

EAST PENN TOWNSHIP  
 CARBON COUNTY  
 ORDINANCE NO. 2021-02

AN ORDINANCE OF THE TOWNSHIP OF EAST PENN, CARBON COUNTY, PENNSYLVANIA ESTABLISHING PROCEDURES AND FIXING REQUIREMENTS AND REGULATIONS AND STANDARDS GOVERNING THE COLLECTION, TRANSPORTATION, PROCESSING, GENERATION, TREATMENT AND DISPOSAL OF SOLID WASTE, HAZARDOUS WASTE, RESIDUAL WASTE, CONTAMINATED SOIL, HOSPITAL WASTE, INFECTIOUS AND CHEMOTHERAPEUTIC WASTE, MUNICIPAL WASTE, SPECIAL HANDLING WASTE, AND OTHER MATERIALS RELATED THERETO WITHIN THE TOWNSHIP OF EAST PENN.

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EAST PENN TOWNSHIP  
CARBON COUNTY ORDINANCE  
NO. \_\_\_\_\_

AN ORDINANCE OF THE TOWNSHIP OF EAST PENN, CARBON COUNTY, PENNSYLVANIA; ESTABLISHING PROCEDURES AND FIXING REQUIREMENTS AND REGULATIONS AND STANDARDS GOVERNING THE COLLECTION, TRANSPORTATION, PROCESSING, GENERATION, TREATMENT AND DISPOSAL OF SOLID WASTE, HAZARDOUS WASTE, RESIDUAL WASTE, CONTAMINATED SOIL, HOSPITAL-WASTE, INFECTIOUS AND CHEMOTHERAPEUTIC WASTE, MUNICIPAL WASTE, SPECIAL HANDLING WASTE, AND OTHER MATERIALS RELATED THERETO WITHIN THE TOWNSHIP OF EAST PENN.

WHEREAS, this Township, as a township of the second class, is governed by the Second Class Township Code of the Commonwealth of Pennsylvania, Act of May 1, 1933, P.L. 103, as amended, 53 P.S. § 65101 *et seq.*; and,

WHEREAS, pursuant to the provisions of said Code as amended, the Township has the following powers and duties, among others:

A. To "prohibit accumulations of ashes, garbage, solid waste and other refuse materials upon private property...."  
53 P.S. § 67101.

B. To "prohibit nuisances, including, but not limited to, the storage of abandoned or junked automobiles, on private and public property and the carrying on of any offensive manufacture or business. " 53 P.S. § 66529.

C. To "make and adopt any ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth necessary for the proper management, care and control of the township and its finances and the maintenance of peace, good government, health and welfare of the township and its

citizens, trade, commerce and manufacturers. " 53 P.S. § 66506.

D. To be concerned with and involved in the supply of water for public and private uses in the township as provided for in 53 P.S. § 67601 *et seq.*

E. To "secure the health, safety and welfare of the citizens of the township." 53 P.S. § 65607.

F. To "enact and enforce codes and ordinances to govern and regulate the construction, alteration, repair, occupation, maintenance, sanitation, lighting, ventilation, water supply, toilet facilities, drainage, use and inspection of all buildings and housing constructed, erected, altered, designed or used for any use or occupancy and the sanitation and inspection of land. " 53 P.S. § 66517.

WHEREAS, the Supreme Court of the Commonwealth of Pennsylvania has recognized that the boundaries of a township "encompass a certain natural existence—land, water, air, etc. collectively referred to as environment. Whatever affects the natural environment within the borders of a township or county affects the very township or county itself." *Franklin Twp. v. Com., Dep't of Env't Res.*, 500 Pa. 1, 6, 452 A.2d 718, 720 (1982); and,

WHEREAS, the Supreme Court of this Commonwealth in said case has also recognized that: "Aesthetic and environmental wellbeing are important aspects of the quality of life in our society, and a key role of local government is to promote and protect life's quality for all of its inhabitants." *Id.*; and,

WHEREAS, in the event of an environmental emergency, the local municipality would be the first line of containment and defense; and,

WHEREAS, Article I, Section 27, of the Constitution of the Commonwealth of Pennsylvania provides in part: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment;" and,

WHEREAS, the Pennsylvania Supreme Court has set forth clear limitations on the General Assembly's authority "to remove a political subdivision's implicitly necessary authority to carry into effect its constitutional duties." *Robinson Township v. Commonwealth*, 83 A.3d 901, 977 (Pa. 2013); *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017) ("*PEDF*"); and,

WHEREAS, Article I, Section 27 establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee and the people are the named beneficiaries. *PEDF*, 161 A.3d at 932; *Robinson Twp.*, 83 A.3d at 955-56; and,

WHEREAS, all agencies and entities of the Commonwealth have a fiduciary duty to act toward the corpus with prudence, loyalty and impartiality. *PEDF*, 161 A.3d at n. 23; *Robinson Twp.*, 83 A.3d at 956. "This includes local governments." *Robinson Twp.*, 83 A.3d at 956-57; and,

WHEREAS, this ordinance is geared toward fulfilling the Township's obligations under Article I, Section 27 of the Pennsylvania Constitution, and of protecting the public health, safety, and welfare of Township citizens; and

WHEREAS, townships have certain powers to adopt ordinances, regulations and standards for the storage, collection, treatment and disposal of municipal wastes under the provisions of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P. S. § 4000.101 *et seq.* ("Waste Reduction Act"), and particularly § 4000.304(b) and under the provisions of the Solid Waste

Management Act 35 P.S. § 6018.101, *et seq.*("SWMA"), and particularly § 6018.202; for the storage, collection, treatment and disposal of infectious and chemotherapeutic waste under the provisions of 35 P.S. §6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal; for the disposal of hazardous waste pursuant to the provisions of the Hazardous Sites Cleanup Act, 35 P.S. § 6020.101 *et seq.*("HSCA"), and for the storage, collection, treatment and disposal of solid waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, sludge and other materials related thereto pursuant to the provisions of the Air Pollution Control Act, as amended, 35 P.S. § 4001 *et seq.*("Air Pollution Control Act"), and;

