

MONTGOMERY TOWNSHIP
INDIANA COUNTY, PENNSYLVANIA
ORDINANCE NO. 29

AN ORDINANCE OF THE TOWNSHIP OF MONTGOMERY , COUNTY OF INDIANA, PENNSYLVANIA, TO PROTECT THE HEALTH OF THE CITIZENS AND THE ENVIRONMENT OF MONTGOMERY TOWNSHIP BY ADOPTING AND ENFORCING UNIFORM STANDARDS CONCERNING THE LAND APPLICATION OF SEWAGE SLUDGE; ESTABLISHING MAXIMUM LIMITS FOR CONCENTRATIONS OF POLLUTANTS AND THE RATES OF APPLICATION PER ACRE OF LAND; REQUIRING TESTING OF SEWAGE SLUDGE FOR METALS, CHEMICALS, PATHOGENS, RADIOACTIVITY, pH, VECTOR ATTRACTION, AND OTHER POLLUTANTS; REQUIRING SITE AND APPLICANT REGISTRATION FOR THE LAND APPLICATION OF SEWAGE SLUDGE WITHIN THE TOWNSHIP; AUTHORIZING THE INSPECTION OF LAND APPLICATION OF SEWAGE SLUDGE; AND SETTING FORTH PENALTIES FOR VIOLATIONS.

Section 1 - Name

This Ordinance shall be known and may be cited as the Montgomery Township Sewage Sludge Safety Ordinance.

Section 2 - Authority

This Ordinance is enacted pursuant to the authority granted to Montgomery Township by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

The provisions of The Second Class Township Code, Article VII, as codified in 53 P.S. § 65101 et seq., which authorizes Montgomery 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 VII, as codified in 53 P.S. § 66501 et seq., which authorizes Montgomery Township to enact ordinances concerning the protection of the Township residents= health, the regulation of refuse material and nuisances, and the promotion of public safety;

The provisions of The Second Class Township Code, Article VII, as codified in 53 P.S. § 67101, which empowers Montgomery Township to prohibit the accumulation of ashes, garbage, solid waste, and other refuse materials within the Township;

Pennsylvania Constitution, Article I, Section 27;

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

Municipal Waste Regulations, 25 Pa. Code § 271, 275, 287, and 291, et seq.;

Pennsylvania Air Pollution Control Act, 35 P.S. § 4001 et seq.;

Clean Air Act, 42 U.S.C. § 7416 and 7431;

Safe Drinking Water Act, 35 P.S. § 7211 et seq.;

Right-to-Know Act, 42 U.S.C. § 11001 et seq., 35 P.S. § 7301 et seq.;

Nutrient Management Act, 3 P.S. § 1701 et seq.;

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

General Pretreatment Regulations for Existing and New Sources of Pollution, 40 C.F.R. Part 403.

Section 3 - Findings and Purpose

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

That the land application of sewage sludge in Montgomery Township poses a significant threat to the health, safety, and welfare of the citizens and the environment of Montgomery Township if the levels of heavy metals, pathogens, chemicals, radioactive material, vector attractants, or other pollutants in the sewage sludge exceed the levels determined to be safe by the Pennsylvania Department of Environmental Protection (ADEP);

That under current law, Montgomery Township is powerless to prohibit the land application of sewage sludge that complies with all applicable laws and regulations;

That in order to protect the health, safety, and welfare of the residents of Montgomery Township, the soil, groundwater, and surface water, the environment and its flora and fauna, and the practice of sustainable agriculture, it is necessary to register each sewage sludge site and land applicant operating in Montgomery Township and to test each truckload of sewage sludge that is applied

within the Township to determine if certain specified metals, chemicals, pathogens, radioactive material, vector attractants, and other pollutants are present, to determine the levels of said pollutants, and to determine whether those levels exceed the levels allowed under applicable laws and regulations;

That DEP does not possess sufficient personnel to ensure that persons land applying sewage sludge in Montgomery Township are doing so in compliance with Federal and State laws and regulations, and so Montgomery Township must enforce such compliance by methods consistent with Federal and State laws and regulations concerning land application of sewage sludge, including requiring site registration, land applicant registration, and sewage sludge testing prior to land application of sewage sludge in Montgomery Township;

