facility for disposal of hazardous waste.

(24) *Hazardous waste management* means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(25) *Household waste* means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas.

(26) *Ignitable waste* means:

- a. Causes fires under certain conditions.
- b. Liquids having a flash point of less than one hundred forty (140) degrees Fahrenheit (60° C) as determined by the methods specified in the Virginia Hazardous Waste Management Regulations.
- c. Non-liquids liable to cause fire through friction, absorption of moisture, spontaneous chemical change or retained heat from manufacturing or liable, when ignited, to burn so vigorously and persistently as to create a hazard.
- d. Ignitable compressed gasses; and/or oxidizers.

(27) *Incineration* means the controlled combustion of solid waste in an enclosed device.

(28) *Incinerator* means a commercial furnace or other combustion unit which is an enclosed device using controlled flame combustion for solid waste with a rated capacity for greater than twenty (20) tons of solid waste per day and is not classified as a boiler or industrial furnace for other than solid waste.

(29) *Incinerator residue* means the resulting ash product from the incineration of solid waste.

(30) *Industrial solid waste* means all solid waste resulting from manufacturing and industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a publicly-owned sewage treatment plant. Industrial solid wastes include: Mining wastes from the extraction, beneficiation, and processing of ores and minerals unless those materials are returned to the mine site; fly ash; bottom ash; fire gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; cement kiln dust; and asbestos.

(31) *Industrial waste landfill* means a solid waste landfill facility used primarily for the disposal of a specific industrial waste or a waste which is a by-product of a production process.

(32) *Inert waste* means solid waste which is physically, chemically and biologically stable from further degradation and considered to be nonreactive. Inert wastes include rubble, concrete, broken bricks, and blocks.

(33) *Infectious waste* means solid wastes which contain pathogen with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. Infectious wastes are generated by health care facilities, laboratories, and research facilities and are contaminated with pathogenic organisms and may cause infectious disease in exposed persons.

(34) *Institutional waste* means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include infectious waste from health care facilities and research facilities that has not been classified as a hazardous waste by the Virginia Hazardous Waste Regulations or the EPA.

(35) *Landfill* means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(36) *Long-term retrievable storage* means storage in closed containers in facilities (either above or below ground).

(37) *Lower explosive limit* means the lowest concentration by volume of a mixture of explosive gases in air that will explode or burn in air at twenty-five (25) degrees Celsius at atmospheric pressure.

(38) *Municipal solid waste* means that waste which is normally composed of residential, commercial, and institutional solid waste.

(39) *Natural resources* means all materials which have useful physical or chemical properties which exist, unused, in nature.

(40) *Nuisance* means an activity which unreasonable interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

(41) *Operator* means the person responsible for the overall operation and site management of a solid waste management or solid waste storage facility.

(42) *Owner* means the person, corporation or other legal entity which possesses the land on which a solid waste management facility or solid waste storage facility is located.

(43) *Person* means an individual, corporation, partnership, association, a unit of local government, state agency, federal agency, or other legal entity.

(44) *Pollutant* means any substance which causes or contributes to or may cause or contribute to, environmental degradation when discharged into the environment.

(45) *Processing* means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

(46) *Public land* means any land, used for any purposes, that is leased or owned by a governmental entity.

(47) *RCRA* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901 et seq.) and the Hazardous and Solid Waste Amendments of 1984.

(48) *R.D.F. (refused derived fuel)* means solid waste which is processed to be used as fuel to produce energy.

(49) *Reactive waste* means wastes that are unstable under normal conditions. They can create explosions and/or toxic fumes, gases and vapors when mixed with water.

(50) *Recycling* means the process by which recovered resources are transformed into new products so that the original products lose their identity.

(51) *Residential waste* means household waste.

(52) *Resource recovery* means a solid waste management system which provides for collection, separation, recycling and recovery of energy or solid wastes, including disposal of non-recoverable waste residues.

(53) *Sanitary landfill* means a land disposal site employing an engineered, constructed and controlled burial method of disposal of solid waste to minimize environmental and health nuisances and hazards. The methods include spreading the solid waste in thin layers, compacting the solid waste to the smallest practical volume, confining the solid waste to the

smallest practical area, and applying suitable cover material at the end of each operating day and at such more frequent intervals as may be necessary.

(54) *Site* means the land or water area upon which a solid waste facility, solid waste storage facility, or activity is physically located or conducted, including adjacent land used for the facility and its utility systems such as repair, storage, shipping or processing areas, or other areas incident to the controlled solid waste facility or activity.

(55) *Sludge* means any solid, semi-solid or liquid waste generated from a municipal, commercial, institutional, industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other waste having similar characteristics and effects.

(56) *Solid waste* means any hazardous or nonhazardous discarded material, garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage, and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including but not limited to solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial, mining and agricultural operations and from community activities.

(57) *Solid waste disposal facility* means any landfill, sanitary landfill facility, storage facility, construction/demolition/debris landfill facility, industrial waste landfill, resource recovery facility, incinerator and composting facility. A wastewater treatment plant is not a solid waste facility.

(58) *Solid waste generation* means the act or process of producing solid waste.

(59) *Solid waste management* means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery, and disposal of solid waste.

(60) *Solid waste management facility ("SWMF")* means any facility (land, personnel, and equipment) which engages in a planned program for effectively controlling the storage, processing and reuse, conversion or disposal of solid wastes in a safe, sanitary, aesthetically acceptable, environmentally sound and economical manner.

(61) *Storage* means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.

(62) *Storage facility* means a facility (land, personnel and equipment) which engages in the storage or containment of hazardous or nonhazardous solid waste either on a temporary basis or for a period of years in a manner which does not constitute disposal. Storage facilities include any and all contiguous land, structures, containers, units, and other appurtenances, and improvements thereon used for solid waste storage, and associated

activities. Facility types include: long-term retrievable storage facilities, storage facilities, temporary storage facilities, surface storage facilities, transfer stations, underground storage facilities, storage farms (above or below ground), buildings used for storing solid waste. A facility may consist of more than one operational unit.

(63) *Toxic waste* means wastes that are harmful or fatal when ingested or absorbed. When toxic wastes are disposed of on land, contaminated liquid may drain (leach) from the waste and pollute groundwater.

(64) *Trash* means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

(65) *Transfer station* means any storage or collection facility which is operated as a relay point for solid waste which ultimately is to be transferred to a central solid waste management facility.

(66) *Treatment* means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste to neutralize the waste or to render the waste non-hazardous, safer to transport, amendable for recovery, amendable for storage or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of solid waste to render it nonhazardous.

(67) *Unit of local government* means a county, city, town or incorporated village.

(68) *Waste needing special handling (special waste)* means any solid waste which requires extra or unusual management when introduced into a solid waste management facility to insure protection of human health or the environment.

(69) *Water pollution* means such alteration of the physical chemical, or biological properties of any groundwater, state waters as will or is likely to create a nuisance or render such waters:

a. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, aquatic life or plants;

b. Unsuitable for recreational, commercial, industrial, agricultural or other reasonable uses; provided that:

1. An alteration of the physical, chemical or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

2. The discharge of untreated sewage by any person into state waters; and

3. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of these articles.

(70) *White goods* means any stoves, washers, hot water heaters, other large appliances, waste metal products which are introduced onto a landfill facility for disposal.

ARTICLE 2. AUTHORITY AND GENERAL INFORMATION

Sec. 2.0. Authority for ordinance.

This ordinance is adopted pursuant to Section 15.1-504 of the Code of Virginia, as amended. Upon proper motion the Wise County Board of Supervisors does hereby adopt the following county ordinance pursuant to said Code Section. Now, therefore, be it ordained:

Sec. 2.1. Purpose for ordinance.

This ordinance is established for the purpose of protecting, promoting and preserving an environment that is conducive to public health, welfare, and preventing the creating of nuisances and the depletion of our natural resources, and to maintain such levels of air quality and water quality as will protect human health, welfare and safety; and to the greatest degree practicable prevent injury to plant and animal life and property, and nurture the comfort of the people and their enjoyment of life and property; and to encourage the social and economic development of Wise County and facilitate enjoyment of its attractions.

ARTICLE 3. SOLID WASTE DISPOSAL

Sec. 3.0. Solid waste disposal prohibited.

Within the territorial boundaries of Wise County, Virginia, it shall be unlawful for any private person to dispose any solid waste without the expressed approval of the Wise County Board of Supervisors. Unlawful solid waste disposal is not limited to, but includes these types of waste as defined in Article 1 of this ordinance: Asbestos waste, ash, bottom ash, by-product materials, commercial waste, construction waste, corrosive waste, debris waste, demolition waste, fly ash, garbage, hazardous waste, household waste, ignitable waste, incinerator residue, industrial solid waste, inert waste, infectious waste, institutional waste, low-level radioactive waste, municipal solid waste, non-hazardous solid waste, nuclear waste, pollutants, reactive wastes, radioactive waste, residential waste, sludge, solid waste, special waste, toxic waste or trash.

Sec. 3.1. Solid waste disposal approval requirements.

The following solid wastes are exempt from these regulations provided that they are managed in accordance with the requirements promulgated by other applicable state agencies:

- (a) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy; and
- (b) Solid waste from the extraction, beneficiation and processing of ores and minerals, including coal.
- (c) By-products of coal combustion such as fly ash and bottom ash from coal mined in Wise County to be brought back into the county and disposed of with other mine refuse on permitted sites.

A person requesting such approval as is outlined in Section 3.0 above shall comply with the following requirements:

1. That any partnership provide the names and physical addresses of any and all partners, whether they be general or limited partners, to the Wise County Board of Supervisors;
2. That any corporation provide to the Wise County Board of Supervisors the names and physical addresses of any and all stockholders, officers and directors of such corporation;
3. That any person or entity, including any general or limited partner, stockholder, officer or director disclose any relation it/he/she may have with any other entity who has any dealings with or whose business concerns collection, storage, transfer, reclamation or disposal of any type of waste, whether or not it be solid, liquid, toxic, hazardous or nuclear; and further, that each person or entity disclose under oath, any violation, citation of violation or notice of violation it/he/she or any entity they have been associated with concerning collection, storage, transfer, reclamation or disposal of any type of waste has received, and further if there have been no violations, citations of violations or notice of violations, each such person and/or entity shall sign an affidavit to that effect. In the event that any such affidavit or disclosure signed under oath shall be determined by the Wise County Board of Supervisors to be false, then the Wise County Board of Supervisors may withdraw its approval without notice to said person or entity. Any such person and/or entity executing such a disclosure under oath or affidavit shall execute a bond in the amount of one hundred thousand dollars (\$100,000.00) which said bond shall be forfeited in the event that it shall be determined that said disclosure or affidavit is false. Such a forfeiture may be waived by the Wise County Board of Supervisors if it be determined that any such false statement was made by accident and not in bad faith. In the event that any such forfeiture shall take place, the money received by the county for said bond shall be used indemnify the county and each and every one of its citizens who shall be in any way damaged by the activities of any such person or entity and all remaining funds shall thereafter be transferred to the general funds for the county to use as the Wise County Board of Supervisors deems fit.
4. Submit in writing to the board a comprehensive program for implementation of such request as described in Section 3.0 of this ordinance. This comprehensive program shall include the following:
 - (A) A complete description of all property to be used including a copy of the deed on record in the Wise County Circuit Court Clerk's Office at the Wise County Courthouse;

(B) A certified surface ownership map showing all the boundaries of the property to be used and locating all adjacent property boundaries and tracts of land and owners. This map is to be on a scale of one inch equals four hundred (400) feet and must include creeks, streams, dwellings and other structures, nearest corporation limits, ownership, acreage, deed book and page number of all property to be used and all adjacent properties.

(C) The existing population and project population of the county over the life of the proposed request.

(D) The quantities of solid waste generated and estimated to be generated by the type of request over the life of the request.

(E) A manifest system for identifying the quantity, composition and the origin, routing and destination of all solid waste during its transportation from the point of generation to the point of disposal.

(F) A complete hydrological and geological report by a registered geologist which includes such factors as flood plains, depth to water table, drainage plan, groundwater travel time, proximity to public water supply watersheds, soil pH, soil cation, exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines, and climate; and credentials of geologist.

(G) A complete report pertaining to transportation factors which includes proximity to population, route safety, method of transportation and all area roads, lands, etc., which will be effected by route.

(H) A complete air quality report which includes relevant facts and circumstances as may be presented bearing upon the reasonableness of the activity involved and the methods proposed to control it, including:

1. The suitability or unsuitability of such activity; and
2. The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity.

(I) A complete baseline water analysis test from at least two (2) different water analysis laboratories who are certified under the Safe Drinking Water Act, one of which will be recommended by the board.

(J) A set of plans for the proposed request with a plan view of the proposed site, elevations and floor plans for structures.

(K) A complete workforce report for the number of employees needed and complete job descriptions, qualifications and projected employment for the future of the request, employees benefit plan, training programs and comprehensive plan.

Inclusive of: plans to minimize unanticipated damage from request, emergency health and safety programs, procedures to minimize danger, annual retraining programs to prevent health hazards and risk to workers, community and environment.

5. Copies of the proposed comprehensive program shall be available for inspection as follows:

- (a) A copy of the comprehensive program shall be provided to the local health director.
- (b) A copy of the comprehensive program shall be filed with the Wise County Administrator's Office.
- (c) A copy of the comprehensive program shall be provided to the Wise County Building Inspector's Office.
- (d) A copy of the comprehensive program shall be provided to each public library located in the county.
- (e) The county administrator may place copies of the comprehensive program in other locations as to assure the availability thereof to the public.
- (f) In addition, copies of the comprehensive program shall be available for inspection and copying at cost by the public during regular business hours in the offices of the person requesting approval.

Sec. 3.2. Public participation.

1. All information requested shall be submitted to the Wise County Board of Supervisors. Upon receipt of all information pursuant to Article [Section] 3.1 the board shall issue public notice of said request and conduct public hearings as follows:

- (a) A public notice and summary of the proposed request and scheduled public hearing dates shall be published twice weekly for three (3) consecutive weeks in two (2) newspapers having general circulation in the county.
- (b) The first publication to occur within ten (10) days of said request.
- (c) There shall be a public hearing held at least one day during regular business hours and a complete transcript kept of said hearing.
- (d) There shall be a public hearing held at least one night during evening hours and a complete transcript kept of said hearing.
- (e) All hearings shall be held within forty-five (45) days of the first publication for said request.

2. No approval shall be given except after public hearing to be held after prior notice by public advertisement of the date, time and place of such hearings, at which opportunity to be heard with respect thereto shall be given to the public.
3. Any interested persons may appear before the board at the hearings to offer testimony. In addition to testimony before the board an interested person may submit written material to the board for its consideration. No later than one hundred eighty (180) days after the hearing, the board shall approve or disapprove the facility.

Sec. 3.3. Acting upon request for approval.

In acting upon request for approval the following will be considered:

1. Acceptability within the community;
2. Hydrological and geological factors such as flood plains, depth to water table, groundwater, travel time, proximity to public water supply watersheds, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines and climate;
3. Natural resources such as wetlands, endangered species, habitats, proximity to parks, forests, wilderness areas and historical sites and air quality;
4. Local land use whether residential, industrial, commercial, recreational, agricultural, and proximity to incompatible structures such as schools, churches and airports;
5. Transportation factors, such as proximity to population, route safety, method of transportation, and proximity to other waste generators.
6. Aesthetic factors such as visibility, appearance and noise level.
7. Experience and management qualifications.

Sec. 3.4. Findings required for approval.

Before approval the board must make the following finding:

1. That the proposed request is capable of management in this county and serves the interest of the citizens of the county as a whole.
2. That all legally required local ordinances and permits can be met.
3. That local citizens and elected officials have had adequate opportunity to participate in the approval process.
4. That the construction and operation of the request will not pose an unreasonable health or environmental risk to the surrounding locality and that the developer, operator

or person has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with all applicable ordinance(s).

5. The person requesting approval shall remain fully liable for all damages, losses, personal injury or property damage which may arise out of such request and for compliance with regulatory requirements concerning insurance, bonding foreclosure and postclosure costs, monitoring and other financial or health and safety requirements as required by law. The county shall be immune from liability except as otherwise provided by statute.

6. In the event the laws or rules applicable to the request make the operation impossible or economically infeasible such operation cannot be terminated without notice of not less than six (6) months.

7. The board may adopt rules for financial responsibility requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures, and for potential liability for sudden and nonsudden accidental occurrences, which may permit the use of insurance, financial tests, guarantees by corporate owners who can pass the financial test, trusts, surety bonds, or other financial device, or any combination of the foregoing, shown to provide protection equivalent to the financial protection that would have been provided by insurance if insurance were the only mechanism used. The board may provide a copy of any filing to meet the financial responsibility requirements to the state treasurer, who shall review the filing and provide written comments on the equivalency of protection provided by the filing including recommended changes.

8. Annual permit fees shall be required for all requests. Permit fees shall be set by the board and a list of such fees shall be available at the county administrator's office. In addition the board shall require a percentage of the income from the request be deposited in trust with the county for the purpose of defraying the cost of any cleanup which might be required. The limits of all deposits required shall be set by the board.

Sec. 3.5. Record for request shall be kept.

The record for the request for approval shall include the board's written decision, a complete transcript of all hearings, all written material presented to the board regarding the site location, comprehensive program and the specific findings and any minority positions on the recommendation and specified findings. The board shall identify the material submitted to the board plus any additional materials used in arriving at the decision.

Sec. 4.0. Approval prohibited.

It shall be unlawful for any person or entity, or any entity who is owned wholly or in part, or any entity who is operated, managed or controlled by any entity or person who has ever been cited for violations of health, safety or environmental law, rules, regulations, ordinances or

requirements of any federal, state or local government pertaining to the collection, storage, transportation, reclamation, disposal or use in landfills of solid waste, liquid waste, toxic or hazardous waste or nuclear waste to transport such waste into or through the boundaries of Wise County.

Sec. 5.0. Revocation of approval.

Any approval issued by the board may be revoked when any of the following conditions exist:

- (1) Any person or entity thereof violates any local, state or federal regulations so as to pose present to potential hazard to human health, or the environment;
- (2) Any person or entity thereof maintains or operates a site in such a manner as to pose a substantial present or potential hazard to human health or the environment;
- (3) The person who was given expressed approval abandons, sells, leases, or ceases to operate the site or facility;
- (4) There exists a substantial threat of a release into the environment of a hazardous substance or pollutant causing significant effects on the air, land, surface water or groundwater;
- (5) There is a significant change in operation which may require safeguards to protect the public health and environment.

Sec. 6.0. Noncompliance and penalties.

Any violation of any portion of all of this ordinance shall be subject to a fine of up to one thousand dollars (\$1,000.00) and/or up to twelve (12) months imprisonment as provided in the Virginia Code section 15.1-505, as amended. Each day that a person violates these ordinances shall constitute a separate offense and such violation shall additionally be subject to injunctive relief in a state court of competent jurisdiction.

Sec. 7.0. Must meet all other rules and regulations.

Nothing in this ordinance shall be construed to exempt the person requesting said approval, from any other federal, state or local regulations required for request made in Article 3 of this ordinance. Other regulations include, but are not limited to:

1. Federal regulatory acts as defined by the Department of Defense, Corps of Engineers, Department of the Army Regulatory Programs of the Corps of Engineers, Final Rule. These acts include but are not limited to the following:
 - (a) National Fishing Enhancement Act of 1984;
 - (b) The Clean Water Act;
 - (c) The National Environmental Policy Act of 1969;

- (d) The Fish and Wildlife Act of 1956;
 - (e) The Federal Power Act of 1920;
 - (f) The Historic Preservation Act of 1966;
 - (g) Full Disclosure Act
 - (h) The Endangered Species Act
2. The Virginia Department of Waste Management Rules and Regulations.

Sec. 8.0. Adjudication in part.

If any clause, sentence, paragraph, subdivision, section or part of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

ATTEST:	WISE COUNTY BOARD OF SUPERVISORS
/s/ <u>William P. Varson</u> County Administrator	/s/ <u>G. Fred Dotson</u> Chairman
ADOPTED: <u>June 9, 1988</u>	

SAMPLE ORDINANCE TO ESTABLISH A VOLUME-BASED USER FEE FOR SOLID WASTE DISPOSAL

Prepared by the Michigan Department of Natural Resources

Disposal of solid waste is sometimes recognized as one of the largest expenses to local governments, yet many people are unaware of what it costs to properly dispose of solid waste. Either because the dollar costs are hidden in the general fund for municipal services, or because some dumps have been operated at low standards and fees (or not operated at all, as with roadside dumps), many people are not billed directly for the real costs of proper disposal.