WHEREAS, said Acts provide various Statewide regulations concerning solid waste, hazardous waste, residual waste, infectious and chemotherapeutic waste, and other materials related thereto which is defined to include but not limited to municipal, residual or hazardous wastes, including solid, liquid, semisolid, or gaseous materials; and,

WHEREAS, the Solid Waste Management Act, in Section 607 thereof, 35 P.S. § 6018.607, declares the legislative intention of the General Assembly of the Commonwealth of Pennsylvania that one of the purposes of said Solid Waste Management Act is "to provide additional and cumulative remedies to control the collection, storage, transportation, processing, treatment, and disposal of solid waste within the Commonwealth;" and,

WHEREAS, said section of said Act further states that "nothing contained in the Act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law;" and,

WHEREAS, said section of said statute provides that said Act shall not be construed as estopping any municipality from enforcing any common law or statutory rights; and,

WHEREAS, the Waste Reduction Act, and the SWMA, and the provisions of 35 P.S. §6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal; and the HSCA, and the Air Pollution Control Act, establish statewide regulation of the collection, storage, transportation, processing, treatment, and disposal of waste within the Commonwealth, which regulation does not, however, cover all matters and things which the Supervisors of this Township believe should be covered to adequately protect the health, safety and welfare of its people; and,

WHEREAS, the Township is concerned that there are matters and things relating to the collection, storage, transportation, processing, treatment, and disposal of waste not covered or encompassed by said Acts; and,

WHEREAS, the Township, by virtue of the authority aforementioned, has various powers of regulation also as aforementioned, which it may exercise provided its exercise of the same shall not be inconsistent with the aforementioned legislative enactment of the Commonwealth of Pennsylvania relating to the aforementioned Acts nor inconsistent with the Rules and Regulations promulgated by the Department of Environmental Protection, the Environmental Quality Board or any other regulatory agency of this Commonwealth; and,

WHEREAS, the Township, pursuant to the aforementioned rights and all other rights that it has by virtue of the aforementioned Second Class Township Code and the common law and Statutory law of this Commonwealth, desires to exercise all of its powers to the maximum extent legally available in the promotion of the health, cleanliness, comfort, safety, and welfare of the citizens of the Township; and,

WHEREAS, the collection, storage, transportation, processing, generation, treatment and disposal of solid waste,

hazardous waste, municipal waste, residual waste, infectious and chemotherapeutic waste, and other materials related thereto as those terms are defined in the aforementioned legislative enactments, presents dangers to and adversely affects the health, safety, and welfare of the citizens of the Township in the following and other respects: By polluting or causing a danger of pollution of water supplies; by creating conditions that may discourage recreational use of land and resources of the Township, thereby adversely affecting the economy of the Township; by destroying or threatening to destroy the present natural state of land and resources of the Township which land and resources are assets to the economy and the welfare of the Township and its inhabitants and are irreplaceable; by polluting and threatening a danger of polluting land, water and air, thereby adversely affecting the health and welfare of the citizens of the Township; by creating or threatening to create a deleterious effect on the environment in which Township residents live; by causing worry and concern to the citizens of the Township; by destroying the present way of life of the citizens of the Township by raising various matters of intense public and private concern thereby causing harm to the health and welfare of both the minds and bodies of the citizens of the Township; and,

WHEREAS, the Township desires to promote continued operational stability of any waste management activity contemplated within its borders; and,

WHEREAS, the Township desires to create a buffer zone between the waste management activities and habitable buildings so as to minimize the environmental intrusion on the citizens of the Township by the activity; and,

WHEREAS, use of the public roads in the Township by trucks hauling the aforementioned waste presents a likelihood of spillage, leakage, damage due to the weight of said vehicles and accidents which would present a danger to and cause harm to the citizens of the Township and the environment of the Township as well

as increased damage to said roads because of the weight and number of trucks; and,

WHEREAS, past experiences in the Township with the actions of the Commonwealth of Pennsylvania's Department of Environmental Protection in looking out for and protecting the interest of the citizens of the Township has indicated that the Township and its citizens cannot rely solely upon the Department of Environmental Protection but rather must rely also on its own powers in regulating matters relating to waste in addition to and not inconsistent with the regulations provided on a statewide basis by the aforementioned legislative enactments, the Department of Environmental Protection, the Environmental Quality Board, and other regulatory agencies; and,

WHEREAS, the Township has determined that to prevent nuisances and to exercise all of its statutory and common law powers for the protection of the public health, safety, economy and welfare, it is advisable to adopt this ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of East Penn Township, Carbon County, Pennsylvania, as follows:

**SECTION I**  
**Definitions**

The following definitions shall apply in the interpretation and enforcement of this ordinance:

1. "Board of Supervisors" or "Supervisors" shall mean the duly qualified and acting Supervisors of this Township.
2. "Roads" shall mean all roads maintained by either the Commonwealth or the Township or any public entity for the purpose of vehicular travel within the geographical limits of the Township.



3. "Township" shall mean the Township of East Penn, Carbon County, Pennsylvania.

4. "Township roads" shall mean those roads within the Township over which the Township exercises jurisdiction and as to which the Township has the responsibility for maintenance.

5. In addition to the terms defined herein, all other terms used but not defined herein shall have the meanings set forth in the SWMA and the rules and regulations promulgated thereunder, including without limitation the definitions set forth in 25 Pa. Code §§ 260a.10, 271.1 and 287.1. Should any term defined herein conflict with a definition in the SWMA, the definition in the SWMA shall prevail.