That a testing fee of \$750.00 per truckload of sewage sludge is necessary to cover the cost of testing each truckload of sewage sludge to be land applied in Montgomery Township, which fee has been determined by contacting the only DEP qualified laboratory in the County and requesting a bid for this service. This laboratory could not provide radiological analysis, which can be provided by DEP at a cost of approximately \$130.00 per truckload. The total cost of testing thus is \$880.00 per truckload. In addition, Montgomery Township will have to provide an employee or agent to take samples for each truckload. The Township has thus concluded that the sum of \$950.00 per test is a reasonable estimate of the Township=s cost to test each truckload; and

That Montgomery Township=s cost of testing sewage sludge should be borne by those persons land applying sewage sludge in Montgomery Township.

Section 4 - Interpretation

Anyone interpreting, implementing, or applying this Ordinance shall give priority to the findings and purposes stated in Section 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.

Administrative Completeness: An application is administratively complete if it contains the necessary analyses, fees, documents, and information, regardless of whether the analyses, fees, documents, and information would be sufficient for the issuance of the permit or the determination of applicability, 25 Pa. Code Chapter 271, Subchapter 1, § 271.822.

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.

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, 25 Pa. Code Chapter 271, Subchapter A, § 271.1.

DEP: Pennsylvania Department of Environmental Protection.

Final Action: The granting, denial, suspension, revocation, or reissuance of a site registration or land application registration, any truckload acceptance or rejection, and the issuance, failure to issue, or revocation of a notice of violation, compliance order, injunction, cease and desist order, or any other order.

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. 25 Pa. Code Chapter 271, Subchapter J, § 271.907.

Laboratory or Qualified Laboratory: A facility that is certified by DEP to test sewage sludge samples for metals, chemicals, pathogens, radioactivity, vector attractants, and other pollutants for compliance with all applicable laws and regulations prior to the land application of the sewage sludge.

Ordinance: The Montgomery Township Sewage Sludge Safety Ordinance, as amended.

Pathogens: Organisms that cause disease, including, without limitation, certain bacteria, protozoa, viruses, and viable helminth ova.

Permit Area: The area of land and water within the boundaries of any DEP permit that is designated on the permit application maps as approved by DEP.

Person: Any natural person, company, corporation, business, contractor, joint venture, trust, trustee, court appointed representative, syndicate, association, partnership, firm, club, institution, cooperative enterprise, or agency; any government corporation, municipal corporation, city, county, municipality, district, or other political subdivision, department bureau, agency, or instrumentality of federal, state, or local government; any other entity recognized by law as the subject of rights and duties; and any officer, agent, employee, independent contractor, or representative of any kind of any of the aforementioned persons.

Pretreatment User: A person subject to the National Pretreatment Standards under 40 C.F.R. Chapter 1, Part 403, as amended.

Pollutant: An organic substance, inorganic substance, a combination of organic substances, a pathogenic organism, or any other substance identified by DEP that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly from ingestion through the food chain, could, on the basis of information available to DEP, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformation in either organisms or offspring of organisms. 25 Pa. Code Chapter 271, Subchapter J, § 271.907.

Sewage 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. 25 Pa. Code Chapter 271, Subchapter A, § 271.1.

Site or Sewage Sludge Site: A surveyed area of land used or to be used for the land application of sewage sludge.

Site Registration Applicant: Any person responsible for registering or obtaining a permit for a sewage sludge site under applicable Federal, State, and local laws and regulations.

Source or Sewage Sludge Source: The wastewater treatment facility or other facility that produces the sewage sludge to be land applied.

Substantially Owned or Controlled: A person substantially owns or controls another person if he has the ability to evade the intent of Section 11.6 of this Ordinance by using that person to land apply sewage sludge, operate a sewage sludge site, or prepare sewage sludge for disposal in Montgomery Township.

Township: Montgomery Township in Indiana County, Pennsylvania, its Board of Supervisors, or its representatives or agents.