Others would argue that proper disposal is whatever method hides trash from view or simply covers it up. Roadside (or "back from the road and out of sight") dumping is the easiest method (and cheapest to the disposer), but it is about the worst possible method where everyone else is concerned. With increased density of population, what is out of one person's sight is likely to be in sight of someone else. The environmental costs and damage caused by such poor disposal methods are increasingly being recognized, especially when the wastes are hazardous. Solid wastes can produce contamination, which is increasingly expensive to correct, and reduces property values.

There is really no free disposal service. The question is really, who will pay, and how much? How much is paid depends on the type, level and extent of service provided. A disposal fee assessed to users causes the user to pay for the waste he creates, and thereby pays for protecting the environment, while providing some incentive to evaluate proposals to seek the least expensive disposal method.

Economic theory suggests that paying a direct cost for a service is an incentive to not use that service, or to use it less than one would without direct costs assessed. Many would say it is more equitable to assess costs directly to users of a service ("polluter pays" principle) regardless of the users' ability to pay, or social benefits resulting from widespread use of the service. Sometimes there are social costs, as when unacceptable alternatives are used by potential users who cannot or will not pay the direct charge or user fee (in the case of solid waste this may be littering, illegal hauling or disposal).

User fees can be based on time, weight, or volume (e.g., per week, per pound, or per gallon). A user fee that varies proportionately with the volume of waste disposed could disclose the volume-dependent costs of waste disposal and provide a direct incentive to use the disposal system with moderation. One consultant suggests that a volume-based user fee should only be used in conjunction with a recycling and education program, to present optional disposal systems to the user which would cost less than the volume-based fee refuse system. Suffice it to say that raising the fee for use of any disposal system will give a direct incentive to users to look for other, possibly unacceptable, options for disposal (and, to a lesser degree, to produce less waste--possibly through reduced consumption of discardable products).

Assuming there are no alternatives to a volume-based fee refuse disposal system, the success of the fee system in financing acceptable solid waste disposal will depend on the users' willingness to pay. The fees may or may not cover the full cost of disposal. There are systems in existence in Michigan where users are willingly paying more than \$30 per ton for waste disposal. The fee system in use, in that case, is an "estimated volume" rate (operator's judgment), assessed at a central transfer facility. So, in some situations, it has been demonstrated that a volume-based user fee works to cover part of relatively high-cost disposal options (in conjunction with the usual general subsidy). However, it should be noted that this service area is rural and remote, consequently, many people readily reduce their waste by composting and incineration so they have less refuse per household than many other areas of the state. This must be assumed to affect their willingness to pay a higher rate per ton—having fewer tons—but this has not been statistically verified.

Volume-based user fees can be established in a multiplicity of forms, to pay for any proportion of disposal costs, and may work over a large range of costs. The user fee is a kind of cost assessment, while the volume-based rate is a matter of degree in assessing the user fee. Several municipalities nationwide operate user pay systems. Among them are Hanover, New Hampshire; Lansing, Michigan; Seattle, Washington; and Vassar, Michigan.

Assuming the object of assessing a volume—based user rate is to make the user pay directly for the service (in proportion to service required), and to provide an incentive to moderate the level of use, there are several degrees of incentive which may be applied in conjunction with resource recovery options such as source separation and composting:

1. The first degree is to simply apply a direct user fee to give some incentive to reduce or to moderate waste volume in the disposal system (and to replace other revenues subsidizing the system,) while not allowing alternative solid waste management options.
2. A second degree is to apply a volume—based fee along with encouraging other management options like recycling and composting—perhaps setting up a program to facilitate either, or both, of these waste reduction techniques through education or assistance to civic organizations.
3. A third degree would be to apply a volume-based fee in conjunction with mandatory source separation recycling and/or composting of yard wastes and leaves. Of course, with this arrangement there would have to be active programs to handle recyclable materials and compostables (regardless of the scale of the composting operation—backyard, neighborhood or community-wide).

It should be noted that each of these categories could be applied whether the volume-based fee mechanism is a metered (standard-size) bag, a stickered can, a counted can, a standard container, a weighed container, a leased container, bulk item tagging or estimated volume, or whether the service is in the form of weekly curbside pick-up or discretionary depositing at a landfill or transfer facility.

Generally, simplicity in the metering system is desirable, as is a flat rate per unit volume (that is, each successive can, bag, or tag should be assessed the same fee as the first). The metered bag is thought to be the simplest mechanism, with all bags sold at the same price. Two Michigan communities surveyed use this system and have no problem with it. One community uses plastic trash bags and gives no part of the sale revenue to designated retail sales outlets. The other uses high strength paper bags and allows its outlet merchants to retain 1 cent per bag sold.

Although private rubbish haulers may be serving the same areas as municipal refuse service, recycling, and composting operations are serving, an adopted user fee ordinance should provide for uniform standards for containment of refuse, and an opportunity for use of the recycling and composting options. Such uniform requirements would encourage waste reduction and other benefits throughout the community and assure that private services maintain comparable performance and litter-free standards.

The reasons for having a directly-assessed, volume-based user fee for solid waste management is to gain the benefits of reduced management costs resulting from having less waste to dispose of and to transport, and to gain the benefits of having revenue from sales of materials and conserved material and energy resources. The U.S. Environmental Protection Agency estimates indicate that composting leaves and yard wastes could reduce the waste volume by 20 percent annually, and that recycling might remove another 20 percent. A modified volume-based rate was shown to cause a 6 percent waste weight reduction in Seattle. So, it seems reasonable to assume that a concerted effort to implement a strictly applied, volume-based user fee in conjunction with vigorous recycling and composting projects, might well reduce the waste stream flowing to the local landfill by another 50 percent, along with saving money and energy used in the disposal system while generating revenues from the sale of conserved materials.

There are numerous possible ways to encourage people to participate in these waste reduction programs if simple idealism, common sense, and reduced user fees are insufficient. For example: participating five or 10 successive weeks in a source separation program could qualify the resident for a discount card which identifies the resident as a participant and therefore eligible for bag purchase at reduced rates; for senior citizens, or anyone who needs smaller bags, a reduced size/cost bag could be marketed. There are myriad possibilities (Fresno County, California reduces collection fees for recycling program participants, for example).

The following model ordinance is intended to implement a volume-based user fee system utilizing the metered-bag system. These ordinances apply to either collection systems (where bags are set out at the curb for pickup service) or deposition systems (where the filled municipal bags are taken to a central drop-off or disposal point by the user or resident). Such deposit sites might be either a landfill or, more likely, a transfer facility or compactor. In each case, the sale of municipal bags for exclusive use in the system implements the user fee which can cover the full cost of the service, or part of those costs (depending on the judgment of the city or town council).

The ordinance has also been written to allow, encourage, or mandate—depending on the desires of the municipal authorities and which sections they choose to include—either source separation of recyclables or composting of yard wastes, or both. It should be emphasized here that either encouraging or mandating either source separation or composting will require that there be a public education program and/or additional expenditures to get up these alternative materials—handling systems. It may be possible to encourage backyard composting of yard wastes without capital outlays, but it seems inevitable that there would still be a need for a public information program to give advice on how to properly compost yard wastes. The Division has produced a technical report on composting.

(All ordinance provisions must be in accord with the County Solid Waste Plan prepared under Public Act 641 of 1978.)

A section-by-section narrative follows, to guide officials in understanding the logic of the ordinances, and properly applying them:

Section 1:

"Garbage" is essentially food wastes, "refuse" is non-food waste; "yard wastes" from lawn, leaves and garden; "prunings" are small branches; "debris" is from demolition; "hazardous" as defined in Act 64; "miscellaneous" remainder; "source separation" allows for recycling; "composting" would remove leaves and lawn clippings from waste stream; "general refuse" is what would remain after waste reduction measures are utilized.

Section 2:

Establishes refuse collection or drop-off service and names administering agency.

Section 3:

States who can use the established refuse service. This is where commercial, industrial and non-resident interests must be either included or excluded. Assuming the user fees cover the full cost of the service, there may be no reason not to include non-residents from using the service. However, if there are certain materials like corrugated paper (which could be profitably baled and sold for scrap in most locations) and industrial wastes (which could clog up the system or cause some other difficulty), they should be excluded here or in Section 5, Unacceptable Materials.

Section 4:

Acceptable materials include "general refuse" plus the marketable and compostable materials which may be reduced from the waste stream.

Section 5:

Unacceptable materials are materials inappropriate to the collection system. This section should specify both "problem wastes" (i.e., from industry, etc.) and any materials selected for waste reduction programs (like newspapers, glass, and yard wastes).

Section 6: Disposal Options

1. Use of user fee system including any source separation provisions which may be included.
2. Private haulers may be utilized by anyone who prefers private service. It would be quite possible to utilize contract haulers for municipal programs, thereby protecting municipal source separation programs through exclusive contracts with appropriate specifications. Under Act 641 provisions, the county solid waste management plan may require that all haulers using licensed landfills (as provided in the plan) participate in any waste reduction programs operating in any municipality in that county. This would be a logical and justifiable measure to extend landfill life.
3. This option assumes there are such things as "approved" garbage grinders and incinerators. If there are none, this option may be deleted.
4. This option may require the adoption of a sister ordinance to govern composting operations, including household composting activities—for health and nuisance considerations.
5. Individuals may still prefer to haul their own refuse and this option should be left open in most cases.

NOTE: None of these disposal options are mutually exclusive, and any or all of them may be used in the same community, or even by the same individual. There is great flexibility and a wide range of services provided under this section. This is simply to forbid using public receptacles for private wastes.

Section 7:

Is intended to promote regular utilization of the refuse service and applies only to "general refuse," and should not affect source separation or composting activities, where adopted.

Section 8:

Is intended to require adequate storage containers for general refuse for the period between regular uses of the system. If collection or deposition intervals are to be greater than one week, container requirements should be adjusted accordingly.

Section 9:

Bags of 30 gallon capacity, made of brightly-colored plastic are most frequently used--with the city seal imprinted to identify them. Wet strength paper bags are also used (i.e. City of Vassar, Michigan) with success. Because paper bags are compostable, these may be useful for yard waste containment within a community-scale composting project requiring bagged materials. Most composting projects of that type employ a vacuum system to load curbside leaf piles into trucks.

Bag sale seems to be successful regardless of whether merchants receive a commission, probably because bag sale is a high priority service and will attract additional foot traffic and potential sales.

Section 10: Collections

Describes use of municipal refuse bags and specifies times for setting out bags. These times are suggested because they have served well in actual service, however, you should consider adjustments to suit your community.

Care should be taken in enforcing the weight limits for bags. Such activities can be politically

explosive, and stressing the requirements prior to use is far more useful than enforcing the restrictions after they have been ignored. Always make concerted efforts to communicate with the users to gain their cooperation and appreciation of the benefits of proper use of the service provided.

Depositions - Self-explanatory.

Section 11:

Collections - gives a 24-hour period to clean up any scattered refuse

Depositions - provides for immediate clean-up of spilled refuse.

Section 12:

Excludes scattered, excess, tardy, or unacceptable refuse from system.

Section 13:

Schedule of collections/operations are set by program administrator.

Section 14:

Self-explanatory.

Section 15: Separation of refuse

Source separation of marketable materials may reduce the waste stream by 20 percent or more in some areas, while providing revenues from sales and reduced disposal costs. This requires a processing program and an ongoing public education program. Pickup or deposition can be performed at the same place and time as refuse collections or deposition. No charge should be assessed for these materials, as they create a positive cash flow in the system. Reusable containers for such marketable materials would also be appropriate to encourage.

Section 16:

Composting yard wastes and composting organic materials could remove 20 percent of the annual load from the waste stream. Such wastes are often too wet to incinerate easily and can often be sold, as humus, after a low-technology processing.

Composting reduces waste volume by a factor of five, so it might be worthwhile to compost simply for volume reduction prior to landfilling. A program would need to be set up to operate a composting project or to educate the public on proper household composting. Township parks departments are logical operators of municipal operations and can be direct beneficiaries of them--having a cheap source of needed mulch and top dressing.

Section 17: Bulk item service

You should consider offering this service to those not regularly using the municipal system. Other arrangements may be difficult to make.

Section 18:

Collections - self-explanatory. Depositions - self-explanatory.

Section 19:

Collections - self-explanatory. Depositions - penalty. Adapt to your own community's needs.

Section 20: Collections

Bulk items may be collected if accompanied by one municipal refuse bag or one container of source separated materials, when such service is offered. Depositions - severability.

Self-explanatory.

Section 21:

Self-explanatory.

Section 22: Penalty

Adapt to your community's needs.

Section 23: Severability

Self-explanatory.

NOTE: Any and all provisions of such an ordinance must comply, and not conflict with, the Act 641 mandated county solid waste plan adopted by your county.

The purpose of this sample ordinance is to provide a suggested guideline for the types of items that should be included within an ordinance. Certainly, no sample ordinance should be used unless, after careful review, it is the professional judgment of your legal counsel that using the sample will accomplish the particular objectives and intentions of your township. Although these sample ordinances are the result of much thought and effort, neither the authors nor the Michigan Townships Association assumes any responsibility for the results of using these samples word-for-word in individual cases.



LOCAL REGULATION OF HAZARDOUS MATERIAL/WASTE TRANSPORTATION

Introduction

Many communities in the United States are confronted with the threats to public health, safety and the environment posed by the relentless transport of hazardous materials and wastes on their roads. Concerned that an accident may expose them to some deadly poison, or that emergency clean-up procedures may be too little-too late to protect the environment, citizens often demand that local officials regulate transportation of hazardous materials and wastes on their roads. This document is intended to help citizens better understand the ability of local governments to regulate the transportation of hazardous material/waste. It provides an analysis of the federal law governing hazardous material/waste transportation, permissible subjects for local government regulation, the process used to determine the legality of a local government regulation, and a model ordinance.

Analysis of Federal Law

Like many other matters, the United States Government has determined that local regulation of hazardous materials and hazardous waste transportation can unduly interfere with commerce. To minimize this interference, Congress and the United States Department of Transportation have severely restricted the authority of local communities to regulate the transport of hazardous materials and wastes.

On November 16, 1990, the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101-615, 104 Stat. 3244, became effective. This law amended the Hazardous Materials Transportation Act (HMTA), Pub. L. 93-633, 49 U.S.C. Appx. §1801 et seq., and addressed many of the open questions concerning the extent to which local communities may regulate hazardous material/waste transportation. The primary purpose of the Hazardous Materials Transportation Uniform Safety Act of 1990 is to provide for national uniformity in the regulation of hazardous materials transportation and to preclude the patchwork of differing regulations by local and state governments. Section 105 of the HMTA was amended to prevent any state or local regulation of hazardous materials transportation relating to the following subjects, unless such state or local regulations are substantively the same as the federal regulations governing such subjects:

- (1) The designation, description, and classification of hazardous materials.
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.
- (3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
- (5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

Section 105 of the HMTA was also amended to impose severe restrictions on the authority of state and local authorities to limit the use of highways for hazardous materials transportation. The law directs the Secretary of Transportation to establish standards not later than May 16, 1992 for the states to use in establishing these limits. Any limitations adopted by the state must be according to the procedural requirements of these federal standards and must comply with the substantive requirements of these federal standards.

The law requires that the federal standards established by the Secretary of Transportation shall include the following:

- (a) Enhancement of Public Safety - A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian tribe shall enhance public safety (i) in the area subject to the jurisdiction of the State or Indian tribe, and (ii) in areas of the United States not subject to such jurisdiction which are directly affected by such designations, limitations, and requirements.
- (b) Public Participation - Minimum procedural requirements for ensuring public participation in the establishment by a State or Indian tribe of highway routing designations, limitations, and requirements.
- (c) Consultation with Other Governments - A requirement that, in establishing highway routing designations, limitations, and requirements, the State or Indian tribe shall consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of the establishing State or Indian tribe and affected industries.
- (d) Through Routing - A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian

tribe shall assure through highway routing for the transportation of hazardous materials between adjacent areas.

(e) Agreement of Other States, Burden on Commerce - A requirement that a highway routing designation, limitation, or requirement which affects the transportation of hazardous materials in another State or Indian tribe may only be established, maintained, and enforced by a State or Indian tribe if (i) it is agreed to by the other State or Indian tribe within a reasonable period or has been approved by the Secretary, and (ii) does not unreasonably burden commerce.

(f) Timeliness - A requirement that the establishment of highway routing designation, limitations, and requirements by a State or Indian tribe shall be completed in a timely manner.

(g) Reasonable Routes to Terminals - A requirement that highway routing designations, limitations, and requirements established, maintained, and enforced by a State or Indian tribe shall provide reasonable routes for motor vehicles transporting hazardous materials to reach terminals, facilities for food, fuel, repairs, and rest, and points for the loading and unloading of hazardous materials.

(h) State Responsibility for Local Compliance - A requirement that the State shall be responsible (i) for ensuring that political subdivisions of the State comply with the Federal standards in establishing, maintaining, and enforcing highway routing designations, limitations, and requirements, and (ii) for resolving disputes between or among such political subdivisions.

(i) Factors to Consider - A requirement that, in establishing, maintaining, and enforcing highway routing designations, limitations, and requirements, a State or Indian tribe consider -

- (i) population density
- (ii) type of highways
- (iii) type and quantities of hazardous materials
- (iv) emergency response capabilities
- (v) results of consultations with affected persons
- (vi) exposure and other risk factors
- (vii) terrain considerations
- (viii) continuity of routes
- (ix) alternative routes
- (x) effects on commerce
- (xi) delays in transportation, and
- (xii) such other factors as the Secretary considers appropriate.

Section 105(b) authorizes the state to establish, maintain, and enforce specific highway routes over which hazardous materials may and may not be transported and limitations and requirements with respect to highway routing. This authorization is limited as discussed above. Although the law does not expressly authorize political subdivisions of the states to do the same, such authority is implicit in the law. Congress assigned to the states the responsibility of policing local government compliance with the federal standards when such local governments impose limitations on the transport of hazardous materials on highways. Accordingly, local governments will have to follow the same federal standards as the states.

In addition to the above restrictions on state and local regulation of hazardous materials transportation, Section 112 of the HMTA was amended to make state or local requirements invalid if compliance with federal requirements and the state or local requirements is not possible. State or local requirements are also invalid if the requirements create an obstacle to the accomplishment and execution of the federal regulatory program. Moreover, local regulation may impose an undue burden on interstate commerce, and thereby violate the commerce clause of the United States Constitution.

Subjects for Local Government Regulation

Typically, local governments are interested in imposing requirements relating to particular subjects. These subjects along with an indication of the extent to which a local government can regulate the subject, include the following:

Advance Notification - generally not allowed.

Fees - reasonable fees related to funding of regulatory activities may be allowed.

Time Restrictions - generally not allowed, but may be allowed if justified by safety analysis or applicable only to pick-ups and deliveries within city. Considered a subset of routing restrictions.

Financial Responsibility - must be essentially the same as federal requirements.

Permits - may be allowed if it does not result in delays as measured in hours.

Spill Notification - oral notice requirements allowed - written notifications not allowed.

Escorts - transporter-provided escort may be a non-allowable equipment regulation - escort by local law enforcement authorities may be allowed if it does not result in delay.

Emergency Preparedness - requirements for transporter preparedness different from federal requirements are not allowed.

Routes - see Hazardous Materials Transportation Uniform Safety Act of 1990, Pub.L. 101-615, 104 Stat. 3244, §4.

Speed Limits - reasonable limits allowed.

Vehicle Operation - reasonable restrictions allowed.

To the extent that any of these subjects has been specifically addressed in the Hazardous Materials Transportation Uniform Safety Act of 1990 (e.g. routes), compliance with that Act should be strictly observed.¹

Consistency Review Process

Local governments which wish to regulate the transportation of hazardous materials and wastes through their communities can obtain helpful guidance from the federal government. In addition, transporters of hazardous materials and waste can obtain review of local regulations by the federal government. These processes have helped to define the subjects of local regulation which are allowed.

The Research and Special Programs Administration (RSPA) of the Office of Hazardous Materials Transportation, U.S. Department of Transportation, is responsible for the issuance of "Inconsistency Rulings" ("IRs"). These rulings, though not binding on the courts² are nevertheless given consideration by the courts.³ The rulings represent an administrative determination of whether the local or state regulation is allowed or preempted. RSPA maintains and publishes a summary of its rulings and judicial decisions on state and local regulation of hazardous materials and wastes. Any government seeking to regulate the transportation of hazardous materials or wastes should consult this summary for the latest views of the Department of Transportation and the courts on allowable regulation. Their address is:

400 Seventh Street, S.W.
Washington, D.C. 20590
Tel. (202) 366-4400

¹One should also note that historically, the Department of Transportation has regarded many regulations which have the effect of re-routing shipments as route restrictions.