## **SECTION II**

### **Certain Conduct Prohibited**

The collection, storage, transportation, processing, treatment, and disposal of waste within the Township is hereby declared to be a public nuisance and unlawful, except:

1. when such collection, storage, generation, transportation, processing, treatment, and disposal of waste is conducted in accordance with all applicable laws of the Commonwealth of Pennsylvania, including but not limited to the Waste Reduction Act, and the SWMA, and the provisions of 35 P.S. § 6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal, and the HSCA, or the Air Pollution Control Act, as amended, and in full compliance therewith and with all rules and regulations thereunder and all permits issued thereunder, and in accordance with and in full compliance with the terms and provisions of this ordinance and all requirements of this or any other proper authority, or

2. as has heretofore been provided for or may hereafter be provided for by this Township with respect to the collection, storage,

transportation, processing, treatment or disposal of waste originating within this Township.

### **SECTION III**

#### **Registration**

1. No person shall engage in any conduct requiring a permit from the Commonwealth of Pennsylvania under the Waste Reduction Act, the SWMA, 35 P.S. § 6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal, HSCA, or the Air Pollution Control Act, as amended, within the corporate limits of this Township without first obtaining the requisite permit from the Commonwealth and registering with the Township, pursuant to this ordinance, and obtaining a registration certificate from the Township. If, at the time this ordinance becomes effective, a person already has a permit from the Commonwealth of Pennsylvania, then that person shall have a period not greater than three (3) months within which to obtain a registration certificate from the Township in accordance with this ordinance and may operate without registration during that period. If such a person is proceeding with due diligence to obtain a registration certificate from the Township, the Township Supervisors may, by motion, for good cause shown, extend the time during which the person may operate without a registration certificate.

2. A registration certificate shall be applied for by any person seeking a permit from the Commonwealth simultaneously with the filing of said permit application with the Commonwealth by filing a true, complete and correct copy of the State application with the Supervisors of the Township. If a person already holds a permit from the Commonwealth, or has already filed an application, a true, complete and correct copy thereof shall be filed forthwith upon the effective date of this ordinance.

The Township Supervisors will evaluate the application for a registration certificate in light of the goals of ensuring compliance by an applicant with the obligations imposed on the applicant under this

ordinance and to prevent or abate a public nuisance that may be created by the waste facility.

3. All applicants for a registration certificate and all persons who hold a registration certificate shall submit to the Township true, complete and correct copies of all materials submitted to the Commonwealth of Pennsylvania in connection with the project or facility for which a registration certificate is sought, including but not limited to applications, supporting papers, documents, maps, test results, statements and responses to inquiries by the Commonwealth. Such material shall be submitted to the Township simultaneously with its submission to the Commonwealth or, if already submitted to the Commonwealth, promptly upon effective date of this ordinance. Any information which is designated as "confidential" and is permitted to be so designated by the Commonwealth, shall be disclosed only to the Supervisors, engineers, solicitor or other professionals needing such information for purposes of enforcement of this ordinance or applicable law, and shall be disclosed by them only as necessary in the performance of their duties.

4. The application shall identify the route of transportation. The application shall also indicate the methods of transportation expected to be used. The application and such subsequent submissions as may be required shall set forth in reasonable detail the dangers that could be presented from a motor vehicle accident involving a truck or other vehicle carrying waste and the steps which would have to be immediately taken to protect the welfare and safety of the citizens of the Township so that by reference thereto the Township police and Supervisors and fire officials could act promptly in the event of such an occurrence so as to minimize damage and danger to residents of the Township and their property pending the time when expert officials from the State or elsewhere could be called in to deal with the problem. The application shall also designate a contact person or persons who can be reached for emergency information at any time.

5. Every person applying for a registration certificate shall give public notice by advertisement one time in a newspaper of general circulation in Carbon County and in such other or substitute newspapers as the Supervisors of the Township may hereafter by motion designate, of their application for a registration certificate and of the type of permit obtained or being sought from the Commonwealth, the type of activity intended to be engaged in, the location thereof, and setting forth the complete name and address of the applicant, and also setting forth a location within the Township where any interested citizen may examine a copy of the application, and setting forth reasonable hours during which the same may be examined. Said notice shall specify that if any person has any objection to the granting of a registration certificate by the Supervisors of the Township pursuant to this ordinance, such person should make known the same within thirty (30) days from the date of said advertisement, in writing, addressed to the East Penn Township Supervisors, c/o the secretary of the East Penn Township Board of Supervisors or at such other address or designation as the Township Supervisors may by motion hereafter fix. The Supervisors may accept comments or objections received after said 30-day period.

6. The Supervisors shall review the application and supporting data, together with any comments or objections received from citizens, and may, if they deem it appropriate in the exercise of their discretion, hold a public hearing on the application for a registration certificate. A registration certificate shall be issued if the applicant complies with all of the terms and conditions of this ordinance and makes appropriate provisions for future compliance with the terms and provisions of this ordinance, including the posting of such bonds, letters of credit or the like as may be required by the terms hereof. A registration certificate may be issued at any time but shall not be effective until applicant receives a permit from the Commonwealth. The Supervisors shall act on the request for registration within ninety (90) days of receipt of the application and supporting data and notification by the applicant that the Department of Environmental Protection has deemed the permit application to be administratively complete unless

the Supervisors notify the applicant that additional time is required (not to exceed an additional three (3) months) and explain the reasons therefor. The granting of a registration certificate shall not be deemed approval of the application permit from the Commonwealth.

7. If the Supervisors deny a registration certificate, they shall give notice of that decision to the applicant, in writing, stating the reasons why a registration certificate has been denied and the applicant shall be afforded an opportunity for a prompt hearing before the Supervisors at a public meeting after which the Supervisors shall make a final decision. If a State permit has already been granted, then a hearing shall at least be offered within ten (10) days of the Supervisors' notice to the applicant that it will not approve registration and stating the reasons thereof and, unless waived by the applicant, the Supervisors shall make their decision within ten (10) days after the hearing. If this process takes place prior to the grant of the permit by the Commonwealth, the ten (10) day time limit shall not apply; instead the hearing shall be scheduled within thirty (30) days and the decision shall be rendered within thirty (30) days after the hearing.