Vector Attraction: The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

Section 6 - Requirements

It shall be unlawful for any person to land apply sewage sludge in Montgomery Township unless:

Section 6.1: The sewage sludge site has a valid permit as may be required by DEP or any agency under the laws of the Commonwealth of Pennsylvania and the United States of America; and

Section 6.2: The sewage sludge site has a valid site registration issued by Montgomery Township under Section 7 of this Ordinance; and

Section 6.3: The sewage sludge applicant holds a valid permit as may be required by DEP or any other agency under the laws of the Commonwealth of Pennsylvania and the United States of America; and

Section 6.4: The sewage sludge applicant holds a valid land application registration issued by Montgomery Township under Section 8 of this Ordinance; and

Section 6.5: The site registration applicant and sewage sludge applicant comply with all applicable Federal, State, and local laws and regulations concerning the land application of sewage sludge, including, without limitation, 40 C.F.R. Chapter 503, 25 Pa. Code Chapters 271, 275, 287, and 291, and this and other Township ordinances, all as amended.

Section 7 - Site Registration

Before any person may land apply sewage sludge on a site in Montgomery Township, the site must receive a site registration from Montgomery Township. Site registrations issued by Montgomery Township shall be valid for a period concurrent with the analogous DEP permit. Montgomery Township shall issue or deny the site registration within the later of: (a) twenty-four (24) hours after receiving the results of any background tests conducted pursuant to Section 10.1; or (b) thirty (30) days after the site registration applicant complies with this section, under which the site registration applicant must do the following:

Section 7.1: Complete and submit a written application in such form and number as reasonably required by Montgomery Township. Such application shall identify the name and address of the site registration applicant and be accompanied by an application map as required by DEP showing the location and necessary narrative descriptions for lands and date, including without limitation: (a) boundaries and names of present owners of record of land, both surface and sub-surface, for the DEP permit area, including easements, rights-of-way, and any other property interests; and (b) boundaries in which sewage sludge will be applied, including identification of all setbacks as required by Federal and State regulations.

Section 7.2: Provide Montgomery Township with a copy of all materials provided to DEP for approval of the site for sewage sludge application, including, without limitation, soil, groundwater, and surface water information and background analyses, an erosion control plan, and a copy of the consent of the landowner of the site on which sewage sludge is to be land applied.

Section 7.3: Provide Montgomery Township with the most recent Pretreatment Annual Report of the wastewater treatment facility producing the sewage sludge to be land applied at the site,

including, without limitation, a list of Significant Users that have received written notices of violation at the wastewater treatment facility, the number of such notices issued to each Significant User during the reporting period, and a list of Significant Industrial Users of the wastewater treatment facility that are required to be permitted by EPA. Before Montgomery Township issues a site registration, the site registration applicant shall be required to have instituted an enforcement procedure for pretreatment violations at the wastewater treatment facility producing the sewage sludge to be land applied at the site.

Section 7.4: Pay Montgomery Township a non-refundable administrative fee sufficient to cover all Township expenses reasonably incurred to process the site registration application. Montgomery Township shall set this fee by resolution and may adjust it by resolution as necessary.

Section 7.5: Certify by letter that it has complied with all applicable Federal, State, and local laws and regulations concerning the land application of sewage sludge, including, without limitation, 40 C.F.R. Chapter 503, 25 Pa. Code Chapters 271, 275, 287, and 291, and this and other Township ordinances, all as amended.

Section 8 - Land Application Registration

Before any person may land apply sewage sludge on a site in Montgomery Township, the sewage sludge applicant must receive a land application registration from Montgomery Township. Land application registrations issued by Montgomery Township shall be valid for a period concurrent with the analogous DEP permit. Montgomery Township shall issue or deny the land application registration within the later of: (a) twenty-four (24) hours after receiving the results of a sewage sludge test conducted pursuant to Section 10; or (b) thirty (30) days after the land application registration is administratively complete. To apply for a land application registration, the sewage sludge applicant must do the following:

Section 8.1: Complete and submit a written application to Montgomery Township in such form and number as reasonably required by Montgomery Township. The submitted application must be administratively complete not less than forty-five (45) days prior to the date on which the land application of sewage sludge is to begin. The application shall inform Montgomery Township of: (a) the name and address of the person applying for the land application registration; (b) the source of the sewage sludge to be applied to the site, with each land application registration restricted to sewage sludge from a single source; (c) a current, certified list of the names and addresses of all pretreatment users of the sewage sludge source; (d) a copy of the required priority pollutant scan, if any; (e) the name and address of the person holding the current, valid Montgomery Township site registration for the land application; (f) a description of the route to be used by vehicles hauling sewage sludge from the source to the site; (g) a schedule of the date(s) and time(s) when the land application of sewage sludge will occur; (h) copies of all laboratory analyses conducted on the sewage sludge from the source within the prior twelve (12) months; (i) an application map showing the area in which sewage sludge will be land applied and the location of markers that will be posted to warn passers-by of the land application of sewage sludge; (j) a letter from the sewage sludge

applicant certifying that it has complied with all applicable Federal, State, and local laws and regulations concerning the land application of sewage sludge, including, without limitation, 40 C.F.R. Chapter 503, 25 Pa. Code Chapters 271, 275, 287, and 291, and this and other Township ordinances, all as amended; and (k) a copy of the requisite DEP permit for land application of sewage sludge.

Section 8.2: Pay Montgomery Township a non-refundable administrative fee sufficient to cover all Township expenses reasonably incurred to process the land application registration. Montgomery Township shall set this fee by resolution and may adjust it by resolution as necessary.

Section 9 - Land Application Operation

Any person land applying sewage sludge in Montgomery Township shall do the following:

Section 9.1: Comply with all applicable Federal, State, and local laws and regulations concerning the land application of sewage sludge, including, without limitation, 40 C.F.R. Chapter 503, 25 Pa. Code Chapters 271, 275, 287, and 291, and this and other Township ordinances, all as amended;

Section 9.2: Pay Montgomery Township a testing fee of \$950.00 per truckload of sewage sludge to be land applied. Prior to land application of each truckload of sewage sludge, Montgomery Township shall test the sewage sludge pursuant to its authority under Section 10 of this Ordinance. No person shall land apply sludge from any truckload until Montgomery Township approves the land application after it receives the results of such tests, which tests Montgomery Township will process through a qualified laboratory as expeditiously as possible. Montgomery Township may reject land application of any truckload when test results of the sewage sludge indicate that the land application will violate Section 6.4 of this Ordinance.

Section 9.3: Inform Montgomery Township of any discharges, upsets, spills, slug loadings, or any other violations of which the sewage sludge source is aware by operation of 40 C.F.R. § 403.8, 403.12, and 403.16, as amended.

Section 9.4: Upon changing the scheduled date(s) and time(s) for land application, notify Montgomery Township of the changes at least twelve (12) hours prior to the new date(s) and time(s).

Section 9.5: On the day land application begins, notify Montgomery Township by telephone (814-749-0422) and fax (814-) prior to commencing land application and give the Township the opportunity to attend the land application to monitor compliance with this Ordinance.

Section 10 - Inspection and Investigation

Section 10.1: After receiving an administratively complete site registration application or land application registration, Montgomery Township may: (a) inspect the site to determine whether the site registration applicant has complied with this Ordinance; (b) test the background or accumulated

levels of chemicals, metals, pathogens, radioactive material, and other pollutants in the soil, groundwater, or surface water at the sewage sludge site, and/or (c) test the sewage sludge to be applied by collecting and sending samples to a qualified laboratory to ensure that the land application will comply with Federal and State pollutant, pathogen, pH, vector attraction reduction, and other applicable regulations. The person who inspects the site on behalf of Montgomery Township may be accompanied by representatives of the site registration applicant, sewage sludge applicant, and DEP, Montgomery Township shall deny a site registration or land application registration if the results of any test or inspection reveal that the land application will violate any Federal, State, or local laws or regulations concerning the land application of sewage sludge.

Section 10.2: Montgomery Township may inspect the land application of sewage sludge without notice or a search warrant to monitor compliance with this Ordinance. Montgomery Township will contact DEP in advance of any inspection so that DEP may accompany the Township at the inspection. At an inspection, Montgomery Township may collect samples of sewage sludge to be tested by a qualified laboratory to monitor compliance with Federal and State pollutant, pathogen, pH, vector attraction reduction, and other applicable regulations. If Montgomery Township determines that this Ordinance is being violated and is unable to secure compliance on site, the land application of sewage sludge shall be enjoined and the land application registration shall be suspended until violations are corrected.