² National Truck Carriers, Inc. v. Burke, 608 F.2d 819, 822 (1st Cir. 1979)

³Southern Pacific Transp. Co. v. Public Service Commission of Nevada, 909 F.2d 352 (9th Cir. 1990)



Legal Environmental Assistance Foundation

203 NORTH GADSDEN STREET, SUITE 5, TALLAHASSEE, FLORIDA 32301 904-681-2591

MEMORANDUM

September 25, 1990

TO: Georgia's Environmental Activists and Local Government Attorneys

RE: Authority for City/County Environmental Protection Ordinances

The Georgia Constitution specifically gives counties and cities the authority to regulate garbage and solid waste collection and disposal, stormwater and sewage collection and disposal systems, air quality control, and the development, storage, treatment, purification and distribution of water (Georgia Constitution Article 9, Section 2, Paragraph 3). Though the Constitution provides that the General Assembly can enact general laws relative to or regulating, restraining or limiting the exercise of these powers, it cannot withdraw them.

The Georgia Solid Waste Management Act specifies that no provision of the Solid Waste Management Act shall be construed to be a limitation (1) on the power of a municipality, county authority or special district to adopt and enforce additional regulations, not in conflict with the act, imposing further conditions, restrictions, or limitations with respect to the handling or disposal of municipal solid wastes; or (2) on the power of the local government to declare, prohibit and abate nuisances (Official Code of Georgia Annotated 12-8-30.9). Prior to the 1990 amendments, this provision was broader and referred more generally to "solid wastes" rather than "municipal solid wastes"; one can argue that the constitutional home rule provision applies to private industrial solid waste facilities as well as to municipal facilities.

The Attorney General has stated that the existence of state law relating to the regulation of solid waste handling and management does not preclude the adoption of regulations on the same subject by county boards of health, provided such regulations have a reasonable relation to the protection of the health of the citizenry of the county, unless the local regulation conflict with state law (1976 Opinions of the Attorney General No. 76-17). A similar opinion addresses local exercise of air quality control (1986 Opinions of the Attorney General No. 86-22). Furthermore, in Rockdale Co. v. Mitchell's Used Auto Parts, 243 Ga. 465, 254, S.E.2d 846 (1979), the Georgia Supreme Court held that carefully drafted local regulations may apply to pre-existing as well as to future uses.

In December 1989, the Georgia Legislature ratified Chapter 391-3-15 of the Rules of Georgia Department of Natural Resources (DNR)/Environmental Protection Division (EPD). These rules specify minimum criteria for wetlands, water basin and groundwater protection that must be incorporated into each county's land use plan and thus provide further authority for regulating pollutant sources at the local government level.

The Georgia Hazardous Waste Management Act provides that no local government legislation shall prevent the location or operation of a hazardous waste facility holding a valid hazardous waste permit issued by the EPD (Official Code of Georgia Annotated 12-8-79). The Georgia Supreme Court ruled in Earth Management, Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981) that this provision applies only where the facility already holds a valid permit from the EPD.

EnvEd-Ordinance.mem

A Public Interest Law Firm



Georgia Local Ordinance
For
Preventing The Siting of Municipal,
and Private Industry Solid Waste Landfills
In Significant Groundwater Recharge Areas

WHEREAS The Constitution and laws of the State of Georgia authorize the Board of Commissioners of _____ County, Georgia to regulate garbage and solid waste collection and disposal, and;

WHEREAS The Board of Commissioners of _____ County, Georgia is charged with the responsibility of protecting and is empowered to protect the health, safety and welfare and sanitary living conditions of the residents of _____, and;

WHEREAS the Board of Commissioners of _____ County, Georgia desires to prevent the operation of any disposal facility which can contaminate the environment, including the ground and surface water and soil of _____, Georgia, and;

WHEREAS the State of Georgia has determined that the siting of solid waste landfills in significant groundwater recharge areas constitutes a threat to the health, safety and welfare of the citizens of Georgia,¹ and;

¹ If the proposed site is located in a significant groundwater recharge area, according to the definition of that term, include this whereas clause. If not, delete this whereas clause.

WHEREAS the Board of County Commissioners of _____ County, Georgia have determined that the operation of solid waste landfills over a significant groundwater recharge area constitutes substantial endangerment to the citizens of _____ County, Georgia;²

NOW, THEREFORE BE IT RESOLVED BY the Board of Commissioners of _____ County, Georgia as follows:

SECTION I. SHORT TITLE

This ordinance shall be known as the "Prohibition of Siting Solid Waste Landfills in Significant³ Groundwater Recharge Areas Ordinance."

SECTION II. DEFINITIONS

"Landfill" means an area of land on which or an excavation in which solid waste is placed for permanent disposal and which is not a land application unit, surface impoundment, injection well, or compost pile.

"Person" means the State of Georgia or any other state or any agency or institution thereof and any municipality, county, political subdivision, public or private corporation, solid waste authority, special district empowered to engage in solid waste management activities, individual, partnership, association, or other entity in Georgia or any other state.

² If the proposed site is located in a significant groundwater recharge area, according to the definition of that term, include this whereas clause. If not, delete this whereas clause.

³ If the proposed site is not located in a significant groundwater recharge area, delete the word "significant."

This term also includes any officer or governing or managing body of any municipality, political subdivision, solid waste authority, special district empowered to engage in solid waste management activities, or public or private corporation in Georgia or any other state. This term also includes employees, departments, and agencies of the federal government.

"Recharge Area (groundwater)" means an area in which water infiltrates the ground and reaches the zone of saturation.

"Significant Recharge Areas" ⁴means those areas mapped by the Department of Natural Resources in Hydrologic Atlas 18 (1989 edition). Mapping of recharge areas is based on outcrop area, lithology, soil type and thickness, slope, density of lithologic contacts, geologic structure, the presence of karst, and potentiometric surfaces. Significant recharge areas are as follows in the various geologic provinces of Georgia:

1. In the Valley and Ridge and in the Cumberland Plateau, significant recharge areas are outcrop areas of carbonate rock where low slope (less than 8% slope) conditions prevail. Such areas commonly are characterized by karst topography (caves and sinkholes).
2. In the Piedmont and in the Blue Ridge, rocks have little primary porosity, with most groundwater being stored in the overlying soils. The significant recharge areas are those with thicker soils. Field mapping indicates that thick soils in the

⁴ If the proposed site is not located in a significant groundwater recharge area, delete this definition.

- Piedmont and Blue Ridge are characterized by a density of two or more geologic contacts per four square miles (source: 1976 1:500,000 Geologic Map of Georgia) and slopes lower than 8%.
3. In the Coastal Plain, the significant recharge areas are the surface outcroppings of the large and extensively used drinking water aquifers (e.g. the Floridan, the Clayton, etc.) and soils having high permeability according to the 1976 1:750,000 Soils Association Map of Georgia.

"Solid Waste" means discharged putrescible and nonputrescible waste, except water carried body waste and recovered materials, and shall include garbage; rubbish, such as paper, cartons, boxes, wood, tree branches, yard trimmings, furniture and appliances, metal, tin cans, glass crockery, or dunnage; ashes; street refuse; dead animals; sewage sludges; animal manures; industrial waste, such as waste materials generated in industrial operations; residue from solid waste thermal treatment technology; food processing waste; demolition waste; abandoned automobile; dredging waste; construction waste; and any other waste in a solid, semisolid, or liquid state not otherwise defined in this part.

"Zone of Saturation" means a subsurface zone in which all the interstices or voids are filled with water under pressure greater than that of the atmosphere.

SECTION III. PROHIBITION OF SITING SOLID WASTE LANDFILLS IN SIGNIFICANT GROUNDWATER RECHARGE AREAS

No person shall own or operate a solid waste landfill if any part of such site is within a significant ⁵ groundwater recharge area.

SECTION IV. APPLICABILITY

This ordinance shall apply to all proposed solid waste landfills which are not permitted by the Environmental Protection Agency as of the date of enactment.

SECTION V. PENALTIES

In the event that any person or entity violates any provision of this Resolution, the County may, in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful act or to correct or abate such violation.

SECTION VI. SEVERABILITY

If any section, paragraph, subsection, clause, or provision of the ordinance shall be declared by a court of competent jurisdiction to be invalid, such validity shall not be construed to affect the portions of this ordinance not so held to be invalid or the applicability of this ordinance to other circumstances not so held to be invalid.

⁵ If the proposed site is not located in a significant groundwater recharge area, delete "significant."

SECTION VII. AUTOMATIC REPEAL

Ordinances and parts of ordinances of _____ County, Georgia heretofore adopted that are inconsistent with any of the terms and provisions of this ordinance are hereby repealed to the extent of such inconsistencies.

THIS RESOLUTION IS HEREBY ADOPTED this _____ day of _____, 1990 to become effective immediately.

_____ County Board of Commissioner,

_____ Chairperson

_____ Commission

Attest: _____ Clerk

LEAF-LETS are legal, educational, and technical summaries published by the Legal Environmental Assistance Foundation (LEAF), 203 North Gadsden Street, Suite 5, Tallahassee, Florida 32301-7633; (904) 681-2591, as part of LEAF's Resource Action & Information Network (RAIN).

August, 1990

ADDENDUM

No. 1: Definitions to be used when the pollution source is not a sanitary landfill.

"Designated hazardous waste" means any solid waste identified as such in regulations promulgated by the board. The board may identify as "designated hazardous waste" any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which codified as 40 C.F.R. Section 261.11(a)(3), in force and effect on February 1, 1988, if such solid waste contains any substance which is listed on any one or more of the following lists:

1. List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in force and effect on February 1, 1988;
2. Groundwater Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in force and effect on February 1, 1988;
3. List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R. Table 302.4, in force and effect on February 1, 1988;
4. List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on February 1, 1988;

5. List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 335, Appendix A, in force and effect on February 1, 1988; or
6. Proposed list of chemicals and chemical categories, as set forth in 50 Fed. Reg. 21168-21179, June 4, 1987.

"Hazardous waste" means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1988, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste.

"Hazardous waste facility: means any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste.

Lee County Landfill Ordinance*South Carolina - from mid-American Corp file*

Pursuant to its police and zoning powers, its powers to protect the general health and welfare of its citizens, and its powers to control truck traffic on County roads, Lee County hereby adopts the following ordinance:

1. No privately owned or operated landfill in Lee County may accept in excess of 150 tons of solid waste per day, computed on a quarterly basis.
2. No privately owned or operated landfill may be established or expanded to an aggregate capacity in excess of one million tons.
3. No one shall operate or construct a privately owned or operated landfill in Lee County without first obtaining a Landfill Permit, after hearing, from the Lee County Planning Commission. Permits shall be for a five-year term.
4. Landfill permits will be issued only upon a demonstration of compliance with this ordinance and with all applicable zoning ordinances, and of compatibility with the existing land uses in the area and with the general health, welfare and interests of the County's citizens.
5. No landfill permit application shall be considered until all permits required by State and Federal authorities have been received in final form.
6. For purposes of this ordinance, a landfill is privately operated unless the County has the right on a year-to-year basis, without cost or penalty, to limit the amount of waste received by the landfill or prohibit the landfill's further operation.
7. All provisions of this ordinance are severable. The invalidity of any section or clause shall not affect the validity of any remaining section or clause.
8. County Council may not amend this ordinance within five years of its adoption except after favorable referendum vote on the amendment.



New Sewage Sludge Ordinance

The text of this Ordinance was prepared at the request of the citizens of East Brunswick Township in Schuylkill County, Pennsylvania. Very similar Ordinances developed by the Legal Defense Fund at the request of municipal governments and citizen groups in other communities have recently been advertised for the purpose of consideration for adoption by those local governments in September 2006.

East Brunswick Township, Schuylkill County, Pennsylvania

Ordinance No. _____ of 2006

An Ordinance to Protect the Health, Safety, and General Welfare of the Citizens and Environment of East Brunswick 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 "East Brunswick Township Sewage Sludge Ordinance."

Section 2—Authority

This Ordinance is enacted pursuant to the authority granted to East Brunswick Township by all relevant Federal and State laws and their corresponding regulations, and by the inherent right of the citizens of the Township of East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick Township finds and declares that:

The land application of sewage sludge in East Brunswick Township poses a significant threat to the health,

safety, and welfare of the citizens and environment of East Brunswick 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, East Brunswick 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 East Brunswick 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 East Brunswick 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 East Brunswick Township are doing so in compliance with state laws and regulations, so East Brunswick Township must have the option of enforcing those laws and regulations itself.

East Brunswick 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 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 East Brunswick 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 East Brunswick Township.

Township: East Brunswick Township in Schuylkill County, Pennsylvania, its Board of Supervisors, or its representatives or agents.

Truckload: A load containing a maximum of approximately 23 (twenty-three) tons of sewage sludge, based upon East Brunswick Township's understanding that sewage sludge for land application typically is delivered in tri-axle trucks that can hold approximately that amount of sewage sludge.

Section 6—Adoption of State Regulations

East Brunswick Township hereby adopts as local law the Pennsylvania regulations concerning the land application of sewage sludge, including without limitation those codified at 25 Pa. Code §§ 271 and 275, *et seq.*, as amended, to the extent that those regulations permit persons, but not corporations, to engage in land application of sewage sludge under those regulations.

Section 7—Statements of Law

Section 7.1: It shall be unlawful for any person, corporation, or other entity to violate in East Brunswick Township the Pennsylvania regulations concerning the land application of sewage sludge, including without limitation those codified at 25 Pa. Code §§ 271 and 275, *et seq.*, as amended.

Section 7.2: It shall be unlawful for any person to haul or land apply sewage sludge in East Brunswick Township without first complying with the requirements in section 8 of this Ordinance.

Section 7.3: It shall be unlawful for any corporation to engage in the hauling or land application of sludge within the Township of East Brunswick. It shall be unlawful for any person to assist a corporation to engage in the hauling or land application of sewage sludge within East Brunswick Township.

Section 7.4: It shall be unlawful for any director, officer, owner, or manager of a corporation to use a corporation to engage in the land application of sludge within East Brunswick Township.

Section 7.5: Within the Township of East Brunswick, corporations engaged in the land application of sludge, dredged material, or any other type of waste as defined under Title 25, §271.1 of the Pennsylvania Code, shall not be “persons” under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, or East Brunswick Township, and so shall not have the rights of persons under those constitutions and laws. In addition, within the Township of East Brunswick, no corporation engaged in the land application of sludge, dredged material, or any other type of waste as defined under Title 25, §271.1 of the Pennsylvania Code, shall be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions from the Pennsylvania Constitution.

Section 7.6: Natural communities and ecosystems possess inalienable and fundamental rights to exist and flourish within the Township of East Brunswick. It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The Township of East Brunswick, along with any resident of the Township, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Township, regardless of the relation of those natural communities and ecosystems to Township residents or the Township itself. Township residents, natural communities, and ecosystems shall be considered to be “persons” for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 7.7: All residents of East Brunswick Township possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the Township possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants.

Section 8—Application and Testing Requirements

Before each and every truckload of sewage sludge is land applied in East Brunswick Township by a person, the sewage sludge applicant must do the following:

Section 8.1: Complete and submit to the Township a written application in form and number provided by the Township and containing the name and address of the sewage sludge applicant, the name and address of the landowner on whose land the sewage sludge is to be land applied, the location of the land on which the sewage sludge is to be land applied, and a copy of all DEP and other applicable state and federal permits pertaining to the land application.

Section 8.2: Provide East Brunswick Township with written proof of the Class of sewage sludge to be land applied. If the sludge is Class A, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 271.932(a) under which the sludge qualifies as Class A. If the sludge is Class B, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 271.932(b) under which the sludge qualifies as Class B. For all Classes of sludge, provide East Brunswick Township with written proof of the Alternative in 25 Pa. Code § 933(b) under which the sludge purportedly satisfies DEP vector attraction requirements. The purpose of this subsection is to confirm the Class of sludge to be applied and to identify the testing that East Brunswick Township must conduct on the sewage sludge and the requisite testing and collection fees under Section 8.4 of this Ordinance.

Section 8.3: Arrange for and allow East Brunswick Township to collect the necessary sewage sludge samples from the truckload to be land applied to have a qualified laboratory test the sludge for pollutants, pathogens, and vector attractants regulated by DEP at 25 Pa. Code § 271.914 (pollutants), § 271.932 (pathogens), § 271.933 (vector attractants), and at all other applicable state and federal regulations, as amended.

Section 8.4: Pay East Brunswick Township the testing and collection fees identified below and, when indicated, provide East Brunswick Township with the written proof requested below.

Pollutants: For all classes of sewage sludge, the testing fee for pollutants under 25 Pa. Code § 271.914 (a)(1) will be determined based upon quotes from one or more qualified laboratories at the time of testing.

Pathogens: For Class B sludge under Alternative 1 of 25 Pa. Code § 271.932(b), the testing fee to test seven samples for fecal coliform will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For Class B sludge under Alternatives 2 and 3 of 25 Pa. Code § 271.932(b), the sewage sludge applicant shall submit written proof that the sludge to be land applied has been treated as required under the applicable Alternative.

Vector Attractants: For sewage sludge that purportedly satisfies vector attraction requirements under 25 Pa. Code § 271.933(b)(1), (2), or (3), the testing fee for mass of volatile solids will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For sewage sludge that purportedly satisfies vector attraction requirements under 25 Pa. Code § 271.933(b)(4), the testing fee for SOUR will be determined based upon quotes from one or more qualified laboratories at the time of testing.

For sewage sludge that purportedly satisfies vector attraction requirements under 25 Pa. Code § 271.933(b)(5), (6), (7), (8), (9), or (10), the sewage sludge applicant shall submit written proof that the sludge to be land applied satisfies the requirements under the applicable Alternative.

Collection: For all classes of sewage sludge, the administrative fee for collection and transportation of the sewage sludge samples for testing, and for handling the application, is \$50.00 per truckload of sewage sludge to be land applied.

Section 8.5: Store the sewage sludge pursuant to all applicable DEP, federal, and state regulations (including without limitation those at 25 Pa. Code §275.204 and 25 Pa. Code Chapter 285) until the Township notifies the sewage sludge applicant whether it may land apply the sewage sludge in East Brunswick Township. The sewage sludge applicant shall notify East Brunswick Township of the location of the stored sludge and the identity of the container storing the sludge, in a manner sufficient to enable the Township to verify that the stored sludge is the same sludge being considered for land application.

Section 8.6: If the land applicant does not receive permission to land apply the sewage sludge in East Brunswick Township, it shall follow all applicable state and federal regulations for handling and disposing of sewage sludge that may not be land applied.

Section 8.7: If the land applicant receives notice that it is allowed to land apply the sewage sludge in East Brunswick Township, it shall do so in compliance with all applicable federal, state, and local laws and regulations.

Section 9—Testing Procedures

When East Brunswick Township receives all of the following—a complete application pursuant to section 8.1 of this Ordinance; all information required under Section 8.2 of this Ordinance; and all testing and collection fees and written proofs required under Section 8.4 of this Ordinance—it shall do the following:

Section 9.1: Collect the necessary sewage sludge samples for testing by a qualified laboratory for compliance with DEP's pollutant regulations at 25 Pa. Code § 271.914, pathogen regulations for Class B sludge at § 271.932, vector attractant regulations at § 271.933, and all other applicable state and federal regulations, as amended. The Township shall instruct the laboratory to conduct the tests in compliance with all DEP regulations for testing sewage sludge to be land applied under the beneficial use program.

Section 9.2: Inform the sewage sludge applicant of the results of testing conducted pursuant to Section 9.1 within seventy-two (72) hours after receiving the results.

Section 9.3: If the testing reveals that the sewage sludge contains levels of pollutants, pathogens, or vector attractants that violate DEP regulations at 25 Pa. Code § 271.914 (pollutants), § 271.932 (pathogens), § 271.933 (vector attractants), or any other federal or state laws or regulations, as amended, the Township shall deny permission for the sewage sludge to be land applied in East Brunswick Township. Otherwise, the Township shall grant permission for the land application.

Section 10—Administration

This Ordinance shall be administered by East Brunswick Township. The Township may, but is not required to, administer and enforce, at Township expense (except as provided in section 8.4 of this Ordinance), any and all regulations that it has adopted pursuant to Section 6 of this Ordinance.

Section 11—Enforcement

Section 11.1: East Brunswick Township shall enforce this Ordinance by an action brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. (See 53 P.S. § 66601(c.1)(2).)

Section 11.2: Any person, corporation, or other entity that violates any provision of this Ordinance shall be guilty of a summary offense and, upon conviction thereof by a district justice, shall be sentenced to pay a fine of \$750 for first-time violations, \$1000 for second-time violations, and \$1000 for each subsequent violation, and shall be imprisoned to the extent allowed by law for the punishment of summary offenses. (See 53 P.S. § 66601(c.1)(2).)

Section 11.3: A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance that is found to be violated. (See 53 P.S. § 66601(c.1)(5).)

Section 11.4: East Brunswick Township may also enforce this Ordinance through an action in equity brought in

the Court of Common Pleas of Schuylkill County. (See 53 P.S. § 66601 (c.1)(4).) In such an action, East Brunswick Township shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 11.5: All monies collected for violation of this Ordinance shall be paid to the Treasurer of East Brunswick Township.