8. If a hearing is to be held under paragraph 6 or 7 of this section, the applicant shall give notice of the same by regular mail to any person who made written objection to the granting of registration within the Township under paragraph 4 of this section and those other persons who specifically requested notice of any hearing under paragraph 6 or 7 of this section. Notice shall be mailed at least ten (10) days before the hearing. The applicant shall also publish notice of the hearing one time in a newspaper of general circulation in Carbon County and in such other or substitute newspapers as the Supervisors of the Township may hereafter by motion designate.

#### **SECTION IV**

##### **Protection of Water Supplies**

1. (a) The Supervisors hereby determine that the providing of safe, potable and aesthetically acceptable drinking water

to houses, buildings, and dwellings of the Township is important to the health, safety and welfare of the residents of the Township.

(b) The Supervisors also determine that because of the lack of complete and comprehensive records thereof and because of the dangers of infiltration of water supplies and because of the difficulties inherent in trying to trace water or water contamination underground, and because of changes in strata and water flow, any applicant for a registration certificate shall certify and bear the burden of proving by clear, precise, competent and convincing evidence that the applicant's proposed activity will not affect any public water supply, which, for purposes of this ordinance, shall be any water supply serving ten (10) or more households.

(c) If the proposed facility is to be located in any area higher in elevation than any public water supply and if said water supply (1) is ground-water dependent and is within three (3) miles of such facility; or, (2) is surface-water dependent and the proposed facility or parts thereof (measured by the boundaries of the area permitted or to be permitted by the Commonwealth) is within the watershed of said public water supply, then it shall be presumed that such facility could affect said water supply unless the applicant shall rebut said presumption by competent proof meeting the clear, precise, and convincing standard set forth above.

(d) If, at any hearing under paragraph 5 of Section III, the effect of the project on a private water supply (a private water supply for this purpose is one which is within 2,500 feet of the boundary of the project area to be permitted by the Commonwealth and which does not meet the foregoing definition of a public water supply) is at issue, applicant shall bear the burden of proving by preponderance of the evidence that the applicant's proposed activity will not adversely affect the private water supply.

(e) As to private water supplies as defined in (d) but not within the 2,500 foot area required by the definition in (d), the owner

or user shall have the burden of proving by a preponderance of the evidence that the proposed activity will affect his or her private water supply.

2. Whether under this section or any other provision hereof, the decision of the Supervisors on all questions of fact shall be subject to the highest degree of finality allowed by law and the scope of review of any such decisions shall be the narrowest scope of review which legally may be imposed. This section is not intended to deny any person any right of review or appeal which is provided for by law.

3. All public water supplies shall be available to an applicant for background and period testing at reasonable times during reasonable business hours provided applicant complies with reasonable requirements of the owner or operator of such water supplies as to safety and accompaniment by a representative of the owner or operator. The Township hereby requires the owner and operator of such water supplies to permit such testing. As to private water supplies, if the owner refuses upon reasonable request of applicant to permit such testing in the same manner as herein required for public water supplies, the owner and all persons served by such water supply shall waive all protection under this ordinance and no requirement of this ordinance shall apply to such water supply.

4.(a) With respect to any public water supply referred to in paragraph 1(b) of this section, it shall be presumed that any significant and material deterioration or degradation in the quality or quantity of water after operation of the facility commences (as compared to quantity and quality of water during a period immediately preceding commencement of operation of the facility) is caused by the facility. This presumption shall not preclude appropriate proof of causation under other circumstances.

(b) If such deterioration or degradation causes said water to fail to meet federal safe drinking water standards in some respect that did not exist prior to operation of the facility as aforesaid, then a substitute water supply and appropriate remedial action shall be furnished by the applicant forthwith upon occurrence of such deterioration or degradation, unless applicant notifies the Township that it believes there exists clear, precise and convincing evidence that the deterioration or degradation in water quality or quantity is not caused by the facility. In such a case, the Township shall grant a prompt hearing on the issue at applicant's request and applicant shall not be required to take interim remedial action until the Township renders a decision after said hearing.

(c) If the Township determines that applicant has failed to rebut the presumption or causation by clear, precise, competent and convincing evidence, then temporary or interim remedial action shall be taken pending final adjudication unless a supersedeas is obtained from a court of competent jurisdiction. Test results from applicant's monitoring wells shall be admissible, but not necessarily conclusive, evidence on the causation issue. Also, if the problem is a deterioration or degradation in quantity of water, evidence that the area experienced a severe drought shall be admissible, but not necessarily conclusive, on the causation issue.

(d) If temporary or interim remedial action is required, the temporary or interim replacement water need only meet federal safe drinking water standards or the quality and quantity standards existing prior to operation of the facility, whichever standard is least severe.

(e) Upon final adjudication of applicant's responsibility as aforesaid, a permanent substitute water supply shall be provided as soon as possible. The permanent substitute water supply or treatment facility shall be such as to provide water at least equal to the quantity and quality of the water prior to operation of the waste facility.



(f) If the applicant's project as submitted to and permitted by the Department of Environmental Protection provides for monitoring wells between the facility and a public water supply as herein defined, and if the test results from said monitoring wells indicate a significant and material degradation of water quality (or quantity if the loss of quantity is due to operation of the facility rather than natural drought or other unrelated cause), then applicant shall undertake prompt action to either (1) prevent said water in its degraded state from percolating or moving further toward the water supply (such as by pumping and treating or otherwise intercepting said water) or to (2) proceed with implementing the substitute water supply plan or treatment plan so that the replacement or treated water will be available before the degradation found in the monitoring wells shall reach the water supply.

## **SECTION V**

### **Restriction on Use of Certain Roads**

1. Any applicant shall conduct the project in such a way and impose such requirements on anyone from whom it accepts any waste as may be necessary such that no vehicles hauling waste to or in connection with the project or empty vehicles which had hauled waste to or in connection with the project shall pass within nine hundred (900) feet of any existing public or private school within the Township. The Supervisors determine that this provision is necessary to protect children because of the greater risk of a catastrophic accident if a vehicle hauling waste were to be involved in an accident in the vicinity of a school or if spillage or leakage from vehicles should occur in the vicinity of the school.