Section 10.3: After the land application of sewage sludge, Montgomery Township may inspect the site to monitor compliance with this Ordinance, including, without limitation, to determine whether the sewage sludge was properly applied, whether all DEP permit requirements have been achieved, and whether there is compliance with food and feed crop restrictions under all applicable laws.

Section 10.4: Prior to conducting any inspection under this Ordinance, the person conducting the inspection on behalf of Montgomery Township shall present his Township credentials to the owner or occupier of the site unless this requirement would wholly or partially frustrate the inspection.

Section 11 - Enforcement and Revocation

Section 11.1: Whenever Montgomery Township determines that there has been a violation of this Ordinance, the Township shall give notice to the person alleged to have violated the Ordinance. Such notice shall: (a) be in writing; (b) include a statement of the alleged violation(s); (c) be served upon the person alleged to be in violation of the Ordinance or his agent as required by the laws of the Commonwealth of Pennsylvania; (d) contain a compliance order that explains the remedial action that, if taken, will effect compliance with the Ordinance; and (e) provide the alleged violator with five (5) days to take the prescribed remedial action to cure his violation(s).

Section 11.2: Upon failure of any person to comply with a notice of violation and compliance order, Montgomery Township may suspend the applicable site registration and/or land application registration with a cease and desist order that terminates land application of sewage sludge at the site at which the alleged violation(s) occurred.

Section 11.3: Any person adversely affected by final action by Montgomery Township under this Ordinance may appeal such action only by filing such appeal in the Court of Common Pleas of Indiana County within thirty (30) days after the date of the action being appealed.

Section 11.4: In addition to the enforcement mechanisms available in sections 10.1 through 10.3 of this Ordinance, Montgomery Township shall, as provided by The Second Class Township Code, 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. 53 P.S. § 66601 (c.1) (2). Any person who 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 \$1,000.00 per violation, no more and no less, and shall be imprisoned to the extent allowed by law for the punishment of summary offenses. 53 P.S. § 66601 (c.1) (2). A separate offense shall arise for each day or portion thereof in which a violation is found to exist and for each section of this Ordinance that is found to be violated. 53 P.S. § 66601 (c.1) (5). The Township may also enforce this Ordinance through an action in equity brought in the Court of Common Pleas of Indiana County. 53 P.S. § 66601 (c.1) (4).

Section 11.5: All fines collected for violation of this Ordinance shall be paid to Montgomery Township.

Section 11.6: Any person who violates and/or is convicted of violating this Ordinance two or more times shall be permanently prohibited from land applying sewage sludge, operating a sewage sludge site, or preparing sewage sludge to be land applied in Montgomery Township. This prohibition applies to that person's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person substantially owned or controlled by the person (including its officers, directors, or owners) that twice violates this Ordinance.

Section 12 - Administration

This Ordinance shall be administered by Montgomery Township. In its administration, Montgomery Township shall review and process all site registration applications and land application registrations, set and collect all fees for said registrations, indefinitely keep records of its discussions, findings, recommendations and actions taken in administering this Ordinance, and enforce all provisions of this ordinance.

Section 13 - Effective Date and Existing DEP Permitholders

This Ordinance shall be effective five days after it is enacted. Any land application of sewage sludge that has begun before the date this Ordinance is enacted shall be completed in thirty (30) days. All land applications that begin on or after the effective date shall comply with this Ordinance.

Section 14 - 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 this Ordinance. The Board of Supervisors of Montgomery Township hereby declares that in the event of such a decision, 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 15 - Repealer

Montgomery Township hereby repeals the provisions of any prior ordinance that are inconsistent with this Ordinance only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this 1 day of October, 2003, by the Board of Supervisors of Montgomery Township.

ATTEST:

Mary Jo Engle
Secretary

BOARD OF SUPERVISORS
MONTGOMERY TOWNSHIP

Ronald L Lowe
Supervisor

Jack F. Hazelit
Supervisor

Sam Satt
Supervisor