Section 11.6: Any person, corporation, or other entity that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from land applying sewage sludge in East Brunswick Township. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 11.7: Any Township resident shall have the authority to enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Schuylkill County. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

Section 12—Civil Rights Enforcement

Section 12.1: Any person acting under the authority of a permit issued by the Department of Environmental Protection, any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, who deprives any Township resident, natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be liable to the party injured and shall be responsible for payment of compensatory and punitive damages and all costs of litigation, including, without limitation, expert and attorney's fees. Compensatory and punitive damages paid to remedy the violation of the rights of natural communities and ecosystems shall be paid to East Brunswick Township for restoration of those natural communities and ecosystems.

Section 12.2: Any Township resident shall have standing and authority to bring an action under this Ordinance's civil rights provisions, or under state and federal civil rights laws, for violations of the rights of natural communities, ecosystems, and Township residents, as recognized by sections 7.6 and 7.7 of this Ordinance.

Section 13—Effective Date and Existing DEP Permitholders

This Ordinance shall be effective five (5) days after the date of its enactment, at which point the Ordinance shall apply to any and all land applications of sewage sludge in East Brunswick Township regardless of the date of the applicable DEP permits.

Section 14—People's Right to Self-Government

The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to

use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Township Board of Supervisors to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government.

Section 15—Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Board of Supervisors of East Brunswick Township hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 16—Repealer

All inconsistent provisions of prior Ordinances adopted by East Brunswick Township are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ____ day of _____, 2006, by the Board of Supervisors of East Brunswick Township.

By: _____

Attest: _____

ARTICLE XI. HAZARDOUS AND MEDICAL WASTE DISPOSAL FACILITIES

Sec. 36-571. Title.

Chapter 36 of the Little Rock, Arkansas Revised Code (1988) is hereby amended to add a new Article XI entitled the "Hazardous and Medical Waste Disposal Facility Zoning Ordinance". Except to the extent of a conflict with the provisions of this article, the application, submission and review of conditional uses set forth in Little Rock, Arkansas Revised Code Sections 36-101--36-125 (1988) shall apply.

(Ord. No. 16,156, § 1, 1-21-92)

Sec. 36-572. Purpose and construction.

The purpose of this article is to provide for an application and review procedure for the issuance of a conditional use permit for any person seeking to locate a hazardous or medical waste disposal facility within the city, and zoned areas within its statutory three-mile extraterritorial jurisdiction. This article is to be liberally construed consistent with Arkansas statutes and federal law applicable to the disposal of hazardous or medical waste.

(Ord. No. 16,156, § 2, 1-21-92)

Sec. 36-573. Authority.

This article is enacted pursuant to the authority of the city to engage in planning and zoning, as set forth in Arkansas Code Annotated Section 14-56-416 (1987).

(Ord. No. 16,156, § 3, 1-21-92)

Sec. 36-574. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them by this section, except where the context clearly indicates a different meaning:

Disposal

facility

means any land and appurtenances thereon and thereto, used for the treatment, storage, or disposal by any means of hazardous or medical waste, excluding a crematorium.

Disposal site means any place in which hazardous or medical waste is dumped, abandoned, accepted or disposed of for final disposition by incineration, microwaving, landfilling, composting, or any other method, excluding a crematorium.

District zoned for residential uses means an area of the city and its extraterritorial jurisdiction as designated on the official zoning map which authorizes the use of land or buildings primarily for dwelling units. This definition includes all residential, planned residential and multifamily districts.

Hazardous waste means any waste or combination of solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration or physical, chemical or infectious characteristics, may in the judgment of the Arkansas Department of Pollution Control and Ecology: (1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible incapacitating reversible illness or injury; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means.

Incineration means a controlled process by which solid, liquid and gaseous combustible wastes are burned and changed into gases and a residue produced which is relatively free of combustible

Incinerator

means all devices intended or used for the reduction or destruction of solid, liquid or gaseous wastes.

Medical waste is solid, semisolid or liquid waste and includes isolation waste, infectious agents, pathological waste, human or animal blood and blood products, sharps and nonsharps, human or animal body parts, contaminated bedding, surgical wastes and other contaminated disposal medical equipment and material that may pose a risk to the public health or welfare.

Occupied structure means a building or other structure:

- (1) Where any person lives or carries on a business or other calling; or
- (2) Where people assemble for purposes of business, government, education, entertainment or public transportation; or
- (3) Which is customarily used for overnight accommodation of persons whether or no person is actually present. Each unit of a structure divided into separate units designed for occupancy is itself an occupied structure; or
- (4) Which has not yet been constructed or completed but for which a building permit where applicable has been issued by the city and is valid on the date the application for the conditional use permit is filed.

Person

means any individual, corporation, firm, partnership, association, trust, venture, or other legal entity however organized.

Transportation of waste means the movement of hazardous or medical waste from the point of generation to any intermediate points, or to the point of ultimate storage, treatment or disposal if such points are not on the property of the generating entity.

(Ord. No. 16,156, § 4, 1-21-92)

Sec. 36-575. Permit required.

No person shall engage in the operation of a hazardous or medical waste disposal facility within the city and its extraterritorial jurisdiction without first having obtained a conditional use permit as described herein. In no event shall a permit be issued to allow the operation of a hazardous waste disposal facility within one-half mile of an occupied structure or district zoned for residential uses on the date of the application for the permit. Medical waste disposal facilities shall not be permitted to operate within one thousand (1,000) feet of an occupied structure or district zoned for residential uses on the date of the application for the permit. Disposal facilities approved under this article shall only be allowed in districts zoned I-2 or I-3, subject to the spacing requirements which shall be measured from the property line of the proposed facility. No conditional use permit issued pursuant to this chapter shall become effective until the applicable permits submitted to PC&E have been granted. Actual construction of the disposal facility shall commence within one (1) year of the date of final approval of the conditional use permit or the permit shall be revoked.

(Ord. No. 16,156, § 5, 1-21-92)

Sec. 36-576. Hazardous waste disposal facility--Application procedure.

Each person seeking a conditional use permit to operate a hazardous waste disposal facility shall file an application with the city department designated by the city manager and provide the following information:

- (1) At least thirty (30) days prior to filing, the applicant shall send notice of intent to apply for a conditional use permit. The notice shall be sent by certified mail to all property owners within one-half mile of the proposed disposal facility. For purposes of this requirement, a list of property owners in a certified abstract obtained from an abstracting company will suffice. Proof of notice shall be submitted with the application to the city;

CHEY Local Ordinance PP 174

(2) In addition to the submission requirements of Little Rock, Arkansas, Revised Code Section 36-103 (1988), the applicant shall provide a full and complete legal description and site survey of the land where the disposal facility is to be located, including a map with overlay of the official zoning map and the adopted land use plan of the area in question on the effective date of the application, demonstrating that the proposed disposal facility will not be located within one-half mile of an occupied structure or district zoned for residential uses on the date of the application;

(3) A copy of the application or draft of application for permit submitted to the Arkansas Department of Pollution Control and Ecology (PC&E). A draft is sufficient to the extent that it provides all information required by PC&E in accordance with the Arkansas Hazardous Waste Disposal Act and Arkansas Hazardous Waste Management Code;

(4) Proof of title to the property where the proposed disposal facility is to be constructed; in lieu of record title, the applicant may submit evidence of an agreement to purchase property for use as a hazardous waste disposal facility; and

(5) Information sufficient to establish that the utility requirements of the facility are currently met and will be sufficient to provide extraordinary service in the event of an accident.

(Ord. No. 16,156, § 6, 1-21-92)

Sec. 36-577. Same--Public hearing.

(a) Once an application has been accepted and the appropriate fees paid pursuant to Little Rock, Arkansas, Revised Code Section 23-3 (1988), notice of the date of a public hearing by the city regarding the application for the permit shall be given by the applicant via regular mail to each property owner described in Section 36-576(1). If any hearing is postponed, a new notice must be sent by regular mail.

(b) At the public hearing, comments from the public in support of or opposition to the disposal facility will be recorded and forwarded by the city to PC&E. The hearing will also establish for the record the information required pursuant to section 36-376.

(c) If failure to notify is established at the public hearing by a preponderance of the evidence, then the hearing shall be recessed, certified notice of the next hearing date given by the applicant, and a full public hearing held on that date.

(Ord. No. 16,156, § 7, 1-21-92)

Sec. 36-578. Approval of hazardous waste disposal facility permit.

If the application submitted pursuant to section 36-576 is found by the Little Rock Planning Commission to be in compliance with this article in all respects, and the planning commission determines that use of the property for the purpose described in the application is consistent with coordinated, adjusted and harmonious development of the city and its environs, the conditional use permit shall be granted subject to approval of the applicant's request for a permit from PC&E. The planning commission shall not vary any of the provisions of this article. However, the planning commission shall retain the discretion and responsibility in reviewing the appropriateness of the proposed land use as provided in Little Rock, Arkansas, Revised Code Sections 36-105, 36-106, 36-107 and 36-108 (1988). If any of the applicable federal, state or local permits or amended permits to operate are denied, suspended or revoked at any time, the permit issued pursuant to this article shall automatically be revoked and a new permit shall be obtained prior to continuing operation. A new application shall not be denied solely on the basis that an occupied structure or district zoned for residential uses came into existence within the spacing requirement subsequent to the approval of the original permit.

(Ord. No. 16,156, § 8, 1-21-92)

Sec. 36-579. Medical waste disposal facility--Application procedure GHEJ Local Ordinance FP - 75

Each person seeking a conditional use permit to operate a medical waste disposal facility shall file an application with the city department designated by the city manager and provide the following information:

- (1) At least thirty (30) days prior to filing, the applicant shall send notice of intent to apply for a conditional use permit. The notice shall be sent by certified mail to all property owners within one thousand (1,000) feet of the proposed disposal facility. For purposes of this requirement, a list of property owners in a certified abstract obtained from an attorney's company will suffice. Proof of notice shall be submitted with the application to the city;
- (2) In addition to the submission requirements of Little Rock, Arkansas Revised Code Section 36-103 (1988), the applicant shall provide a full and complete legal description and site survey of the land where the disposal facility is to be located, including a map with overlay of the official zoning map and the adopted land use plan of the area in question on the effective date of the application, demonstrating that the proposed disposal facility will not be located within one thousand (1,000) feet of an occupied structure or district zoned for residential uses on the date of the application;
- (3) A copy of the application or draft of application for permit submitted to the Arkansas Department of Pollution Control and Ecology (PC&E). Subject to the provisions of section 36-575 of this article, a draft is sufficient to the extent that it provides all information required by PC&E in accordance with the Arkansas Solid Waste Management Code;
- (4) Proof of title to the property where the proposed disposal facility is to be located. In lieu of record title, the applicant may submit evidence of an agreement to purchase the property for use as a medical waste disposal facility;
- (5) Information sufficient to establish that the utility requirements of the facility are currently met and will be sufficient to provide extraordinary service in the event of an accident;
- (6) Proposed use of facility and design to accomplish the use;
- (7) Proposed days and hours of operation;
- (8) Proposed emergency preparedness plan, including a detailed list of all city services which may be required in the event of an emergency. Such plan shall also contain description of emergency procedures, safety and security precautions that will be implemented at the facility, details on emergency assistance and medical treatment that may be required of the area's medical facilities, fire, police and ambulance service;
- (9) Proposed maintenance schedule; and
- (10) Identity of contractors retained to build the facility and proof of any license required by Arkansas Code Annotated Section 17-22-101, et seq. (Supp. 1991).

(Ord. No. 16,156, § 9, 1-21-92)

Sec. 36-580. Same--Public hearing.

- (a) Once an application has been accepted and appropriate fees paid pursuant to Little Rock, Arkansas, Revised Code Section 23-3 (1988), notice of the date of a public hearing by the city regarding the application shall be given by the applicant via regular mail to each property owner described in section 36-579(1). If any hearing date is postponed, a new notice must be sent to each owner by regular mail.
- (b) At the public hearing comments from the public in support of or opposition to the disposal facility will be recorded and forwarded by the city to PC&E. The hearing will also establish for the record the information required pursuant to section 36-579.
- (c) If failure to notify is established at the public hearing by a preponderance of the evidence, then the hearing shall be recessed, certified notice of the next hearing date given by the applicant and a full public hearing held on that date.

Sec. 36-581. Approval of medical or solid waste disposal facility permit.

If the application submitted pursuant to section 36-579 is found by the Little Rock Planning Commission to be in compliance with this article in all respects, and the planning commission determines that use of the property for the purpose described in the application is consistent with coordinated, adjusted and harmonious development of the city and its environs, the conditional use permit shall be granted subject to approval of the applicant's request for a permit from PC&E. The planning commission shall not vary the provisions of this article. However, the planning commission shall retain the discretion and responsibility in reviewing the appropriateness of the proposed land use as provided in Little Rock, Arkansas, Revised Code Sections 36-105, 36-106, 36-107 and 36-108 (1988). If any of the applicable federal, state or local permits or amended permits to operate are denied, suspended or revoked at any time, the permit issued pursuant to this article shall automatically be revoked and a new permit shall be obtained prior to continuing operation. A new application shall not be denied solely on the basis that an occupied structure or district zoned for residential uses came into existence within the spacing requirement subsequent to the approval of the original permit.

(Ord. No. 16,156, § 11, 1-21-92)

Sec. 36-582. Appeal.

Applicants or record objectors aggrieved by the decision of the planning commission may file appeal with the board of directors in accordance with the provisions of Little Rock, Arkansas Revised Code Section 36-101 (1988).

(Ord. No. 16,156, § 12, 1-21-92)

Sec. 36-583. Transportation of waste.

Any person granted a conditional use permit under the authority of this article which will require the transportation of hazardous or medical waste to or from a disposal facility shall assure that such transportation is via an arterial roadway on a route calculated to minimize travel through residential areas. Any transportation of waste pursuant to this chapter shall comply with rules and regulations promulgated by the Arkansas State Highway Transportation Department or other responsible state or federal agencies. A violation of this section shall be grounds for revocation of the conditional use permit.

(Ord. No. 16,156, § 13, 1-21-92)

Sec. 36-584. Method of waste disposal.

Before granting a conditional use permit pursuant to this article, the planning commission shall find that the method of waste disposal proposed is consistent with a coordinated, adjusted and harmonious development of the city and its environs. The planning commission shall give greater weight to applicants who establish preponderance of the evidence that state-of-the-art technology has been or will be employed in the design and construction of the disposal facility such that it will not adversely affect, environmentally or otherwise, other property in the area where the proposed disposal facility is to be located.

(Ord. No. 16,156, § 14, 1-21-92)

Sec. 36-585. Fee schedule.

A privilege license fee schedule, set forth in Chapter 17 of the Little Rock, Arkansas Revised Code (1988), shall be applicable to all persons operating hazardous and medical waste disposal facilities

within the city. Payment of this fee is a prerequisite to maintaining a permit issued herein.
(Ord. No. 16,156, § 15, 1-21-92)

Sec. 36-586. Inspections.

Applicants agree that as a condition of the permit, all disposal facilities described herein shall be subject to inspection at all reasonable times by inspectors retained by the city to assure compliance with this article and all other applicable city codes.

Sec. 36-587. Applicability.

This article shall apply to all hazardous and medical waste disposal facilities proposed to be built from and after the effective date of this article. This article shall not apply to existing disposal facilities operated by an entity for the purpose of disposing of waste as currently generated on the date of this article by such entity on its premises. Further, this article shall not apply to renovations to existing disposal facilities, either through modification or additional construction, provided that such renovations are for the purpose of:

- (1) Complying with regulations or standards imposed by local, state or federal governmental agencies; or
- (2) Adding additional disposal capacity to an existing facility due to increased generation of waste by the entity on its current premises or land contiguous with its current premises.

This article shall not apply to existing crematoria. All crematoria in operation on the effective date of this article shall not be required to obtain a conditional use permit so long as they remain in continuous operation without expansion at the same location as that on the effective date of this article.

(Ord. No. 16,156, § 17, 1-21-92; Ord. No. 16,437, § 4, 6-9-93; Ord. No. 16,441, § 3, 7-6-93)

Sec. 36-588. Severability.

In the event any portion of this article is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this article, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this article.

(Ord. No. 16,156, § 18, 1-21-92)

Sec. 36-589. Declaring an emergency.

It is hereby found and declared that the disposal of hazardous or medical waste may be detrimental to the residents of the city if the location of such facility is not reviewed and conditioned in the manner prescribed herein. Therefore, this article is necessary to protect the public health, safety, and welfare, and shall be in full force and effect from and after its passage and approval.

(Ord. No. 16,156, § 19, 1-21-92)

SAMPLE HIGH-LEVEL NUCLEAR WASTE ORDINANCE

AN ORDINANCE TO PROHIBIT THE TRANSPORTATION OF HIGH-LEVEL NUCLEAR WASTE WITHIN
THE [CITY/COUNTY]

THE [CITY/COUNTY] COMMISSION OF THE [CITY OF GAINESVILLE/COUNTY OF ALACHUA] DOES
HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The [Municipal/County] Code of the [City of Gainesville/County of Alachua] is hereby amended by
adding thereto a new chapter, designated as Chapter____, consisting of Sections ____ and ____, reading as follows:

_____: For purposes of this Chapter, the following terms have the meanings ascribed

to them:

"High-level nuclear waste" means highly radioactive material:

(A) That results from the reprocessing of spent nuclear fuel, including liquid waste produced directly in
reprocessing, and any solid material derived from such liquid waste that contains fission products in sufficient
concentrations; or

(B) That the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent
isolation.

"Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the
constituent elements of which have not been separated by reprocessing.

_____: It is unlawful for any person to transport, within or through the corporate boundaries of the [City/County],
any high-level nuclear waste for delivery to a repository for nuclear waste.

SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any
part thereof, is for any reason held to be unconstitutional, or invalid or ineffective by any court or competent
jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or
any part thereof. The [City Commission/County Commission] of the [the City of Gainesville/County of Alachua]
hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or
phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs,
sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 3: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

SECTION 4: The ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the [Municipal/County] Code of the [City of Gainesville/County of Alachua], Florida, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2002.

APPROVED:

By _____



Celebrating Twenty-Five Years
(1984 - 2009)

Local Ordinances

CHEJ Local Ordinance FP - 80

Smithfield and other large industrial agriculture livestock producers are always looking for new places to put their animal factories. That's why dozens of communities are afraid of waking up one morning to industrial-sized sewage lagoons, huge animal-confinement buildings and fields drenched with millions of gallons of hog urine and feces.

These citizens have learned over the past twenty years that their state and federal governments are not going to take any action to protect them from the agricultural giants. As a result, they have taken it upon themselves to work with their local county and township governments to pass health ordinances that restrict the ability of the corporate livestock producers to set up animal factories in their rural neighborhoods.

The citizens have a reason to be concerned. For example, in the northwest region of Missouri the inventory of hogs increased 68% from 1990 to 2002.¹ The north-central portion of the state experienced a 165% increase in the hog population over that same twelve year period. The western and southwestern quadrants of the state experienced a 26% and a 34% increase.² It is no surprise that these are areas of vigorous local legislative activity to restrict the growth of CAFOs.

The local residents in one north-central Missouri County tried to pass a zoning ordinance in the 1990s restricting agricultural structures. The Missouri Court of Appeals in 1997 ruled that the counties of the State do not have the jurisdiction to enact such zoning restrictions. Following that decision, the counties and townships redirected their energies towards passing "health ordinances" in order to control CAFOs. The Missouri Court of Appeals approved such ordinances in a 1999 decision.³

The counties have the power to make rules to enhance the public health and to prevent the entrance of dangerous diseases into the county. Given

the nature of the CAFOs, the public health experts which make up the Pew Commission on Industrial Farm Animal Production, among others, have held that they can be the source of dangerous diseases and could be a detriment to the public health.⁴ The health ordinances were passed to protect local water supplies and the quality of air.

The local health ordinances are able to regulate a CAFO with 750 or more swine over the weight of fifty-five pounds. The ordinances prevent CAFO construction without previously obtaining a health permit from the county. The ordinances set maximum concentration levels for the following gases: carbon dioxide, ammonia, hydrogen sulfide, methane and carbon monoxide. The ordinances establish how far away one CAFO must be from another CAFO, or from residences, populated areas, public areas, sinkholes, strip pits, wells, springs, streams or water supply sources.

The ordinances also require the CAFO operator to post financial security to pay for the eventual clean-up and disposal of improperly handled waste from the facility .