2. Because of the customary heavy-weight vehicles engaged in the hauling of waste, because of the possibility of accidents, spillage or leakage, because of the possibility of the contents damaging township roads, and because of the greater risk of such damage coming from the frequency of use that would exist from the location of a waste facility within the Township as distinguished

from an occasional use of a township road by general traffic, the Supervisors hereby determine that no township road or any portion of any township road shall be used as a way of ingress to or from an waste disposal or storage site from a State highway, except if there is no other reasonably practical means of access from a State highway. The Township shall designate a contact person who is hereby authorized to grant permission for use of township roads during emergency situations. Permission shall be presumed for a period not to exceed four (4) hours for situations where traffic must be diverted because of an accident or similar situation temporarily blocking the designated route. The emergency contact person shall, however, be promptly notified by applicant as soon as applicant becomes aware of the problem. The Township may revoke the "presumed" permission at any time by appropriate barricades, signs or other traffic control measures. Crossing of a township road shall also be considered use of a road.

3. To ease cleanup in the event of spills or accidents, to keep down dust or otherwise protect public safety and welfare, and to provide a good road surface to make less likely the occurrence of tire failure or blowouts, and dangers of spillage or leakage associated therewith, it is hereby required that any private road used to provide access to a waste facility from a State highway or a township road shall be paved or surfaced with asphalt, gravel, cinders, or other equivalent materials approved by the Pennsylvania Department of Transportation and maintained in such a manner as to at all times provide a smooth hard surface thereon from said State highway or township road to the property line of the property designated for the project.

4. In order to protect the citizens, inhabitants and traveling public of East Penn Township, applicant shall conduct the project in such a way and impose contractual requirements on anyone from whom it accepts waste such that all vehicles transporting said waste to the applicant's facility shall be covered by or included in a policy or policies of public liability insurance kept in force with good

and reliable insurance companies authorized to do business in the Commonwealth of Pennsylvania. The liability limits shall be not less than One Million Dollars (\$1,000,000) bodily injury liability per person; One Million Dollars (\$1,000,000) aggregate per occurrence and One Million Dollars (\$1,000,000) property damage liability. Should the material transported or handled be hazardous waste, applicant shall require a minimum of Five Million Dollars (\$5,000,000) liability insurance coverage for personal injury and Five Million Dollars (\$5,000,000) for property damage.

5. It is hereby declared to be unlawful for any transporter of waste to applicant's facility to fail to follow the designated route (except as hereinabove provided in the case of emergencies) or to otherwise fail to comply with the provisions and requirements of this section. Applicant shall not be responsible for an independent transporter's violation of this section if applicant has fulfilled its direct obligations hereunder and has taken reasonable steps to inform such independent transporters of the requirements of this section. Applicant shall not accept waste from any person who has transported such waste in violation of the provisions of this ordinance if applicant knew or should have known in the exercise of reasonable business practice of such violation, unless applicant has been furnished evidence satisfactory to a reasonably prudent businessman that the violation will not likely be repeated and that any harmful effects of the violation have been corrected.

## **SECTION VI**

### **RESTRICTIONS ON HOURS AND DAYS**

1. It is hereby declared that the continuous transportation by vehicles of waste creates an increased danger to the health, safety and welfare of the residents of East Penn Township, their property and environment. Any applicant who has received the proper permits under the Waste Reduction Act and/or the SWMA and/or HSCA and/or Air Pollution Control Act and/or 35 P.S. § 6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal, upon

commencing to receive solid waste or any other types of waste at the permitted site, shall be subject to the following restrictions on the hours and days which vehicles may deliver waste to the facility site:

(a) Vehicles may deliver waste to the facility only between the hours of seven o'clock (7:00 a.m.) and five o'clock (5:00 p.m.) each day when delivery is permitted.

(b) Delivery of waste to the facility shall occur only on weekdays, Monday through Friday, and shall not be permitted on Saturdays or Sundays. Delivery of waste to the facility shall not occur on a weekday if the weekday is a State holiday as determined by the Commonwealth of Pennsylvania.

2. Township shall be permitted to have two inspectors of the Township's choice present at the facility site to oversee the times when vehicles are delivering waste and to oversee and inspect the contents of any or all vehicles that deliver waste to the facility site and to oversee the operation of the facility itself. The Township inspectors shall be entitled to be present at the facility site at all times when any activity or operations are occurring. If the inspectors report any violations to the Township, the Township may proceed to enforce the provisions of any applicable Ordinance, statute, rule or regulation that may apply, as provided therein.

## **SECTION VII**

### **Hazardous Waste**

1. (a) No registration certificate shall be issued for any facility or for the collection, storage, production, generation, transportation, processing, treatment or disposal of hazardous, chemotherapeutic or infectious waste unless the applicant shall first

provide the Supervisors certification of compliance by the applicant, and by the operator of any site involved, with this ordinance, any State permit, and any laws, rules and regulations of this Township, the Commonwealth of Pennsylvania or any other proper authority, and further conditioned upon the future deposit and containment of hazardous waste in compliance with the requirements of this ordinance, any state permit, and any laws, rules and regulations of this Township, the Commonwealth of Pennsylvania or any other proper authority such that the applicant shall guarantee there is no possibility that hazardous waste or any matter derived from such hazardous waste will leak or escape from the container and area in which such hazardous waste is disposed of and so that the applicant shall guarantee that there is no possibility that such hazardous waste will at any time in the future adversely affect the public health, safety, and welfare and economic and social well-being of the citizens of the Township. If the applicant or operator abandons the facility or if the applicant or the disposal operations and methods do not comply with the requirements of this ordinance or State permit or any rule or regulation of any other proper authority, the Supervisors immediately may proceed to enforce the provisions of any applicable ordinance, statute, rule or regulation of the Commonwealth of Pennsylvania or any regulatory agency or other proper authority.