In Missouri, 16 counties have passed county-wide health ordinances restricting CAFOs. In western Maryland a swine CAFO, built within a quarter mile of twenty-five residences, came under scrutiny after local residents, especially the elderly and asthmatics, began to experience severe respiratory and gastrointestinal problems. After the State failed to act, one Maryland county adopted the State's first zoning ordinance aimed at controlling the development of swine CAFOs. The State is planning on requiring all CAFOs within Maryland to have a Federal National Pollutant Discharge Elimination System ("NPDES") permit.⁵ In 2006, The Board of Supervisors of Kern County, California, unanimously passed a local ordinance regulating CAFOs within that County. Similar ordinances have been considered in other states, such as Indiana.

As is so often the case, it is up to the individual and their neighbors to fight to protect the quality of life that they are entitled to expect in a rural community.

¹ The Missouri Swine Audit: An Analysis of Missouri's Competitive Position in the Swine Industry. University of Missouri Extension Swine Team (April 2007) (accessed April 29, 2009 at <http://agebb.missouri.edu/commag/swine/audit/chapter2.htm>)

² Id.

**Las Vegas, New Mexico, Adopts Community Bill of Rights;
Bans Corporations from Fracking for Shale Gas**

"Revolutions always start small—we know that. The Abolitionists started with 12 kids in the 1840s. This one has started small as well with a handful of communities intent on turning the existing system upside down. Hopefully, if we move forward it will make it OK for others to follow in the path. And we must make that path by actually walking it."

--- Andrew Feldman, sponsor of "Las Vegas Community Water Rights and Self-Government Ordinance"

MEDIA RELEASE

April 2, 2012

CONTACT: Ben Price, (717) 254-3233

benprice@celdf.org

FOR IMMEDIATE RELEASE

(Monday, April 2, 2012- Las Vegas, NM) In front of a standing-room only crowd of residents, by a vote of 3-1, the City Council, Las Vegas, New Mexico enacted the Las Vegas Community Water Rights and Local Self-Government Ordinance, drafted by the Community Environmental Legal Defense Fund, which places into law a local Bill of Rights, including the right of all residents, natural communities and ecosystems to water from natural sources, the right of residents to unpolluted water for use in agriculture, the rights of natural ecosystems to exist and flourish, and of residents to protect their environment by enforcing these rights. Also enumerated is the right to a sustainable energy future, and the right to local self-government.

To protect these rights, the ordinance makes it unlawful *"for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within the City of Las Vegas and its watersheds, for any corporation to engage in the extraction of water from any surface or subsurface source within the City of Las Vegas and its watersheds for use in the extraction of subsurface oil, natural gas, or other hydrocarbons, to import water or any other substance...used in the extraction of oil, natural gas, or other hydrocarbons, into the City of Las Vegas or its watersheds for use in the extraction of subsurface oil, natural gas or other hydrocarbons within the City of Las Vegas and its watersheds."*

It is now also unlawful *"for any corporation...to deposit, store, transport or process waste water, produced water, frack water, brine or other materials, chemicals or by-products used in the extraction of oil, natural gas, or other hydrocarbons, into the land, air or waters within the City of Las Vegas,"* or to *"use a corporation to construct or maintain infrastructure related to the extraction of oil, natural gas, or other hydrocarbons within the City of Las Vegas or its watershed."*

The process for adoption of this local law was punctuated by drama. On February 15th Council member Andrew Feldman introduced the bill and the Council voted unanimously to advertise the ordinance and to place it on the agenda for a final hearing and vote on passage at the regularly scheduled March 21st Council meeting. Mr. Feldman stated:

"Along with the City of Pittsburgh, this is how we change federal law, folks. It starts at the bottom. We do this, and other cities do it. It starts a ball rolling that hopefully will not stop. We change our laws in this great country that protect us instead of protecting corporations."

At the hearing, no one spoke in opposition to the proposed law, but numerous voices rose in support. From the 115 community members in attendance, some spoke eloquently of the revolutionary nature of this bill. Local proponent for the ordinance Miguel Pacheco commented *"This is a time we have to take a stand. This is not going to be easy, but it is the right thing to do. Our congress is holding us back. Our federal government makes the wrong choices for us in many instances. That's why this ordinance gives rights to nature, to us human beings. It elevates life. It puts corporations down where they should be. This ordinance is protecting innocents, all those who can't speak for themselves. Profit is not what human beings are about. We need to care for one another, to take care of our environment, future generations and all living life forms."*

Lee Einer of Las Vegas stated that *"Our minds have been colonized, just as our land has been colonized. We live within a legal framework that considers corporations to be persons, and Mother Nature to be property. I think that's strange! I think we have it backwards! I think Mother Nature is a person! I think corporations are property! I think it's time to construct our laws differently."*

Mayor Alfonso Ortiz waxed eloquently in favor of the proposed law, saying: *"Be serious about what is going on here. We are challenging the establishment, federal laws. If people are looking for profit--money isn't going to mean anything if we have no drinking water. It's not just important to vote for this ordinance, but to follow through and make sure other communities do as well. If we pass this, we will set a model for the county to pass it easily, for Mora County to pass it easily--and hopefully other counties--we need to emphasize this to the New Mexico Association of Counties and the Municipal League."*

However, at the meeting on March 21st, Council and community members were dismayed to learn that the mayor and Alfonso Ortiz and the City attorney, David Romero, decided to omit the question from the agenda, so that a vote could not take place. Residents were told there would be a second hearing and a motion for a second advertisement only.

At that meeting, the mayor, who stands for re-election on April 17th, stated *"I feel very comfortable with the ordinance. I just want you to understand it...we're not against it. We're in favor of it. You're dealing with friends. It's a given we want to do the right thing. I'm already convinced. The ultimate goal is that the ordinance passes."*

Mr. Romero had this to say: *"I'm in full favor of working with you to strengthen this ordinance."* ^{CHFE Local Ordinance FP-84}
The administration is not against this ordinance."

None-the-less, a vote was prevented. There was further discussion and testimony from community members and against the protests of the mayor and city attorney, a unanimous vote by Council scheduled a special meeting for the vote on adoption within two weeks, prior to the upcoming election. And again, the agenda was manipulated and the special meeting scheduled for three weeks out, rather than the two weeks voted upon by Council. Supporters of the ordinance discovered the change and notified the bill's sponsor, Council Member Andrew Feldman, and the meeting date was corrected to April 2nd.

At the April 2nd meeting, with more than 100 residents in attendance, as well as Karin Forster, attorney and executive director of the New Mexico Oil and Gas Association, the mayor and city attorney exposed their opposition to the ordinance publicly.

Mr. Romero stated that the ordinance *"is preempted by state law and it has language which implies if this law is challenged, the city could consider seceding from the union or acting as a sovereign nation. That type of language in any ordinance is inappropriate. I would like to note that does not mean that from what I've heard that the average person is against the ordinance... And there is a 2nd part: the Community Bill of Rights... that section is just out of bounds with the laws as we know it...I feel so strongly about this that if it is passed by the council, under my oath as city attorney, I may have to challenge the issue myself as part of my duties to..."*

At this point the attorney's comments became inaudible as the residents shouted *"Resign, Resign!"*

Mayor Ortiz stated, *"I'm concerned about this ordinance because of the significance...If we were to look at this ordinance and look at elements of it, and maybe include some things, exclude some things...I think that the majority of the people are in favor of it, but there's little flaws, little clues in there that can be read in different ways..."*

When the vote came, Councilor Tonita Gurule Giron voted yes, Councilor Vince Howell no, Councilor David Romero voted yes, and Councilor Andrew Feldman voted yes.

After the vote the New Mexico Oil and Gas Association's Karin Forster told the city attorney the oil companies would be filing suit against the City of Las Vegas.

As a final "protest" against adoption of the ordinance, the mayor has so far refused to sign it, although he has no legal authority to halt or veto the law.

The Community Environmental Legal Defense Fund, located in Mercersburg, has been working with people in Pennsylvania since 1995 to assert their fundamental rights to democratic local self-governance, and to enact laws which end destructive and rights-denying corporate action aided and abetted by state and federal governments.



Model Ordinances to Protect Local Resources

[Contact Us](#) | [Print Version](#) Search:

[EPA Home](#) > [Water](#) > [Wetlands, Oceans and Watersheds](#) > [Polluted Runoff \(Nonpoint Source Pollution\)](#) > [Model Ordinances to Protect Local Resources](#) > Illicit Discharges

Home

Aquatic Buffers

Erosion & Sediment Control

Open Space Development

Stormwater Control Operation & Maintenance

Illicit Discharges

Post Construction Controls

Source Water Protection

Miscellaneous Ordinances

Site Map

Links

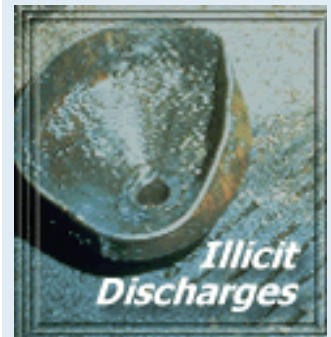
Illicit Discharges

An illicit discharge is defined as any discharge to the municipal separate storm sewer system that is not composed entirely of storm water, except for discharges allowed under a NPDES permit or waters used for firefighting operations. These non-stormwater discharges occur due to illegal connections to the storm drain system from business or commercial establishments. As a result of these illicit connections, contaminated wastewater enter into storm drains or directly into local waters before receiving treatment from a wastewater treatment plant. Illicit connections may be intentional or may be unknown to the business owner and often are due to the connection of floor drains to the storm sewer system. Additional sources of illicit discharges can be failing septic systems, illegal dumping practices, and the improper disposal of sewage from recreational practices such as boating or camping.

Illicit discharge detection and elimination programs are designed to prevent contamination of ground and surface water supplies by monitoring, inspection and removal of these illegal non-stormwater discharges. An essential element of these programs is an ordinance granting the authority to inspect properties suspected of releasing contaminated discharges into storm drain systems. Another important factor is the establishment of enforcement actions for those properties found to be in noncompliance or that refuse to allow access to their facilities.. The [model ordinance](#) in this section includes language to address illicit discharges in general, as well as illicit connections from industrial sites. The language is

[Model Ordinances Language](#)

[Ordinances & Supporting Materials](#)



borrowed from a number of ordinances and communities will need to assess what enforcement methods are appropriate for their area.

1. **Fort Worth, Texas Environmental Code-Stormwater Protection**

Fort Worth's ordinance has been used as a model by many other communities around the country and their illicit connection detection program has been recognized nationally.

[WordPerfect Format](#)(68KB, 22pages)

[PDF Format](#)(64KB, 21pages).

2. **Washtenaw County, Michigan Regulation for Inspection of Residential Onsite Disposal Systems at Property Transfer**

Failing septic systems are recognized as a source of pollutants, especially nitrogen and bacteria. This ordinance seeks to identify those systems that may be contributing excessive pollutant loadings by requiring that inspections be done a time of sale or title transfer.

[WordPerfect Format](#)(67KB, 12pages)

[PDF Format](#)(38KB, 12pages).

3. **Metropolitan St. Louis Sewer District Sewer Use**

Ordinance Sewer use ordinances are designed to control pollutant discharges to the sanitary sewer system. Since cross connections often occur between sanitary and storm sewer systems, the regulation of discharges can help reduce contamination of stormwater runoff.

[WordPerfect Format](#)(128KB, 30pages)

[PDF Format](#)(125KB, 29pages).

4. **City of Monterey, California Stormwater Ordinance**

The City of Monterey was part of a Model Urban Runoff Program designed to be used by small municipalities under 100,000 in population. The Model Program includes a "Stormwater Discharge Management Ordinance" which provides the legal authority required to regulate illicit

discharges.

[WordPerfect Format](#)(77KB, 10pages)

[PDF Format](#)(27KB, 10pages).

5. **Montgomery County, Maryland Illicit Discharge Ordinance**

This ordinance includes illegal discharge restrictions for agriculture and includes language that provides the Director of Environmental Protection with significant latitude for illicit discharge control.

[WordPerfect Format](#)(36KB, 8pages)

[PDF Format](#)(20KB, 8pages).

Local Government Environmental
Assistance Network



Click on the above related web sites

Both links exit the EPA Website [EXIT Disclaimer](#)

[Water](#) | [Wetlands, Oceans & Watersheds](#) | [Watershed Protection](#)

[EPA Home](#) | [Privacy and Security Notice](#) | [Contact Us](#)

Erosion and Sediment Control Model Ordinance

Section I. Introduction/ Purpose

During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.

As a result, the purpose of this local regulation is to safeguard persons, protect property, and prevent damage to the environment in _____ (*municipality*). This ordinance will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in _____ (*municipality*).

Section II. Definitions

Certified Contractor A person who has received training and is licensed by _____ (*state or local environmental agency*) to inspect and maintain erosion and sediment control practices.

Clearing Any activity that removes the vegetative surface cover.

Drainage Way Any channel that conveys surface runoff throughout the site.

Erosion Control A measure that prevents erosion.

Erosion and Sediment Control Plan A set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

Grading Excavation or fill of material, including the resulting conditions thereof.

Perimeter Control A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment Control Measures that prevent eroded sediment from leaving the site.

Site A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site Development Permit A permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

Stabilization	The use of practices that prevent exposed soil from eroding.
Start of Construction	The first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.
Watercourse	Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by _____ (<i>municipality</i>).
Waterway	A channel that directs surface runoff to a watercourse or to the public storm drain.

Section III. Permits

- A) No person shall be granted a site development permit for land-disturbing activity that would require the uncovering of *10,000 or more square feet* without the approval of an Erosion and Sediment Control Plan by _____ (*erosion and sediment control agency*).



The size of the site regulated under the erosion and sediment control ordinance varies widely. The proposed Phase II of USEPA's National Pollutant Discharge Elimination System (NPDES) rules regulates disturbances greater than 1 acre, but communities may regulate sites as small as 2,000 square feet.

- B) No site development permit is required for the following activities:
- 1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
 - 2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.



Communities may choose to exempt other activities, such as mining, from an erosion and sediment control permit, or in some cases include the exempted uses cited above.

- C) Each application shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.

- D) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a certified contractor shall be on site on all days when construction or grading activity takes place.



Some states have "Certified Contractor" programs, in which contractors successfully complete a training course in basic erosion and sediment control. This person would be responsible for ensuring the regular maintenance and proper installation of erosion and sediment control measures.

- E) The applicant will be required to file with _____ (*municipality*) a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by _____ (*erosion and sediment control agency*) to cover all costs of improvements, landscaping, maintenance of improvements for such period

as specified by _____ (*municipality*), and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

Section IV. Review and approval

- A) _____ (*erosion and sediment control agency*) will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 30 days after receiving an application, _____ (*erosion and sediment control agency*) shall, in writing:
- 1) Approve the permit application;
 - 2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
 - 3) Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- B) Failure of the _____ (*erosion and sediment control agency*) to act on an original or revised application within 30 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and _____ (*erosion and sediment control agency*). Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by _____ (*erosion and sediment control agency*).

Section V. Erosion and Sediment Control Plan

- A) The Erosion and Sediment Control Plan shall include the following:
- 1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this code.



This map should be at a scale no smaller than 1"=100'. For a more detailed discussion, see the buffer ordinance.

- 2) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
 - 3) All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
 - 4) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
 - 5) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- B) Modifications to the plan shall be processed and approved or disapproved in the same manner as Section IV of this regulation, may be authorized by

(*erosion and sediment control agency*) by written authorization to the permittee, and shall include

- 1) Major amendments of the erosion and sediment control plan submitted to _____ (*erosion and sediment control agency*)
- 2) Field modifications of a minor nature

Section VI. Design Requirements

- A) Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of _____ (*erosion and sediment control manual*), and shall be adequate to prevent transportation of sediment from the site to the satisfaction of _____ (*erosion and sediment control agency*). Cut and fill slopes shall be *no greater than 2:1*, except as approved by _____ (*erosion and sediment control agency*) to meet other community or environmental objectives.
- B) Clearing and grading of natural resources, such as forests and wetlands, shall not be permitted, except when in compliance with all other chapters of this Code. Clearing techniques that retain natural vegetation and drainage patterns, as described in _____ (*erosion and sediment control manual*), shall be used to the satisfaction of _____ (*erosion and sediment control agency*).
- B) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.



For example, the stream buffer codes as well as the forest conservation code in the "Miscellaneous Ordinances" section would also restrict clearing.

- C) Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by _____ (*erosion and sediment control agency*).



Although many communities encourage phasing, few actually require it. Phasing construction can reduce erosion significantly when well designed. (See Claytor, 1997.)

- D) Erosion control requirements shall include the following:

- 1) Soil stabilization shall be completed within *five days* of clearing or inactivity in construction.
- 2) If seeding or another vegetative erosion control method is used, it shall become established within *two weeks* or _____ (*erosion and sediment control agency*) may require the site to be reseeded or a nonvegetative option employed.



Numerical standards regarding the time to stabilization will vary. In particular, the time to establish seeding will depend on the climate.

- 3) Special techniques that meet the design criteria outlined in _____ (*erosion and sediment control manual*) on steep slopes or in drainage ways shall be used to ensure stabilization.
- 4) Soil stockpiles must be stabilized or covered at the end of each workday.
- 5) The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.

- 6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.



Dust control is most important in arid regions of the country

- 7) Techniques that divert upland runoff past disturbed slopes shall be employed.
- D) Sediment controls requirements shall include
 - 1) Settling basins, sediment traps, or tanks and perimeter controls.
 - 2) Settling basins that are designed in a manner that allows adaptation to provide long term stormwater management, if required by _____ (*erosion and sediment control agency*)
 - 3) Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls
- E) Waterway and watercourse protection requirements shall include
 - 1) A temporary stream crossing installed and approved by (*approving agency, e.g., Waterways Division, ESC agency*) if a wet watercourse will be crossed regularly during construction
 - 2) Stabilization of the watercourse channel before, during, and after any in-channel work
 - 3) All on-site stormwater conveyance channels designed according to the criteria outlined in _____ (*erosion and sediment control manual*)
 - 4) Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels
- F) Construction site access requirements shall include
 - 1) a temporary access road provided at all sites
 - 2) other measures required by _____ (*erosion and sediment control agency*) in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains

Section VII. Inspection

- A) _____ (*erosion and sediment control agency*) or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the _____ (*erosion and sediment control agency*) shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify _____ (*erosion and sediment control agency*) at least two working days before the following:
 - 1) Start of construction
 - 2) Installation of sediment and erosion measures
 - 3) Completion of site clearing
 - 4) Completion of rough grading
 - 5) Completion of final grading
 - 6) Close of the construction season
 - 7) Completion of final landscaping



The "Certified Inspector Program" in Delaware allows developers to hire an inspector who has passed a state licensing program. This person would inspect the site at regular intervals and file

reports to the erosion and sediment control agency. The agency would then be responsible for spot checks on these reports.

- B) The permittee or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to _____ (erosion and sediment control agency) at the time interval specified in the approved permit.
- C) _____ (erosion and sediment control agency) or its designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under Section B.

Section VIII. Enforcement

A) Stop-Work Order; Revocation of Permit

In the event that any person holding a site development permit pursuant to this ordinance violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, _____ (erosion and sediment control agency) may suspend or revoke the site development permit.

B) Violation and Penalties

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more than \$_____ for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration.



Specific penalties will vary between communities and should reflect enforceable penalties given the political realities of a jurisdiction.

Section IX. Separability

The provisions and sections of this ordinance shall be deemed to be separable, and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

References

Claytor, R. 1997. Practical Tips for Construction Site Phasing. *Watershed Protection Techniques* 2(3): 413-417.

ARTICLE II.
PROTECTION OF PUBLIC DRINKING WATER
"RUNOFF CONTROL" ORDINANCE

Sec. 19.1-4. Purpose and construction of article.

The purpose of this article is to protect against and minimize the pollution and eutrophication of the public drinking water supply impoundments in the county resulting from land development in the respective watersheds thereof. It is hereby found by the board of supervisors as a matter of legislative determination that this article is necessary to prevent pollution of such impoundments and to protect the health, safety and general welfare of the people of the county. This ordinance is declared to be remedial in nature and protective of a paramount public interest and shall be liberally construed to effectuate its purpose. The provisions hereof shall be deemed to be supplementary to any other provision of law relating to the control of land development, to the prevention of soil erosion and sedimentation, to the control of stormwater discharges, to the pollution of water or any related matter.

Sec. 19.1-5. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Development. Any construction, external repair, land disturbing activity, grading, road building, or other activity resulting in a change of the physical character of any parcel of land, except as herein otherwise expressly provided.

Impoundment. Any impoundment of surface waters in the county designed to provide drinking water to the public.

Permit. Any building permit, erosion control permit, or other permit, including the approval of any subdivision plat or site development plan, which is required to be issued by any board, committee, officer, employee or other agency of the county as a prerequisite to any development.

Regional Sedimentation Basin. Any public facility designated in the Comprehensive Plan designed to capture and detain stormwater for the geographically defined upstream watershed for the purpose of providing water quality benefits. The area of such watershed shall be based upon naturally existing contours as shown on topographic survey maps.

Runoff control official. The officer or employee of the county authorized by the board of supervisors to enforce this article.

Sewage disposal system. Any sewerage system or treatment works composed of a facility or combination of facilities, including plumbing, piping and fixtures, constructed for the transport and/or treatment of domestic, commercial or industrial sewage. This shall include facilities which do not result in a point source discharge and alternative discharging sewage systems for which a permit is required. This shall not include publicly owned facilities for the transport and/or treatment of sewage.

Tributary stream. Any perennial or intermittent stream, including any lake, pond or other body of water formed therefrom or thereon, flowing, whether directly or indirectly, into any impoundment.

Watershed. That portion of the county lying within the watershed of any impoundment.

Sec. 19.1-6. Runoff control permits--Required for development.

(a) (1) Except as otherwise herein expressly provided, it shall be unlawful for any person to engage in any development which is otherwise permitted by law in the watershed of any impoundment until a runoff control permit for such development shall have been issued by the runoff control official pursuant to this article. It shall thereafter be unlawful for any person willfully to fail to conform to the provisions of such permit in carrying out such development.

(2) Except as herein otherwise expressly provided, it shall also be unlawful for any person to construct any sewage disposal system any part of which lies within the limits prescribed in this section, as follows:

- a. Within two hundred horizontal feet of the one hundred year flood plain of any impoundment; or
- b. Within one hundred horizontal feet of the edge of any tributary stream.

(3) Except as herein otherwise expressly provided, it shall also be unlawful for any person to construct any structure for which a permit is required under the Uniform Statewide Building Code within the limits as described in subsections (2)(a) and (b). This provision shall not apply to accessways, public utility lines and appurtenances, stormwater management facilities or other water dependent facilities to provide reasonable usage of the property where no reasonable alternative exists.

The foregoing notwithstanding, in the event that the runoff control official shall determine that it would be impracticable to construct a lawful sewage disposal system on any parcel of land of record as of October 22, 1980, except within limits hereinabove prescribed, the runoff control official may authorize the construction of such a system upon such terms as he may determine to be necessary to protect the public health, safety and welfare and upon the approval of the state department of health. For the purposes of this section, the construction of a sewage disposal system shall be deemed impracticable in any case in which construction of such a system without the limits prescribed hereinabove would (1) be physically impossible within the geometric limits of such lot or parcel, (2) require the pumping of effluent, or (3) require the construction of such system on soils found to be unacceptable by the state department of health for such construction.

(b) No permit shall be issued by any officer, board, commission or agency of the county for any development requiring a permit for which a runoff control permit is required hereby unless and until the requirements of this article have been complied with; provided, that nothing herein shall be construed to prohibit the approval of any subdivision plat or site development plan where no physical development is to be carried out within any watershed.

(c) In the event of any change in any plan for development subject to the provisions of this article, the developer shall submit to the runoff control official such additional data, plans and specifications as may be reasonably necessary to insure the control of any additional surface water runoff occasioned by such change. The procedure for the submission of such additional data, plans and specifications shall conform to the procedure for the submission of any original application for a runoff control permit for such development.

(d) Whenever any development is proposed to be carried out by any person other than the owner of the land, the responsibility for complying with this article and with all conditions imposed pursuant hereto, including, but not limited to, the maintenance, repair and replacement of any temporary or permanent runoff control measure, shall remain on such owner.

(e) Notwithstanding the provisions of subsection (a) hereof, no runoff control permit shall be required for any of the following activities, provided that the same are otherwise permitted by law:

(1) The tilling, planting or harvesting of agricultural, horticultural or forest crops or products or engineering operations under subsection (c) of section 21-2 of the Code of Virginia, as amended;

(2) The installation, repair, replacement, enlargement or modification of any water supply or sewage disposal system serving not more than two dwelling units; provided, that no such sewage disposal system or part thereof, shall be located within the limits prescribed in subsection (a) (2) hereof;

(3) The interior repair, remodeling or reconstruction of any existing structure;

(4) The construction, reconstruction, remodeling, repair, enlargement or demolition of any development otherwise permitted by law resulting in a total impervious lot coverage of not more than five percent of the area of the parcel on which the same is or is to be located; provided, however, that, after such development, no division shall be made of such parcel without the issuance of a runoff control permit, post hoc, for such development;

(5) Any development involving the establishment of not more than five hundred square feet of impervious cover and disturbance of not more than one hundred cubic yards of earth; or

(6) Any development for which all necessary permits had been issued prior to the effective date of this article.

(f) Whenever any development is proposed within the watershed of a regional sedimentation basin, the developer shall pay a pro-rata share of the construction costs associated with the regional facility before the issuance of any permits for such development. Pro-rata share contributions shall not be used for the maintenance, repair or reconstruction of any regional sedimentation basin.

Sec. 19.1-7. Same--Procedure.

(a) Any person applying for a runoff control permit pursuant to this article shall submit with his application to the runoff control official a runoff control plan with specifications for the temporary and permanent control of surface water runoff in such detail as the runoff control official shall deem reasonably adequate, considering the nature and extent of the proposed development. The runoff control official shall have the power to establish reasonable procedures for the administration of this ordinance which shall be available to applicants. These administrative procedures shall be approved by resolution of the board of supervisors.

(b) The runoff control official shall review the plans and specifications so submitted to insure that there will be occasioned by such development no greater rate of surface water runoff than would be present in the absence of such development; and he shall further review such plans and specifications to insure that such runoff, after development, (1) will be of no lesser quality, upon leaving the site, than would be the case in the absence of such development, or (2) will have a maximum suspended solids loading of one hundred thirty-five pounds per acre per year and a maximum total phosphorous loading of 0.68 pounds per acre per year; whichever of the foregoing shall be less. In carrying out such review, the runoff control official may seek the advice of any other person having knowledge or expertise relevant to the review of such plans and specifications. In the event that the runoff control official shall determine that the plans and specifications so submitted are deficient in any respect, he shall promptly notify the applicant to correct the same. In addition, the runoff control official may require the submission of such additional data as may be reasonably necessary to carry out a thorough review of the application.

(c) In the event that the plans and specifications submitted by the applicant shall be found to be adequate, the runoff control official shall require, prior to the issuance of a runoff control permit, a bond with surety or other security of the type satisfactory to the runoff control official in an amount determined by him to be sufficient for and conditioned upon completion of the controls specified in such plans and specifications in the manner and within the time prescribed in such permit. In addition, the runoff control official may, if he deems the same to be reasonably necessary to protect the public health, safety and general welfare, require a bond or other security for the maintenance, repair and replacement of any permanent runoff control measure, including, but not limited to, the creation of any entity with power to require assessments for such maintenance, repair and replacement.

(d) Upon approval of the plans and specifications so submitted and upon receipt in proper form of the bond or other security required by subsection (c) hereof, the runoff control official shall issue a runoff control permit for the development in question not more than forty-five days after the submission of the original application therefor. In the event of the failure on the part of the applicant to comply with the provisions of this article, the runoff control official shall deny the permit within forty-five days of the date of such application. Failure of the runoff control official to act within forty-five days of the date of such application shall be deemed approval.

(e) Any development subject to the requirement of a runoff control permit pursuant to Sec. 19.1-6 (e)(4) located within the watershed of a regional sedimentation basin shall pay a pro-rata share for the construction of such facility. Pro-rata share payments shall be based upon a fee schedule as outlined in Sec. 19.1-8 (c) below.

Sec. 19.1-8. Standards for review.

(a) The runoff control official shall prepare and adopt guidelines, to be entitled "Guidelines for the Preparation and Review of Runoff Control Permit Applications", for the calculation of pre-development and post-development runoff flow and characteristics, and for runoff control. Upon adoption of such guidelines the runoff control official shall submit the same for approval by the board of supervisors which may be done by resolution or otherwise. After approval by the board of supervisors, such guidelines shall govern the review of all runoff control applications submitted pursuant to this article; provided, however, that nothing herein shall be construed to prohibit the runoff control official from approving any runoff control measure which he shall find to provide protection for any impoundment to an equal or greater extent to the measures set forth in the said guidelines.

(b) Nothing herein shall be construed to require the approval of any application or any part thereof which is found by the runoff control official to pose a danger to the public health, safety and general welfare or to deviate from sound engineering practice.

(c) The runoff control official shall maintain a fee schedule for the calculation of pro-rata share contributions for development within the watershed of a regional sedimentation basin. The fee schedule will include guidelines for the preparation of plans to be submitted to the runoff control official in order to determine the pro-rata share contribution for a particular development. Such fee schedule shall be established by resolution of the board of supervisors and shall include provision for annual adjustment as to inflationary factors. The board of supervisors, from time to time, may also adjust the fee schedule in consideration of circumstance, including, but not limited to, amendments to the Albemarle County Comprehensive Plan.

Sec. 19.1-9. Inspections and enforcement.

(a) The runoff control official and his designated agents shall have the right to enter upon the property subject to this article at all reasonable times for the purposes of monitoring surface water runoff and of making inspections and investigations relating to compliance with the provisions of this article.

(b) If, upon complaint of any citizen or upon his own observation, it shall appear to the runoff control official that any permit holder has failed to comply with any permit previously issued pursuant to this article or that the measures provided in accordance with such permit have proved to be inadequate to protect the quality of water in any impoundment or that any development within the watershed is occasioning any significant degradation in the quality of such water, the runoff control official shall immediately serve upon the permit holder and the owner of the property in question by registered or certified mail to the address shown on the tax records of the county for such owner a notice to comply with the provisions of such permit or to submit a plan in accordance with section 19.1-7. Such notice shall set forth specifically the measures needed to come into compliance herewith and shall specify the time within which such measures shall be completed. Any person failing to comply within the time specified shall be subject to the revocation of any such permit previously issued and shall, in addition, be deemed to be in violation of this article.

(c) In the event that the person so notified shall fail to comply with a notice as provided in subsection (b) of this section, upon finding that such action is reasonably necessary to protect the public health, safety and general welfare, the runoff control official may cause the necessary measures to be taken and shall proceed to recover from the owner of the land or permit holder the expenses of such action, including all reasonable administrative costs incurred in connection therewith.

(d) Notwithstanding any provision of law to the contrary, any holder of a permit granted pursuant to this article may dedicate to public use such facilities required by such permit as the runoff control official may deem appropriate to protect the public health, safety and general welfare, together with such easements and appurtenances as may be reasonably necessary to effectuate the purposes of this ordinance. After the acceptance of such dedication and the expiration of any bond or other security required pursuant to the last sentence of subsection (c) of section 19.1-7, the responsibility for the maintenance, repair and replacement of the facilities so dedicated shall be that of the county, and the permit holder shall have no further responsibility therefor; provided, that nothing in this section shall relieve any person of the responsibility of otherwise complying with this article and with any approved plan; and provided, that any person who shall willfully damage, destroy or otherwise interfere with the construction, operation, maintenance, repair or replacement of any feature of any such plan shall be deemed to be in violation of this article.

(e) Any dedication made pursuant to this section shall be deemed accepted only upon recordation in the office of the clerk of the circuit court of the county after written approval by the runoff control official.

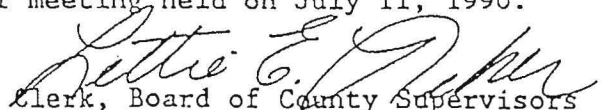
Sec. 19.1-10. Penalties; legal remedies.

(a) Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment.

(b) In addition to any other remedy, the runoff control official may institute any appropriate proceeding, either at law or in equity, to prevent violation or attempted violation of this article, to restrain, correct or abate such violation or prevent any act which would constitute such violation.

* * * * *

I, Lettie E. Neher, do hereby certify that the foregoing writing is a true, correct copy of an ordinance unanimously adopted by the Board of Supervisors of Albemarle County, Virginia, at a regular meeting held on July 11, 1990.


Clerk, Board of County Supervisors

BUFFER PROTECTION AND MANAGEMENT ORDINANCE

Baltimore County, MD

Environmental Protection and Resource Management

(410) 887 - 5683

Sec. 14-341. Design standards for forest buffers and building setbacks.*(a) General requirements.*

- (1) A forest buffer for a stream system shall consist of a forested strip of land extending along both sides of a stream and its adjacent wetlands, floodplain, and slopes. The forest buffer width shall be adjusted to include contiguous, sensitive areas, such as steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands, or other waterbodies. This adjustment shall be accomplished by evaluating the potential of a site for impacts that result from runoff, soil erosion, and sediment transport.
- (2) For those sites where forest vegetation does not exist, it is acceptable to allow the forest buffer to succeed naturally to a wooded state. However, if channel erosion, stream pollution, or habitat degradation exists at that site or has been caused downstream from that site, the director may require planting of the forest buffer and any additional water quality protection measures.
- (3) The department may post the forest buffer.

(b) Forest buffer standards for streams, wetlands, and floodplains.

- (1) For a first or second order stream, the forest buffer shall be measured from the centerline. For all higher order streams, the forest buffer shall be measured from the stream bank of the active channel (bank-full flow).
- (2) For a use I or I-P stream, the forest buffer shall be the greater of the following:
 - a. Seventy-five (75) feet,
 - b. Twenty-five (25) feet from the outer wetland boundary, or
 - c. Twenty-five (25) feet from the onehundred-year floodplain reservation or easement boundary.
- (3) For a use III, III-P, IV or TV-P stream (natural and recreational trout waters), the forest buffer shall be the greater of the following:
 - a. One hundred (100) feet,
 - b. Twenty-five (25) feet from the outer wetland boundary, or
 - c. Twenty-five (25) feet from the onehundred-year floodplain reservation or easement boundary

(c) Adjusted forest buffer standards and requirements for streams and wetlands with adjacent steep slopes and erodible soils.

- (1) A steep slope and erodible soils evaluation shall be conducted in accordance with the evaluation procedures and criteria specified herein or a comparable method approved by the director for sites containing or adjacent to streams, wetlands, or other waterbodies where:
 - a. Slopes exceed ten (10) percent within five hundred (500) feet of the streams, wetlands, or waterbodies;
 - b. Soil erodibility K values exceed .24 within five hundred (500) feet of the streams, wetlands, or waterbodies; or
 - c. The vegetative cover within one hundred (100) feet of the streams, wetlands, or waterbodies is: bare soil; fallow land; crops; active pasture in poor or fair condition; orchard-tree farm in poor or fair condition; brush-weeds in poor condition; or woods in poor condition.
- (2) An evaluation report shall be submitted for review to the department. This report shall include, as a minimum, the following:
 - a. A plan, at a scale not smaller than 1" = 100', that shows:

1. Existing topography with contour intervals no greater than five (5) feet. County photogrammetric maps are an acceptable source for preparing existing topography.
2. Mapped soils as shown in the county soil survey,

925

§ 14-341

BALTIMORE COUNTY CODE

3. Field delineated, marked, and surveyed streams and wetlands,
 4. Existing vegetation,
 5. Existing subdrainage areas of the site, and
 6. Slopes in each subdrainage area segmented into sections of slopes less than or equal to ten (10) percent; eleven (11) to nineteen (19) percent; and greater than or equal to twenty (20) percent;
- b. All slope analysis data forms;
- c. A summary of findings including information pertinent to the evaluation of the site; and
- d. A mitigation plan that describes the proposed additional protective measures for those areas where development is allowed with restrictions.
- (3) The site shall be evaluated by assessing each segment of each subdrainage area using the evaluation criteria in Table 1. Each segment shall be given a score for slope, slope length, soil erodibility, vegetative cover, and sediment delivery. A total score shall be assigned for each segment. A segment of a subdrainage area with a total score of thirty-Five (35) or greater shall be designated as part of the forest buffer and no development shall be approved in that segment. A segment with a total score of twenty-five (25) or thirty (30) shall require the application of additional protective measures; however, development shall not be prohibited and that area shall not be part of the forest buffer. A segment with a score of twenty (20) or less shall be developed with standard protective measures and that area shall not be part of the forest buffer.

Table 1

Evaluation Criteria for Steep Slopes and Erodible Soils

<i>Factors</i>	<i>Scores</i>		
	<i>High (10)</i>	<i>Medium (5)</i>	<i>Low (0)</i>
Slope (S)	$S \geq 20\%$	$10\% < S < 20\%$	$S \leq 10\%$
Slope length (SL)	$SL \geq 200'$	$50' < SL < 200'$	$SL \leq 50'$
Soil erodibility (K)	$K \geq 0.32$	$0.24 < K < 0.32$	$K < 0.24$
Vegetative cover	Bare soil, fallow land, crops, active pasture in poor condition, orchard-tree farm in poor condition	Active pasture in fair condition, brush-weeds in poor condition, orchard-tree farm in fair condition, woods in poor condition	Active pasture in good condition, undisturbed meadow, brush-weeds in fair condition, orchard-tree farm in good condition, woods in fair condition
Sediment delivery (distance from downslope limit of disturbance to outer edge of wetlands or top of streambank)	Adjacent to water-courses or wetlands (< 100' buffer)	Adjacent to water-courses or wetlands (100'-300' buffer)	Not adjacent to water-courses or wetlands (>300' buffer)

(d) Standards for building setbacks.

- (1) At a minimum, the primary or principal structure on a parcel or lot shall be set back from the outer edge of the forest

buffer as follows:

- a. Residential dwellings, thirty-five (35) feet;
 - b. Commercial structures, twenty-five (25) feet;
 - c. Industrial structures, twenty-five (25) feet.
- (2) The setback can include either private or public land or both. Appurtenant or accessory structures including roads and driveways, utilities, recreational facilities, patios, etc., are permitted within the setback area.
(Bill No. 224, 1990, § 1(38-33))

926

ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

§ 14-342

Sec. 14-342. Management requirements for forest buffers.

- (a) The forest buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources. The following practices and activities are restricted within the forest buffer, except as provided for in forest harvesting operations which are implementing a forest management plan *approved by the department, the state department of natural resources*, the county forest conservancy district board, or the county soil conservation district, as provided for in surface mining operations which are operating in compliance with a state surface mining permit or as provided for in agricultural operations in accordance with a soil conservation and water quality plan approved by the county soil conservation district:
 - (1) The existing vegetation within the forest buffer shall not be disturbed except as provided in (b) below. This includes, but is not limited to, disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, and grazing.
 - (2) Soil disturbance shall not take place within the forest buffer by grading, stripping of topsoil, plowing, cultivating, or other practices.
 - (3) Filling or dumping shall not occur within the forest buffer.
 - (4) Except as permitted by the department, the forest buffer shall not be drained by ditching, underdrains, or other drainage systems.
 - (5) Pesticides shall not be stored, used, or applied within the forest buffer, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service.
 - (6) Animals shall not be housed, grazed, or otherwise maintained within the forest buffer.
 - (7) Motorized vehicles shall not be stored or operated within the forest buffer, except for maintenance and emergency use approved by the department.
 - (8) Materials shall not be stored within the forest buffer.
- (b) The following structures, practices, and activities are permitted in the forest buffer:
 - (1) Roads, bridges, trails, storm drainage, stormwater management facilities, and utilities approved by the department are permitted within the forest buffer provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place. This alternatives analysis shall be submitted to the department in accordance with section 14-334 of these regulations. These structures shall be located, de-

signed, constructed, and maintained to provide maximum erosion protection, to have the least adverse effects on wildlife, aquatic life, and their habitats, and to maintain hydrologic processes and water quality. Following any disturbance, the impacted area shall be restored.

- (2) Stream restoration projects, facilities and activities approved by the department are permitted within the forest buffer.
- (3) Scientific studies approved by the department, including water quality monitoring and stream gauging, are permitted within the forest buffer.
- (4) Horticulture practices may be used to maintain the health of individual trees in the forest buffer.
- (5) Individual trees in the forest buffer may be removed which are in danger of falling, causing damage to dwellings or other structures, or causing the blockage of streams.

927

§ 14-342

BALTIMORE COUNTY CODE

- (6) Other timber cutting techniques approved by the department may be undertaken within the forest buffer under the advice and guidance of the state departments of agriculture and natural resources, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

(Bill No. 224, 1990, § 1(38-39))

Sec. 14-343. Conflict with other regulations.

- (a) Where the standards and management requirements for forest buffers are in conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, development in the Chesapeake Bay Critical Area, or other environmental protection measures, the more restrictive shall apply.
- (b) In addition to compliance with the regulations herein, all proposed activities, projects, and developments within a one-hundred-year riverine floodplain or one-hundred-year tidal flood area shall also comply with the regulations and requirements of the departments of public works and permits and licenses.

(Bill No. 224, 1990, § 1(38-40))

Sec. 14-344. Public and private improvements of development.