(b) Any hazardous waste generated, collected, stored, transported, processed or treated at a resource recovery facility or any other operation or which occurs as a result of any waste management activity within the Township shall be treated, handled and disposed of in accord with the Department of Environmental Protection's regulations for the handling of said hazardous waste as well as shall be treated, handled and disposed of in accord with the provisions of the HSCA. This provision shall be applicable regardless of the amount of hazardous waste involved.

2. The applicant for a certificate of registration dealing in any way with hazardous waste shall also provide evidence to the Township that said applicant has in force public liability insurance

specifically covering environmental hazards in an amount not less than Ten Million Dollars (\$10,000,000) or such greater amount as the Supervisors may fix, depending upon the nature and scope of the project. Said insurance shall be with a reputable insurance company acceptable to the Supervisors and shall contain a noncancellation clause and shall be and remain in effect, unless substitute insurance likewise meeting the terms hereof is subsequently provided, for a period of at least one hundred (100) years after the deposit of waste commences, the generation of wastes occurs or after the deposit of the last waste deposited or generated on the site.

## **SECTION VIII**

### **Suspension, Modification or Revocation of Registration**

If an applicant or applicants, or any operator, contractor or agent, or any principal of any corporate applicant, operator or agent, or any principal or a corporate principal, should violate any provision of this ordinance, or should the permit(s) issued by the Commonwealth of Pennsylvania or the Federal Government related to the project be denied, suspended, revoked, modified or expired, the Township may suspend, modify or revoke the certificate of registration.

As used herein, "principal" means any person owning more than five percent (5%) of the capital stock of a corporation, or an officer of the corporation, or a management level employee of the corporation.

The applicant shall promptly notify the Township of any ordinance violation, or of the denial, suspension, revocation, modification or expiration of any Commonwealth of Pennsylvania permit as the same shall have occurred whether or not appeals related thereto have been exhausted.

The Township will not exercise its rights under this provision to suspend, modify or revoke a certificate of registration

with respect to any ordinance violation, the harmful effects of which have been promptly corrected or eliminated, unless the violation or series of violations are, in the opinion of the Supervisors exercising reasonable executive discretion and judgment, of such a material and substantive nature or of such long duration or cumulative impact as to manifest an unwillingness or inability to comply with this ordinance, or unless such violations are criminal in nature. If the Commonwealth or Federal Government shall suspend or revoke any required permit in connection with the project, the registration hereunder shall be automatically suspended or revoked.

**SECTION IX**  
**Registration of Conditions**  
**and**  
**Preservation of Legal Liability**

1. All applicants shall be fully responsible as provided by law for all consequences of their operations and facilities and compliance with this ordinance shall not alter or diminish any such legal liability that might otherwise exist whether to the Township or any person or other entity.

2. In order to meet the terms of this ordinance and to ensure that the applicant for a registration certificate will continue to observe the requirements hereof, and in furtherance of the purposes hereof, the Supervisors may condition the issuance of any certificate of registration upon such terms and conditions or make the same subject to such undertakings as the Supervisors may deem advisable, consistent with the terms hereof and not inconsistent with State or Federal law. This provision shall not give the Supervisors the authority to impose conditions relating generally to the proposed facility but only conditions relating to matters covered by this ordinance and then only conditions that are consistent with the provisions of this ordinance.

**SECTION X**  
Township Solid Waste

Any applicant establishing a waste facility in the Township must accept at said facility waste generated in the Township if it would accept such waste from a source outside the Township. The charges, terms, conditions and limitations relating to such waste generated within the Township shall be no less favorable than those applicable to waste generated outside the Township.

**SECTION XI**  
HOST MUNICIPALITY BENEFIT FEE

**A. HOST MUNICIPALITY BENEFIT FEE**

1. Imposition. There is imposed a host municipality benefit fee upon the operator of each resource recovery facility, or facility or operation dealing with waste as herein defined that has a currently existing permit or receives any new permit from the Department of Environmental Protection pursuant to the provisions of the Waste Reduction Act, and the SWMA, and 35 P.S. § 6019.1 *et seq.* dealing with Infectious and Chemotherapeutic Waste Disposal, and the HSCA and the Air Pollution Control Act. The fee shall be paid to the host municipality. If the host municipality owns or operates the landfill, the fee shall not be imposed for waste generated within such municipality. If the facility is located within more than one host municipality, the fee shall be apportioned among them according to the percentage of the permitted area located in each municipality.

2. Amount. The fee is \$1.00 per ton of weighed waste (solid) or \$1.00 per three cubic yards of volume-measured waste (liquids) for all waste received or generated at a resource recovery facility, or facility or operation dealing with waste as herein defined. Any amounts paid by an operator to a host municipality pursuant to a preexisting agreement shall serve as a credit against the fee amount imposed by this section.



3. Municipal options. Nothing in this ordinance shall prevent a host municipality from receiving a higher fee or receiving the fee in a different form or at different times than provided in any of the legislative enactment dealing with waste as has been defined within this ordinance if the host municipality and the operator of the resource recovery facility dealing with waste as herein defined agree in writing.

4. Supersede. The fee imposed by this section shall preempt and supersede any tax imposed on each resource recovery facility under the act of December 31, 1965 (P.L. 1257, No. 511), known as "The Local Tax Enabling Act", which is in excess of the amount imposed on or before December 31, 1937.

5. County options. Nothing in this ordinance shall prevent a host county from negotiating a fee or fees in a different form, if the host county, and the operator of the resource recovery facility, or facility or operation dealing with waste as herein defined agree in writing. Any county which has negotiated a fee as of the effective date of this ordinance may require that the fee be continued.

#### **B. FORM AND TIMING OF HOST MUNICIPALITY BENEFIT FEE PAYMENT**

1. Quarterly payment. Each operator shall make the host municipality benefit fee payment quarterly. The fee shall be paid on or before the 20th day of April, July, October, and January for the three months ending the last day of March, June, September, and December.

2. Quarterly reports. Each host municipality benefit fee payment shall be accompanied by a form prepared, furnished and completed by the operator. The form shall state the weight or volume of waste received or generated by the landfill or facility or operation

during the payment period and provide such other information deemed necessary by the Township. The form shall be signed by the operator.