- (a) In addition to the provisions of article V of title 26 and in accordance with the provisions of section 14-337 of the regulations herein:
 - (1) The applicant shall provide improvements to the forest buffer and stream system in order to abate and correct:
 - a. Water pollution,
 - b. Erosion and sedimentation of stream channels, and
 - c. Degradation of aquatic and riparian habitat; and
 - (2) The county may participate in the cost of any such improvement.
- (b) For any forest buffer or forest buffer easement:
 - (1) Access easements shall be dedicated by the applicant to the county, of which the number, locations, and design

standards shall be determined by the department; and

- (2) Permanent boundary markers, in the form of monuments, shall be installed by the applicant upon request of the department.

1990, 41))

Sec. Enforce

(a) director department authorized to enforce regulations according to the provisions of section

(b) inspection investigation of this of the that

person has violated any provision of these regulations, order, or permit condition promulgated or issued under these regulations, he shall with reasonable promptness issue a correction notice to the person, on such form as prescribed and approved by the director. Each such notice shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of these regulations, order, or permit condition alleged to have been violated. In addition, the notice shall fix a reasonable time for the abatement and correction of the violation.

- (c) If, after the time fixed for abatement and correction of the violation has expired pursuant to (b) above, an inspection by the director or his designee determines that the violation or violations continue, the director shall issue a citation by certified mail to the person who is in violation on such form as prescribed and approved by the director. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of

No. 224, § 1(38-

14-345. cement

There of the ment is sized and were to e these ions in ance with procedure t h i s n.

If, upon tion or gation, the rector or designee is opinion a n y

FIGURE 1
STREAM ORDER HIERARCHY

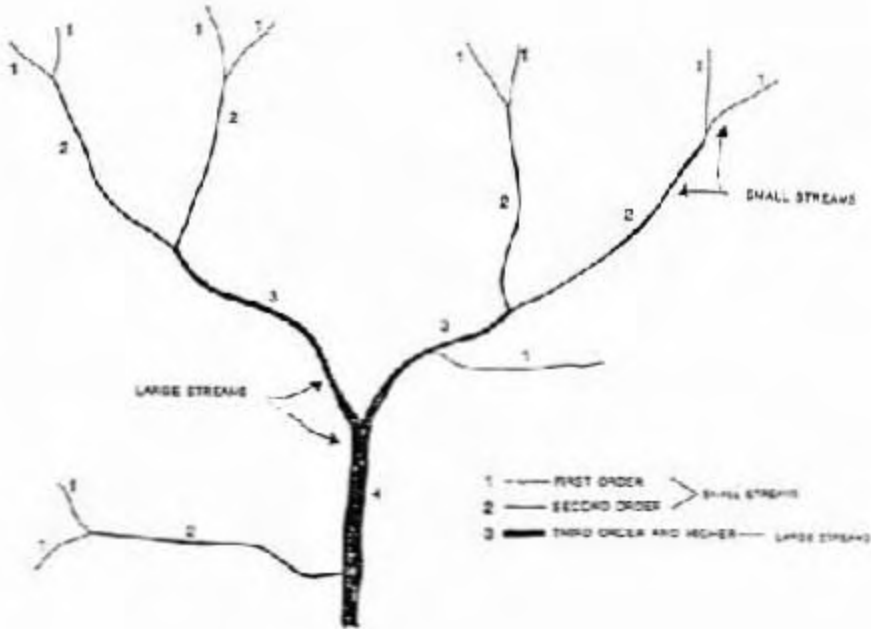
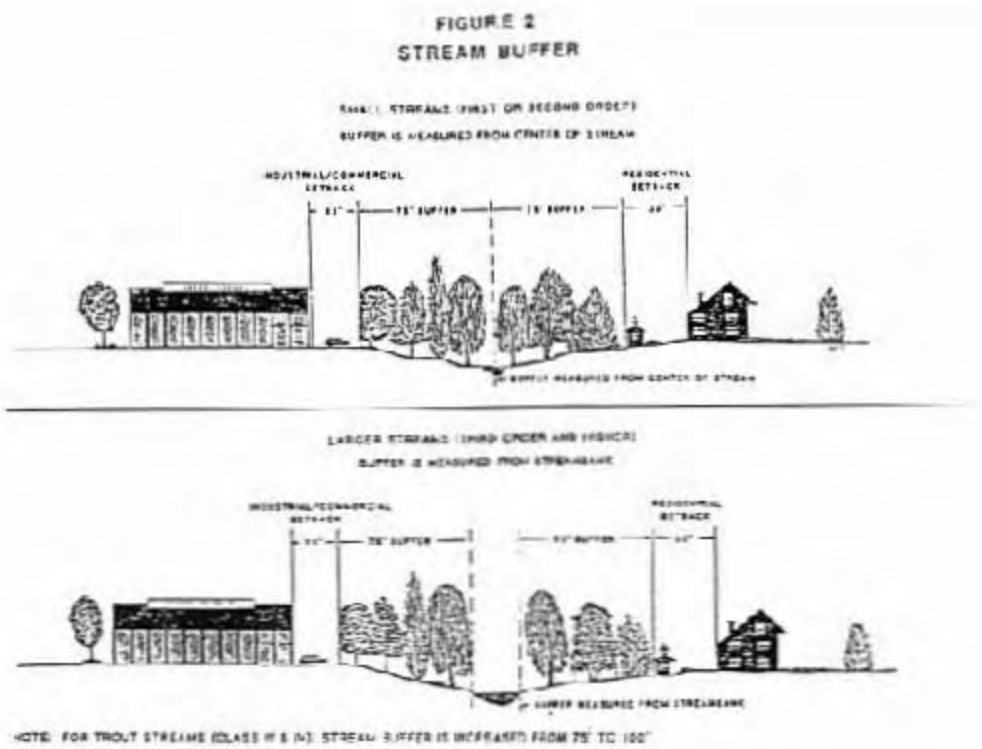


FIGURE I
STREAM ORDER HIERARCHY



LARGER STREAMS (THIRD ORDER AND HIGHER)
BUFFER IS MEASURED FROM STREAMBANK

NOTE: FOR TROUT STREAMS (CLASS III & IV), STREAM BUFFER IS INCREASED FROM 75' TO 100'

WETLAND BUFFER

FOR A SMALL, CLASS I STREAM
BUFFER CONSISTS OF EXTENT OF WETLAND PLUS 25'

OR 75' (WHICHEVER IS GREATER)

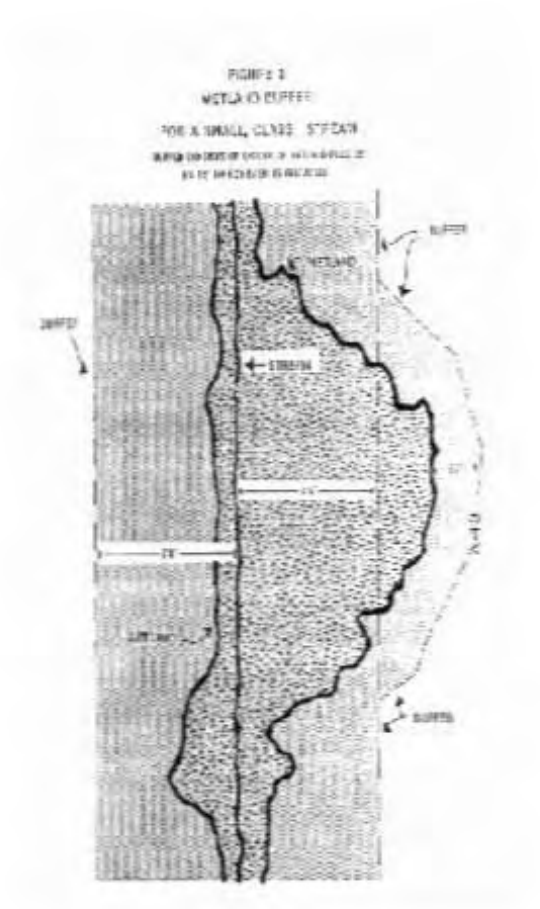
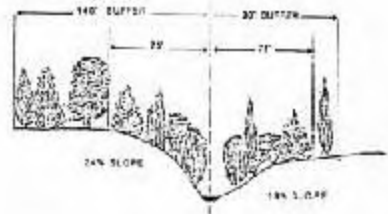


FIGURE 4
FLOODPLAIN BUFFER
FOR A LARGE, CLASS I STREAM

FIGURE 8
BUFFER EXPANSION FOR STEEP SLOPES



SMALL STREAMS 17-43" OR SECOND ORDER
CL. III
BUFFER MEASURED FROM CENTER OF STREAM

APPROXIMATE SLOPE %	CLASS III WETLAND WIDTH	CLASS III SETBACK WIDTH
18	85	100
19	90	100
20	100	100
21	110	110
22	120	120
23	130	130
24	140	140
25	150	150

NOTE: 1. FOR LARGER STREAM (THIRD ORDER AND HIGHER), THE BUFFER IS MEASURED FROM THE STREAMBANK.
2. FOR SLOPES GREATER THAN 25%, THE DIRECTOR OF THE DEPARTMENT SHALL DETERMINE THE BUFFER WIDTH ON A CASE-BY-CASE BASIS.

EXAMPLE A

SITE CONDITIONS	SUFFER/SETBACK REQUIREMENTS
SMALL SECOND ORDER STREAM	MEASURE FROM CENTER OF STREAM
CLASS III TROUT STREAM	100' BUFFER
WETLANDS EXTEND BEYOND 100'	WETLANDS BOUNDARY PLUS 23'
	23% SLOPE
	PROPOSED COMMERCIAL
PROPOSED RESIDENTIAL	35' SETBACK

EXPANSION
TO 130'
25'
SETBACK

Pittsburgh Adopts Ordinance Banning Natural Gas Development Citing Fracking Threat

CHEd Local Ordinance PP - 110

By [eBoom Contributor](#) [2] on November 17, 2010

share  [3]

vote  [4]

retweet  [5]



Dimock PA well explosion near fracking operations.

 [dimock-well-explosion-photo.jpg](#) [6]

Dimock PA well explosion near fracking operations.

The Pittsburgh City Council this week [unanimously adopted a first-in-the-nation ordinance](#) [7] banning corporations from drilling for natural gas within city limits, citing the threats to drinking water and public health posed by hydraulic fracturing methods used widely by drilling companies to

extract natural gas from the Marcellus Shale.

Pittsburgh City Council President Darlene Harris said her biggest concern about natural gas fracking involves the threat to people's health posed by water contaminated by Marcellus drilling. She noted that the gas industry's claims about creating the thousands of jobs isn't worth the risk.

"They're bringing jobs all right," [Harris told CBS News](#) [7]. "There's going to be a lot of jobs for funeral homes and hospitals. That's where the jobs are. Is it worth it?"

Beyond its innovative approach to fighting the fracking threat, the ordinance - drafted by the [Community Environmental Legal Defense Fund \(CELDF\)](#) [8] - seeks to limit the claim of "personhood" by corporations and to elevate the rights of property owners and other living, breathing citizens above the interests of corporations.

According to Pittsburgh Councilman Doug Shields, who introduced the measure, "This ordinance recognizes and secures expanded civil rights for the people of Pittsburgh, and it prohibits activities which would violate those rights. It protects the authority of the people of Pittsburgh to pass this ordinance by undoing corporate privileges that place the rights of the people of Pittsburgh at the mercy of gas corporations."

CELDF [summarizes the main threats](#) [9] posed by fracking in the Marcellus shale region:

"Energy corporations are setting up shop in communities across Pennsylvania, to drill for natural gas in the Marcellus Shale formation. The gas extraction technique known as "fracking" has been cited as a threat to surface and groundwater, and has been blamed for fatal explosions, the contamination of drinking water, local rivers, and streams. Collateral damage includes lost property value, ingestion of toxins by livestock, drying up of mortgage loans for prospective home buyers, and threatened loss of organic certification for farmers in affected communities."

Many communities in Pennsylvania and across the U.S. have had their water supplies, health and property rights threatened by natural gas development. Natural gas has been touted widely by politicians, businesses and even some environmentalists as a clean replacement for oil and coal. But with the fracking threat that comes along with natural gas development, public opinion about the rapid expansion of natural gas dependence is increasingly mixed.

What do you think? Is natural gas the energy panacea its proponents claim, or is fracking too risky to make natural gas a viable "bridge" fuel?

Town of Palmer

Bondsville, Depot Village, Thorndike & Three Rivers

“The Town of Seven Railroads”



Code of Ordinances

Current as of July 11, 2007

CHAPTER 9

CONTRACTS

HISTORY: Art. I, adopted 4-9-1990 Special Town Meeting, Art. 9. Amendments noted where applicable.

GENERAL REFERENCES

Finances -- See Ch. 16.

Officers and employees -- See h. 27.

ARTICLE I, Contracting with Convicted Criminals (Adopted 4-9-1990 STM, Art. 9)

§9-1. General prohibitions.

No person or business entity shall be awarded a contract or subcontract by the Town of Palmer if that person or business entity:

- A. Has been convicted of bribery or attempting to bribe a public officer or employee of the Town of Palmer, the Commonwealth of Massachusetts or any other public entity, including but not limited to the government of the United States, any state or any local government authority in the United States, in that officer's or employee's capacity; or
- B. Has been convicted of an agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- C. Has made an admission of guilt of such conduct described in Subsection A or B above, which is a matter of record, but has not been prosecuted for such conduct or has made an admission of guilt of such conduct which term shall be construed to include a plea of nolo contendere.

§9-2. Period of ineligibility.

A person, business entity or officer or employee of a business entity convicted of one or more of the crimes set forth in §9-1 shall be ineligible for the awarding of a contract or subcontract by the Town of Palmer for a period of three (3) years following such conviction or admission in the case of an admission of guilt of such conduct which is a matter of record but which has not been prosecuted.

§9-3. Applicability; affiliation.

- A. For purposes of this Article, where an official, agent or employee of a business entity has committed any offense under this Article, as set forth in §9-1 or §9-2, on behalf of such an entity and pursuant to the direction or authorization of an official thereof (including the person committing the offense, if he is an official of the business entity), the business entity shall be chargeable with the conduct hereinabove set forth.
- B. A business entity shall be chargeable with the conduct of an affiliated entity, whether wholly owned, partially owned or one which has common ownership or a common Board of Directors. For purposes of this section, business entities are affiliated if, directly or indirectly, one business entity controls or has the power to control another business entity or if an individual or group of individuals controls or has the power to control both entities. Indicia of control shall include, without limitation, interlocking management or ownership, identity of interests among family members and shared organization of a business entity following the ineligibility of a business entity under this section, using substantially the same management, ownership or principals as the ineligible entity.

§9-4. Inapplicability, proof required.

Any party who claims that this Article is inapplicable to him, them or it because a conviction or judgment has been reversed by a court with proper jurisdiction shall prove the same with documentation satisfactory to Town Counsel.

§9-5. Affidavit required.

The Town of Palmer shall not execute a contract with any person or business entity until such person or business entity has executed and filed with the Town Clerk an affidavit executed under the pains and penalties of perjury that such person or entity has not been convicted of any violation described in § 9-1A or B and has not made an admission of guilt or nolo contendere as described in § 9-1C. In the case of a business entity, such affidavit shall be executed by, in the case of a partnership, the general partner(s) and, in the case of a corporation, the President.

RESOLUTION 91-121
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CONCERNING THE PURCHASE OF CEMENT AND PRODUCTS CONTAINING
CEMENT PRODUCED WITHOUT THE BURNING OF HAZARDOUS WASTE

WHEREAS, the disposal of hazardous waste materials is sometimes accomplished by the burning of such waste in cement kilns, boilers and industrial furnaces, whether for energy recovery purposes or otherwise; and

WHEREAS, the burning of hazardous waste in cement kilns can adversely affect public health and the environment through the routine or accidental release of hazardous waste during its transportation, transfer or storage and through the burning process itself; and

WHEREAS, the Council has determined that pollution prevention through the reduction of hazardous waste generation is preferred over burning as a waste management strategy and that pollution prevention should be encouraged by government policy; and

WHEREAS, the operation of cement kilns for hazardous waste incineration is expected to reduce the disposal cost for such waste, with the corresponding result that hazardous waste generators will be less inclined to investigate and adopt pollution prevention techniques; and

WHEREAS, pursuant to Resolution 91-25, the Council stated its position that hazardous or toxic substances should not be burned as fuel in cement kilns; and

WHEREAS, pursuant to Resolution 91-73, the Council directed City staff to develop for Council's review and approval a proposed work plan to implement the foregoing policy of opposition, including development of a policy that City-funded projects will not use cement made from cement kilns that burn hazardous waste as fuel.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

(1) That the City's Purchasing Agent will require vendors supplying cement or products containing cement for City-funded projects to certify that the cement was not made in cement kilns that burn hazardous waste as a fuel.

(2) For the purposes of this Resolution, hazardous waste shall be defined as set forth in the Code of Federal Regulation (40 CFR Part 261) and shall specifically include hazardous wastes burned for energy recovery in cement kilns, boilers or industrial furnaces.

(3) For contracts subject to Chapter 8, Article IV of the City Code, any bidder or proposer who has not provided the certification required by Section (1) above shall not be awarded the bid or contract. In the event that no bidder or proposer provides the required certification, the Purchasing Agent will make reasonable efforts to find a vendor who will provide the certification. If such vendor is not found then the requirement for such certification may be waived by the City Council.

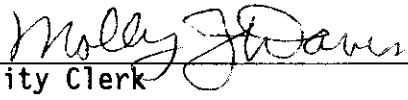
(4) Upon receiving credible information that a vendor has supplied cement or products containing cement in violation of the vendor's certification required by Section (1) above, the Purchasing Agent shall review such information and offer the vendor an opportunity to respond. If the Purchasing Agent finds on the basis of competent evidence that a violation of such certification has occurred, the Purchasing Agent shall take such action as may be appropriate and provided for by law, rule, regulation or contract, including but not limited to imposing sanctions, seeking compliance, recovering damages and/or declaring the vendor in default of any applicable contract.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins held this 3rd day of September, A.D. 1991.



Mayor

ATTEST:



Deputy City Clerk

**Borough of St. Clair
Schuylkill County, Pennsylvania
Ordinance No. 2006-**

AN ORDINANCE OF ST. CLAIR BOROUGH, SCHUYLKILL COUNTY, PENNSYLVANIA, PROHIBITING PERSONS FROM USING CORPORATIONS OR SYNDICATES TO ENGAGE IN CERTAIN WASTE HAULING AND DISPOSAL ACTIVITIES; PROHIBITING CERTAIN CORPORATIONS FROM CLAIMING LEGAL RIGHTS AND PROTECTIONS; AND PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATION OF THIS ORDINANCE.

Section 1. Name. The name of this Ordinance shall be the "St. Clair Borough Corporate Waste and Local Control Ordinance."

Section 2. Authority. This Ordinance is adopted and enacted pursuant to the authority granted to the Borough by all relevant state and federal laws including, but not limited to the following:

§ The Declaration of Independence, which declares that governments are instituted to secure people's rights, and that government derives its just powers from the consent of the governed;

§ The Pennsylvania Constitution, Article 1, §2, which declares that "all power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety, and happiness";

§ The Pennsylvania Constitution, Article 1, §27, which declares that "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";

§ The Borough Code, Article XII, §1202(6), which establishes the authority of Borough governments in the Commonwealth to adopt Ordinances "as may be necessary for the health, safety, morals, general welfare and cleanliness, and the beauty, convenience, comfort and safety of the borough";

§ The Borough Code, Article XII, §1202(28), which establishes the authority of Borough governments in the Commonwealth to adopt Ordinances "to prohibit, within the borough, the carrying on of any manufacture, art, trade, or business which may be noxious or offensive to the inhabitants";

§ The Borough Code, Article XII, §1202(74), which establishes the general power of Borough governments in the Commonwealth to make and adopt Ordinances that “may be expedient or necessary for the proper management, care and control of the borough and its finances, and the maintenance of peace, good government, safety and welfare of the borough and its trade, commerce and manufactures.”

Section 3. Purpose. The general purpose of this Ordinance is to recognize that corporations engaged in certain types of waste hauling and disposal within the Borough constitute a threat to the health, safety, welfare, and rights of the residents of St. Clair Borough due to the limited liability of those corporation, which may prevent full recovery for damages in the event of injuries caused to Borough residents. That limited liability privilege shields and protects the individuals operating the corporation, and thus serves to thwart any deterrent effect from lawsuits brought to remedy injuries caused by those persons using the corporation to engage in waste hauling and disposal. The Borough of St. Clair declares that persons using corporations to haul construction and demolition (C&D) waste, radioactive material, and other waste deemed by the Borough to be hazardous, toxic, or dangerous, place the residents of the Borough at increasing risk, due to the harmful and dangerous composition of those wastes. The Borough of St. Clair also declares that corporations, engaging in hauling and waste disposal in any neighboring municipality that causes harm to residents of the Borough of St. Clair, shall be held strictly liable for the migration of toxic and hazardous contaminants across municipal borders. The Borough of St. Clair also declares that waste management, waste hauling, and waste disposal corporations increasingly determine waste policy in the Commonwealth, and that the Borough must take affirmative steps to subordinate the powers of those corporations to the will of the majority within the Borough of St. Clair.

Section 4. Statement of Law. No person may use a corporation or syndicate to engage in the hauling and/or disposal of construction and demolition (C&D) waste, chemotherapeutic waste, infectious waste, hazardous waste, residual waste, dredged material, PCB-containing waste, or radioactive material as those terms are defined within Title 25, Chapter 271 *et seq.*, of the Pennsylvania Code and the Atomic Energy Act of 1954, within the Borough of St. Clair.

Section 5. Definitions.

“Chemotherapeutic waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which results from the production or use of antineoplastic agents used for the purpose of inhibiting or stopping the growth of malignant cells or killing malignant cells.

“Construction and demolition waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which results from the construction or demolition of buildings and other structures, including, but not limited to, wood, plaster, metals, asphaltic surfaces, bricks, block and unsegregated concrete.

“Corporation” - any corporation organized under the laws of any state of the United States or any country, and any organization recognized under state law as possessing limited liability attributes.

“Dredged material” – material, defined under Title 25, §271.1 of the Pennsylvania Code, which is dredged or excavated from waters for the direct or indirect purpose of establishing or increasing water depth, or increasing the surface or cross-sectional area of a waterway and which includes sediment, soil, mud, shells, gravel, or other aggregate.

“Engage in the hauling and/or disposal” – a phrase that includes, but is not limited to, the trucking or other transportation of wastes identified in this Ordinance within, and across, the jurisdictional boundaries of

the Borough of St. Clair, and any activities associated with the transportation and/or disposal of those wastes within the Borough of St. Clair.

“Hazardous waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which includes garbage, refuse, or sludge from an industrial or other waste water treatment plant; sludge from a water supply treatment plant or air pollution control facility; and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, or agricultural operations, and from community activities; or a combination of the above, which because of its quantity, concentration, or physical, chemical or infectious characteristics may (1) cause or significantly contribute to an increase in mortality or increase in morbidity in either an individual or the total population; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Infectious waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which is generated in the diagnosis, treatment, immunization or autopsy of human beings or animals, in research pertaining thereto, in the preparation of human or animal remains for interment or cremation, or in the production or testing of biologicals.

“PCB-containing waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which contains polychlorinated biphenyls in any measurable concentration.

“Person” - a natural person.

“Radioactive material” – materials, as defined under Title 25, §271.1 of the Pennsylvania Code, which spontaneously emit alpha or beta particles or photons (gamma radiation) in the process of decay or transformation of the atom’s nucleus. This term shall include, but not be limited to, source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954.

“Residual waste” – waste, defined under Title 25, §271.1 of the Pennsylvania Code, which includes solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining, and agricultural operations; and sludge from an industrial, mining or agricultural water supply treatment facility, waste water treatment facility or air pollution control facility, if not hazardous.

“Syndicate” - any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or any country. A syndicate shall not include general partnerships, except general partnerships in which corporations or other limited liability business entities are partners.

Section 6. Statement of Law - Limited Liability. Persons violating §4 of this Ordinance shall be personally liable for damages resulting from that violation, and for penalties assessed for that violation. Any corporation engaging in hauling and/or disposal of waste in violation of §4 of this Ordinance shall not possess limited liability within the Borough of St. Clair for the purposes of the enforcement of this Ordinance.

Section 7. Statement of Law – Strict Liability. Persons using corporations to engage in the types of waste hauling and/or disposal addressed by this Ordinance in a neighboring municipality shall be strictly liable for all harms caused to the health, safety, and welfare of the residents of St. Clair Borough from those activities, and for all harms caused to the natural environment within St. Clair Borough.

Section 8. Statement of Law - Corporate Powers. No corporation doing business within the Borough of St. Clair shall be recognized as a “person” under the United States or Pennsylvania Constitutions, or laws of the United States or Pennsylvania; and no corporation shall be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or similar provisions found within the Pennsylvania Constitution, within the Borough of St. Clair.

Section 9. Enforcement. Any corporation or syndicate that engages in waste hauling and/or disposal activities within the Borough of St. Clair is required to report information necessary for the enforcement of this Ordinance to either the Borough’s Code Enforcement Officer or to the Borough Council, on an annual basis, on forms provided by the Borough pursuant to this Ordinance. The Borough shall monitor such reports and notify the Code Enforcement Officer and police of any possible violations, and any resident of the Borough may also notify the Borough Council of any possible violations. Any violation of this Ordinance shall be considered a criminal summary offense. The Borough Council authorizes a fine of up to \$1,000.00 per violation. Each act of non-compliance shall be considered a separate violation of this Ordinance. The Borough may also file an action in equity in the Court of Common Pleas of Schuylkill County, Pennsylvania, or any other Court of competent jurisdiction to abate any violation defined in §4 of this Ordinance. If the Borough fails to bring an action to enforce this Ordinance, any resident of the Borough of St. Clair has standing in front of those Courts for enforcement of this Ordinance, and civil liability for damages caused to residents may be sought through that action.

Section 10. Severability. The provisions of this Ordinance are severable, and if any section, clause, sentence, part, or provision thereof 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 St. Clair Borough Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

Section 11. Effect. This Ordinance shall be effective immediately upon its enactment.



Governing Community Topic Area

POLICIES, ORDINANCES & TAXES

Public policies developed with active citizen participation can promote sustainability. Local ordinances and tax structures provide the carrot and stick to guide development and other activities that may impact the community. In this section, examples of these tools--public policy, ordinances, and taxes--illustrate how they can be used.

[Related Resources](#) | [Related Reading](#) | [Case Studies](#)
[Feedback](#) | [Search](#) | [To Linked Topic Areas](#) |
[Back to the Governing Community Gateway](#) | [Back to Home Page](#)

RELATED RESOURCES

The Center on Urban and Metropolitan Policy, The Brookings Institution, 1775 Massachusetts Avenue, NW, Washington, DC 20036, Tel: 202.797.6139, Fax: 202.797.2965, Email: brookinfo@brook.edu, Website: <http://www.brook.edu/es/urban/urban.htm>.

The Center seeks to shape a new generation of urban policies that will help build strong cities and metropolitan regions.

The Environmental Tax Program, Website: <http://solstice.crest.org/sustainable/etp/>.

The Environmental Tax Program promotes sustainable development through the development of innovative fiscal policies that align environmental, economic, social and justice related goals

The Georgia Basin Initiative, Ministry of Municipal Affairs, 800 Johnson Street, 6th floor, St. Victoria B.C. V8V 1X4, Tel: 604.953.3009, Fax: 604.953.3225, Email: gbiopen@hq.marh.gov.bc.ca

The provincial government is taking action toward a more sustainable future and suggests how the

vision - supported by the Provincial Land Use Goals - can be used to lay the foundation for social, economic and environmental sustainability within the Georgia Basin.

International Council for Local Environmental Initiatives (ICLEI), City Hall, East Tower, 8th floor, 100 Queen Street West, Toronto, ON M5H 2N2, Tel: 416.392.1462, Fax: 416.392.1478, Email: iclei@iclei.org , Website: <http://www.iclei.org>.

ICLEI serves as a clearinghouse on sustainable development and environmental protection policies, programs and techniques, initiates joint projects or campaigns among groups of local governments, organizes training programs, and publishes reports and technical manuals on state of the art environmental management practices.

Joint Center for Sustainable Communities. ***Codes and Ordinances for Sustainability***. This section of the Joint Center's website lists examples of model local codes, ordinances, policies and resolutions related to sustainability currently available through the Center. This resource can be found online at: http://www.naco.org/programs/comm_dev/center/codes/index.cfm.

Lincoln Institute of Land Policy, 113 Brattle Street, Cambridge, MA 02138-3400, Tel: 617.661.3016, Fax: 617.661.7235, Email: help@lincolninst.edu(information services) , Website: <http://www.lincolninst.edu>.

The Institute's research, educational and publications programs focus on taxation of land and buildings, land use and regulation, and land values, property rights, and ownership.

Local Government Commission (LGC), 1414 K St., Suite 250, Sacramento, CA 95814, Tel: 916.448.1198, Fax: 916.448.8246, Email: lgc@dcn.davis.ca.us , Website: <http://www.lgc.org>.

The LGC provides a forum and technical assistance to enhance the ability of local governments to create and sustain healthy environments, healthy economies, and social equity.

Tools for a Sustainable Community: One-Stop Guide for U.S. Local Governments, International Council for Local Environmental Initiatives (ICLEI), City Hall, East Tower, 8th floor, 100 Queen Street West, Toronto, ON M5H 2N2, Tel: 416.392.1462, Fax: 416.392.1478, Email: iclei@iclei.org , Website: <http://www.iclei.org/la21/onestop.htm>.

This section of the ICLEI website identifies resources from the federal government and other agencies (technical assistance, funding, publications, and Internet sites) that can help local governments create sustainable communities.

[*Back to Top*](#)

RELATED READING

Abbey, D. Gail and Buck Abbey. ***U.S. Landscape Ordinances: An Annotated Reference Book***. (New York, NY: John Wiley & Sons, 1998). This reference book brings together and explains the planning

ordinances which govern the landscapes of 300 U.S. cities. It is a valuable resource for professionals or anyone interested in understanding or developing a community's landscape ordinances.

American Planning Association (APA). ***Growing Smart Legislative Guidebook, Part I***. (Washington, DC: American Planning Association, 1997). This book, a product of APA's Growing Smart initiative, contains model laws that show how regional, state and local governments can initiate or rewrite legislation for directing and regulating land use. To obtain this resource contact the APA bookstore at 312.786.6344. .

American Planning Association. ***Modernizing State Planning Statutes: The Growing Smart Working Papers - Volume 2***. (Washington, DC: American Planning Association, 1998). This is the second of a three-volume set of essays and papers about how American communities can plan for the future and revamp land use planning laws. To obtain this resource contact the American Planning Association; Tel: 312.786.6344.

Bowman, Ann O'M. and Michael A. Pagano. ***"Imagining Cityscapes: The Politics of Urban Development"***. *Land Lines*. (Cambridge, MA: Lincoln Institute of Land Policy, March 1996). To obtain this resource contact the Lincoln Institute of Land Policy at 113 Brattle Street, Cambridge, MA 02138; Tel: 617.661.3016; Fax: 617.661.7235. This resource can be found online at: <http://www.lincolninst.edu/landline/1996/march/pagano.html>.

Brown, Donald A. ***"Thinking Globally and Acting Locally: The Emergence of Global Environmental Problems and the Critical Need to Develop Sustainable Development Programs at State and Local Levels in the United States"***. *Dickinson Journal of Environmental Law & Policy*. (Carlisle, PA: The Dickinson School of Law, Summer 1996). This journal article presents an extensive discussion on thinking globally and acting locally.

Bucks County [PA] Planning Commission. ***Village Planning Handbook***. This handbook, designed for both municipal officials and residents, provides guidelines for comprehensive plan development as well as ideas for dealing with specific problems and concerns within villages. To obtain this resource contact the Bucks County Planning Commission at 215.345.3400.

Bucks County [PA] Planning Commission. ***Tools and Techniques: Bucks County Land Use Plan***. (1996). This document, part of the Bucks County Land Use Plan Series, provides an introduction to various planning approaches and development regulation methods, stressing the strengths and weaknesses of various options. To obtain this resource contact the Bucks County Planning Commission at 215.345.3400.

Clean Water Network and Natural Resources Defense Council. ***America's Animal Factories: How States Fail to Prevent Pollution from Livestock Waste***. (December 1998). This report takes a state-by-state look at the pollution problems of animal factory farms. It addresses practices causing pollution and the subsequent effect on community and environmental health, evaluates state regulatory programs, and

makes policy recommendations. To obtain this resource contact the Clean Water Network, 1200 New York Avenue, NW, Suite 400, Washington, DC 20005; Tel: 202.289.2395; Fax: 202.289.1060. This resource can be found online at: <http://www.nrdc.org/nrdcpro/fppubl.htm>.

Environmental Protection Agency. ***Model Ordinances to Protect Local Resources***. This website includes model ordinances to serve as a template for those charged with making decisions concerning growth and environmental protection. The ordinances address such matters as aquatic buffers, erosion and sediment control, open space development, stormwater control operation and maintenance, illicit discharges, and post construction controls . This resource can be found online at: <http://www.epa.gov/owow/nps/ordinance>.

Hamond, Jeff and Peggy Duxbury. ***Tax Waste, Not Work: How Changing What We Tax Can Lead To a Stronger Economy and a Cleaner Environment***. (San Francisco, CA: Redefining Progress, 1997). This monograph presents revenue-neutral, resource-based tax shifting and argues that it may be possible to improve the economy and the environment simultaneously. To obtain this resource contact Redefining Progress at 800.896.2100; Email: info@rprogress.org.

Hart, John. ***Saving Cities, Saving Money: Environmental Strategies that Work***. (Sausalito, CA: Resource Renewal Institute, 1992). This report, based on 1991 workshop on New Environmental Strategies for Urban Prosperity, includes case studies of cities around the world which are finding ways to profit from new environmental priorities. To obtain this resource contact AgAccess, P.O. Box 2008, Davis, CA 95617; Tel: 916.756.7177.

Kemmis, Daniel. ***Community and the Politics of Place***. (Norman, OK: University of Oklahoma Press, 1990).

Ladd, Helen F. *et al.* ***Local Government Tax and Land Use Policies in the United States: Understanding the Links***. (Cambridge, MA: Lincoln Institute of Land Policy and Edward Elgar Publishing Ltd., 1998). This book is a non-technical evaluation of economic thinking on the interactions between local land use and tax policies. Part 1 explores controversies and issues such as the use of land use regulation as a fiscal tool, the effects of taxes on economic activity, and the success of tax policies to promote economic development. Parts II and III present research on topics such as the impact of growth on tax burdens, tax increment financing, metropolitan tax base sharing, the incidence of impact fees, and the experience with land value taxation in some urban areas. To obtain this resource contact Lincoln Institute of Land Policy, 113 Brattle Street, Cambridge, MA 02138-3400; Tel: 1.8! 00.5 26.3873; Fax: 617.661.7235; Email: help@lincolninst.edu.

Lincoln Institute of Land Policy. ***Land Lines***. Land Lines is the newsletter of the Lincoln Institute of Land Policy, an educational institution whose mission is to study and teach about land policy, including land economics and land taxation. To obtain this resource contact the Lincoln Institute of Land Policy at 113 Brattle Street, Cambridge, MA 02138; Tel: 617.661.3016; Fax: 617.661.7235. This resource can be found online at: <http://www.lincolninst.edu/landline/ll.html>.

Local Government Commission (LGC). ***Building Livable Communities: A Policymaker's Guide to Infill Development***. (Sacramento, CA: Local Government Commission, 1995). To obtain this resource contact the LGC, 1414 K Street, Sacramento, CA 95814; Tel: 916.448.1198; Fax: 916.448.8246; Email: lgc@dcn.davis.ca.us.

New! Minnesota Planning. ***From Policy to Reality: Model Ordinances for Sustainable Development***. This package of model ordinances was developed by the Minnesota state planning agency to help make the best choices today for the health of the community tomorrow. It includes model ordinances addressing citizen participation, growth management, community resources, neighborhood design, infrastructure, resource-efficient building, and economic development. To obtain this resource contact Minnesota Planning, 658 Cedar Street, St. Paul, MN 55155; Tel: 651.296.3985. This resource can be found online at: <http://www.mnplan.state.mn.us/SDI/ordinances.html#view>.

New! National Association of Counties. ***Environmental Purchasing Starter Kit: A Guide to Greening Government through Powerful Purchasing Decisions***. This guide includes program implementation strategies, case studies, a model resolution, and a resource list to assist counties to locate and select products that encourage reduced exposure to hazardous materials, waste reduction, energy efficiency, conservation of resources, and cost effectiveness. To obtain this resource contact NACo publications, P. O. Box 79690, Baltimore, MD 21279-0690; Tel: 202.942.4262; Fax: 202.393.2630. An order form is available on the website: http://www.naco.org/programs/enviro/epkit_form.pdf.

Orfield, Myron. ***Metropolitics: A Regional Agenda for Community and Stability***. (Lincoln Institute of Land Policy and the Brookings Institution Press, 1997). This book presents a policy agenda for achieving the political integration of cities and suburbs.

Town of Davidson [NC]. ***Davidson Land Plan: Part I - Policy Guide***. This document provides general descriptive recommendations of a three-part land plan. Part II is the Regulating Plan and Part III is the Code. To obtain this resource contact the Town of Davidson: Tel: 704.892.7591, Fax: 704.892.3971.

[*Back to Top*](#)

CASE STUDIES

[*Back to Top*](#)

FEEDBACK

We will appreciate your comments on, and suggestions for, this area of the SCN!

References

- Baltimore County Department of Environmental Protection and Resource Management. Buffer protection and management ordinance. Baltimore County, MD. Available at: <http://www.epa.gov/nps/ordinance/documents/A2a-Baltimore.pdf>
- Blue Ridge Environmental Defense Fund, Nuclear Branch. Sample High-Level Nuclear Waste Ordinance. Available at: <http://www.bredl.org/nuclear/sampleHLNWordinance.htm>
- Center to Expose & Closure Animal Factories. Local Ordinances. Available at: <http://www.closeanimalfactories.org/the-issues/local-ordinances/>
- Community Environmental Legal Defense Fund. Local ordinance drafting for townships by the Legal Defense Fund. Available at: <http://www.celdf.org/Ordinances/tabid/61/Default.aspx>
- Community Environmental Legal Defense Fund. Ordinance No. 2006: Anti-Corporate Waste Hauling Ordinance. Schuylkill County, Pennsylvania. Available at: <http://www.celdf.org/Ordinances/AntiCorporateWasteHaulingOrdinance/tabid/258/Default.aspx>
- Concerning the Purchase of Cement and Products Containing Cement Produced Without the Burning of Hazardous Waste (1991). Fort Collins City Council, Resolution 91-121. Fort Collins, CO.
- Contracting with convicted criminals (1990). Town of Palmer Code of Ordinances. Chapter 9, Article 1. Palmer, MA.
- East Brunswick Township Sewage Sludge Ordinance (2006). East Brunswick Township, Schuylkill County, PA. Available at: <http://www.celdf.org/Ordinances/NewSewageSludgeOrdinance/tabid/357/Default.aspx>
- Hazardous and Medical Waste Disposal Facility Zoning Ordinance (1988). Little Rock Revised Code, Article XI, Section 36.571 – 35.589. Little Rock, AR.
- Lee County Landfill Ordinance. Lee County, SC.
- Legal Environmental Assistance Fund (LEAF) (1990, August). Georgia Local Ordinance For Preventing The Siting of Municipal, and Private Industry Solid Waste Landfills In Significant Groundwater Recharge Areas. LEAF, Tallahassee, FL.
- Legal Environmental Assistance Fund (LEAF) (1990, September 25). Authority for city/county environmental protection ordinances. [Memorandum to Georgia's Environmental Activists and Local Government Attorneys]. LEAF, Tallahassee, FL.
- Legal Environmental Assistance Fund (LEAF) (1991). Local regulation of hazardous material/waste transportation [fact sheet]. LEAF, Tallahassee, FL.
- Michigan Department of Natural Resources. Sample ordinance to establish a volume-based user fee for solid waste disposal.
- Protection of Public Drinking Water “Runoff Control” Ordinance (1990). Article II, Section 19.1.4 – 19.1.10. Albermarle County, VA.
- Sustainable Communities Network, Governing Community Topic Area. Policies, Ordinances & Taxes. Available at: <http://www.sustainable.org/governing/policy.html>
- United States Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds, Nonpoint Source Control Branch. Erosion and Sediment Control Model Ordinance. Available at: <http://www.epa.gov/owow/nps/ordinance/mol2.htm>

United States Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds, Nonpoint Source Control Branch. Model Ordinances to Protect Local Resources, Illicit Discharges. Available at: <http://www.epa.gov/owow/nps/ordinance/discharges.htm>

Waste Ordinance. Wise County Municipal Code, Ordinance 7-88. Wise County, Virginia.

Wayne Township Environmental Protection Ordinance (1997). Wayne Township Code. Wayne Township, Mifflin County, PA. Available at: <http://www.newrules.org/gov/wayne.html>

“CHEJ is the strongest environmental organization today – the one that is making the greatest impact on changing the way our society does business.”

Ralph Nader

“CHEJ has been a pioneer nationally in alerting parents to the environmental hazards that can affect the health of their children.”

New York, New York

“Again, thank you for all that you do for us out here. I would have given up a long time ago if I had not connected with CHEJ!”

Claremont, New Hampshire



Center for Health, Environment & Justice

P.O. Box 6806, Falls Church, VA 22040-6806

703-237-2249 chej@chej.org www.chej.org