3. Timeliness of payment. An operator shall be deemed to have made a timely payment of the host municipality benefit fee if all of the following are met:

(a) The enclosed payment is for the full amount owed pursuant to this section, and no further host municipality action is required for collection.

(b) The payment is accompanied by the required form and such form is complete and accurate.

(c) The letter transmitting the payment that is received by the host municipality is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

4. Discount. Any operator that makes a timely payment of the host municipality benefit fee as provided in this section shall be entitled to credit and apply against the fee payable by him a discount of 1% of the amount of the fee collected by him.

5. Alternative proof. For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

### C. COLLECTION AND ENFORCEMENT OF FEE

1. Interest. If an operator fails to make a timely payment of the host municipality benefit fee, the operator shall pay interest on the unpaid amount due at the rate established pursuant to section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as the Fiscal Code, from the last day for timely payment to the date paid.

2. Additional penalty. In addition to the interest provided in subsection (1), if an operator fails to make timely payment of the host municipality benefit fee, there shall be added to the amount of fee due 5% of the amount of such fee if the failure to file a timely payment is not for more than one month, with an additional 5% for each additional month, or fraction thereof, during which such failure continues, not exceeding 25% on the aggregate.

3. Assessment notices. If the host municipality determines that any operator of a landfill dealing with waste as herein defined has not made a timely payment of the host municipality benefit fee, it will send a written notice for the amount of the deficiency to such operator within 30 days from the date of determining such deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of waste received or generated at the landfill dealing with waste, as herein defined, for the payment period, the host municipality may estimate the weight or volume in its deficiency notice.

4. Constructive trust. All host municipality benefit fees collected by an operator and held by such operator prior to payment to the host municipality shall constitute a trust fund for the host municipality, and such trust shall be enforceable against such operator, its representatives and any person receiving any part of such fund without consideration or with knowledge that the operator is committing a breach of the trust. However, any person receiving payment of lawful obligation of the operator from such fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

5. Manner of collection. The amount due and owing as the host municipality benefit fee shall be collectable in any manner provided by law for the collection of debts. If the person liable to pay any such amount neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue,

shall be a judgment in favor of the host municipality upon the property of such person, but only after the same has been entered and docketed of record by the Prothonotary of the county where such property is situated.

6. Remedies cumulative. The remedies provided to host municipalities in this ordinance are in addition to any other remedies provided at law or in equity.

## **SECTION XII**

### **Administrative Provisions**

1. In order to determine if any applicant registered under this ordinance is complying with the ordinance throughout its operations, and in order to evaluate applications for a certificate of registration, and in order to evaluate materials submitted pursuant to the terms hereof, the Township may employ such engineers and other professionals as it may deem advisable from time to time.

2. In order to enforce the provisions hereof, to advise the Township with respect to the application of this ordinance and the implementation thereof, to negotiate agreements authorized by the terms hereof, and to otherwise deal with legal matters relating to the implementation of this ordinance and the enforcement thereof, the Township may employ such attorney or attorneys, including the Township solicitor, to render such special services in relation hereto as the Supervisors may from time to time require.

3. The Supervisors may adopt reasonable rules and regulations to carry out the intent and purpose of this ordinance from the administrative standpoint, such as designations of addresses to be used, persons to be contacted, procedural matters relating to hearings, and other similar matters not inconsistent with the substantive provisions hereof.

4. Any violation of any provision of this ordinance or any rule or regulation of the Township Supervisors adopted pursuant hereto or the term of any registration certificate or the term of any permit issued by the Commonwealth or any law, rule or regulation of any Federal, State or local authority in relation to the matters covered hereby, is hereby declared to constitute a public nuisance and any person committing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation.

5. Any person who shall violate or fail to comply with any of the provisions of this ordinance, any rules or regulations adopted hereunder or any term or condition of any registration certificate or any agreement or undertaking entered into with the Supervisors in connection herewith shall, upon conviction in a summary proceeding, be subject to a fine or penalty of not more than One Thousand Dollars (\$1,000), plus costs of prosecution and, in default of payment thereof, to imprisonment of not more than thirty (30) days. Each day during which any such violation or failure to comply shall occur or continue shall constitute a separate offense.

6. This ordinance shall not restrict the right of the Township to take such other action as may be allowed by law to abate nuisances, to correct same on its own, and to recover the costs thereof, to forfeit bonds, to file municipal claims, and otherwise exercise such rights or remedies as may be otherwise provided by law.

7. This ordinance shall not restrict the right of any person to exercise and enjoy all rights and remedies otherwise available to such person by law relating to the matters covered hereunder, such as but not limited to private rights to abate nuisances or recover damages for tortious conduct. The Township

does not intend to preempt or restrict any such rights and remedies of any person.

8. The Supervisors shall have the right and the applicant, by applying for a certificate of registration, or a transporter, collector or processor, by engaging in conduct within the Township, shall be deemed to consent to the Supervisors or their agents entering any building, property, premises, place or vehicle, where any waste is deposited or disposed of or stored, collected or processed for the purpose of making such investigation or inspection and taking such samples as may be necessary to ascertain compliance or noncompliance by any person with the provisions of this ordinance, any registration certificate issued hereunder, any permit issued by the Commonwealth of Pennsylvania, or any law, rule or regulation of the Township, Commonwealth, United States or any other proper authority. The Supervisors shall also have the right to inspect vehicles hauling waste, whether loaded or empty, and to take samples thereof. All rights hereunder shall be exercised in a reasonable manner and in compliance with reasonable requirements of the inspected party as to matters of safety and accompaniment by representatives of the inspected party during inspections, but this requirement shall not require advance notice or prohibit inspection merely because no one is available at the time to accompany an inspector.

9. The remedies herein provided for the enforcement of the provisions of this ordinance or any other remedy afforded by law shall not be deemed mutually exclusive and may be employed simultaneously or consecutively at the discretion of the Supervisors.

10. If any section or part of any section, sentence, clause or phrase of this ordinance shall be construed to be unconstitutional or invalid by any court of competent jurisdiction, such ruling shall not affect the validity of any other section, sentence, clause or phrase hereof, all of which shall remain in full force and effect and, for this purpose, the provisions of this ordinance are

hereby declared to be severable and the intention of the Supervisors is hereby declared to be that this ordinance would have been enacted without such constitutionally offensive section, sentence, clause or phrase.

11. Applicant shall annually or at such greater frequency as applicant may desire (1) submit a report to the Supervisors listing the characteristics and specific sources of the waste received the previous year and, (2) submit to the Township a report updating the emergency management information supplied, or required to have been supplied, with the application under the terms hereof.

12. In order to cover situations where composition of waste may change before additional information is made available or where the Township or emergency responders are unable to determine the characteristics of a particular load of waste that may be involved in an accident, the applicant shall have available to the Township and emergency responders a qualified individual twenty-four (24) hours a day to deal with any such accidents or problems, which individual shall have reasonable familiarity with all of the substances thereof which will be handled by the project, and of emergency procedures to be undertaken with respect to any such substance or who shall have access to persons who have such information and expertise. The purpose of this provision is to provide as much immediate, local, on-site expertise as possible, with easy access to more detailed information, so as to minimize any danger or damages resulting from a fire, accident, spill or other emergency. The applicant shall designate a contact person or persons who can be reached for emergency information at any time. The Supervisors shall designate a person with whom the applicant can communicate on emergency matters at any time.

13. The applicant shall, on an annual basis, meet and confer with Township and emergency responder representatives, including representatives of the East Penn Township Volunteer Fire

Company, to discuss and share information and procedures for responding to fires, accidents, spills and other emergencies related to the applicant's operations.

14. In implementing this ordinance, the Township shall provide for such notice and hearings preceding adverse action as may be required by applicable law or constitutional provisions.

15. The applicant shall maintain such records as required by law and all such information shall be subject to inspection by the Township or its agents.

16. The Supervisors may participate to the maximum extent allowed by law in the State permitting process and in all administrative and judicial remedies provided for therein and nothing in this ordinance shall be deemed to detract in any way from the Township's right to participate in the permitting process and in all administrative and judicial remedies provided for with respect hereto.

17. No grant of a certificate of registration hereunder and no grant of a certificate contingent upon a State permit hereunder shall be deemed to be the consent of the Township to the issuance of a permit by the State or to prohibit the Township from taking any position before the State that it deems advisable.

18. This ordinance and all obligations imposed hereunder or under any registration certificate or agreement pursuant hereto shall be binding upon applicant and his or its heirs, successors and assigns.

19. Nothing in this ordinance shall be construed as estopping the Commonwealth, or any district attorney or solicitor of this municipality, from proceeding in courts of law or equity to abate pollution forbidden under any applicable law, or abate nuisances under existing law. It is hereby declared to be the purposes of this act to provide additional and cumulative remedies, to the extent such



remedies do not conflict with the laws of the Commonwealth of Pennsylvania, to control the collection, storage, transportation, processing, treatment, and disposal of waste within the Township, and nothing contained in this ordinance, or any act done by virtue of this ordinance shall in any way abridge or alter rights of action or remedies now or hereafter existing in at law or in equity, or under the common law or statutory law, criminal or civil, nor shall any provision in this ordinance, or the granting of any certificate of registration under this ordinance, or any act done by virtue of this ordinance, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or statutory law, civil or criminal, at law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or to enforce common law or statutory rights. No courts in this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of such jurisdiction in any action to abate any private or public nuisance instituted by any person for the reasons that such nuisance constitutes air or water pollution.

### **SECTION XIII**

#### **Cooperation**

In order to implement this ordinance and to facilitate the reasonable operation hereunder by the Township and any applicant, the Township Supervisors hereby agree to meet with the applicant and the parties' respective engineering, legal and other advisors at such reasonable times and with such reasonable frequency as may be reasonably required to facilitate implementation and enforcement of this ordinance consistent with applicable State law and in furtherance of the public Interest.

### **SECTION XIV**

#### **APPLICATION FEE**

Any applicant for a registration certificate under this ordinance shall include with its application a registration fee of One

Hundred (\$100.00) Dollars. This fee shall be payable upon submitting the application to East Penn Township to help cover the administrative costs of processing the application. In addition, the applicant shall be responsible for reimbursing the Township for any specific expenses incurred by the Township in evaluating and processing the application, including but not limited to advertising, engineering fees and costs, attorney's fees and costs and duplication expenses for which the Township is unable to secure payment or reimbursement from other sources.

**SECTION XV**  
**EXCLUSION**

This ordinance does not apply to the application or storage of biosolids/sewage sludge, as defined in the applicable Department of Environmental Protection regulations.

**SECTION XVI**  
**REPEALER**

This ordinance specifically amends Ordinance 77, and any sections of Ordinance 77 which are contrary to or in conflict with these amendments are specifically repealed and superseded hereby. In addition, all prior ordinances or parts of ordinances that conflict with or are inconsistent with the provisions of this ordinance are hereby repealed. All other provisions of the Ordinances of the Township, as amended, shall remain in full force and effect.

**SECTION XVII**  
**Effective Date**

This Ordinance shall become effective five (5) days after the date of enactment. ORDAINED AND ENACTED this 1<sup>st</sup> day of November, 2021.

BOARD OF SUPERVISORS  
East Penn Township  
Carbon County, Pennsylvania

  
Chairman

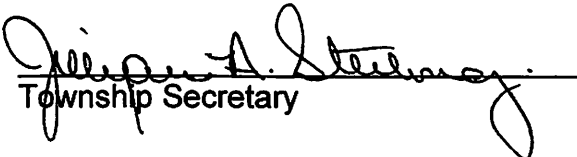
  
Supervisor

  
Supervisor

  
Supervisor

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Supervisor

Attest:

  
Township Secretary