

PROPOSED SLUDGE ORDINANCE **ETNA, MAINE** APRIL 11, 1994

Pursuant to Section 4 subsection C, paragraph 1 of The Ordinance: Re-establishment of Etna Planning Board and 30-A MRSA 3001, the Planning Board is invested with the power to establish, review, grant and deny permits regulating all sludge application, storage or disposal within the Town of Etna, whether proposed, existing or ongoing, within the confines of the following restrictions:

PURPOSE

To regulate the application of sludge in the Town of Etna, thereby protecting water, air and soil quality, public health and wildlife habitat. In order to regulate the application of sludge in the Town of Etna, there shall be no dumping or disposal of sludge as defined in this ordinance without a permit being applied for and granted by the Etna Planning Board.

DEFINITIONS

Sludge: The term "sludge" refers to solid, semi-solid or liquid generated by a municipal, commercial or industrial waste water treatment plant. Sludge is one type of residual and is included when the term "residual" is used alone. The term "sludge" does not include (nor does this ordinance attempt to regulate) either material of the same origin that has been treated and packaged for retail sale as garden fertilizer or any non-processed agricultural waste.

In Vessel Composting: The term "in vessel composting" refers to sludge that is maintained in a heating vessel at 55 degrees Celsius for ten days or longer.

Field Stacking: The term "field stacking" is defined as the stacking of materials for no longer than 72 hours before spreading. In case of inappropriate spreading conditions or lack of test results, an extension may be granted.

Code Enforcement Officer (CEO): a certified code enforcement officer appointed by the municipal officers.

EFFECTIVE DATE

This ordinance becomes effective on April 23, 1994 and applies to new and existing sludge spreading operations.

I. APPLICATION PROCEDURE

A. Application must be filed with the Planning Board 90 days before the first delivery date - application shall include a completed "Application for Sludge Utilization" prepared by the Department of Environmental Protection. In the case of existing operations, application must be filed within 30 days after passage of this ordinance, but operations may continue while the permit is being processed by the Planning Board, if a valid DEP

permit is in force.

B. Fee of \$500.00

C. Map of the proposed site

D. Results of baseline testing from wells and soils tests located adjacent to the spreading site.

E. Description of management techniques to protect ground and surface water.

F. By descriptive letter and/or other proof of insurance, evidence of the applicant's complete acceptance of liability and financial capacity to mitigate any potential damage to humans, animals, soil or water resources caused by the storage or application of proposed residual. The amount of insurance shall be no less than \$1,000,000.00 covering liability to any person or property harmed by any materials placed in Etna by the applicant or any agent of the applicant.

G. The Planning Board, after initial review of the application, may require other such information as it deems necessary to guarantee adequate protection of the public health and safety. This may include, but is not limited to background water tests of existing wells or additional hydrogeologic data. Additional testing shall only be required when there is evidence of a circumstance at or in the vicinity of a specific site that was not adequately addressed by the applicant. Well-substantiated public comment may give cause for the Board to require additional baseline testing or other information.

II. REVIEW PROCEDURE

Upon receipt of the application, the Chairperson shall set a date for the first consideration of the application and prepare a public notice thereof. The notice will include mention of the baseline water tests recommended for wells within 500 feet of the proposed activity. The Board shall provide the applicant with a copy of the notice and direct the applicant to deliver a copy to all abutters and property owners within 100 feet of affected sites of the proposed activity. The applicant is responsible for all costs incurred in fulfilling review requirements.

The Board shall communicate with the DEP to ascertain the status of the applicant's state permit. If the Town permitting process moves ahead of the state process, the Town shall make receipt of a DEP permit a conditional requirement of the Town's permit.

Using any information received from abutters and other concerned citizens, a Code Enforcement Officer shall inspect the proposed site(s) to verify information presented in the application. The CEO shall notify the DEP and the Board of his/her findings. The Planning Board shall determine whether additional or corrected information is required of the applicant.

Within 30 days of filing the application, the Board shall notify the applicant in writing either that the application is complete or what other materials must be provided. The Board shall grant,

grant with conditions, or deny the permit within 60 days of the meeting at which it determines that it has received a completed application.

In granting or denying the application, the Board shall consider the following criteria and, before granting approval will determine that:

1. Pollution. The proposed sludge spreading will not result in undue water or air pollution. In making this determination, they will at least consider:

- A. The elevation of the land above sea level and its relation to flood plains;
- B. The nature of soils and subsoils and their ability to adequately support waste disposal;
- C. The slope of the land and its effect on effluents;
- D. The impact of the operation on nearby streams, brooks or other bodies of water;
- E. The applicable state and local health and water resource rules and regulations. The applicant must prove that the sludge will contain no toxic materials as defined in the United States Clean Water Act.

2. Traffic. The proposed operation will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of highways or public roads existing or proposed.

3. Aesthetic, cultural and natural values. The proposed sludge spreading operation will not have an undue adverse effect on the scenic or natural beauty of the area, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare or irreplaceable natural areas.

4. Groundwater. The proposed sludge spreading operation will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

5. Freshwater wetlands. All freshwater wetlands within the proposed sludge spreading operation site have been identified on any maps submitted as part of the application, no matter the size of those wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

6. River, stream and brook. Any river, stream or brook abutting or within the proposed sludge spreading operating site has been identified on any maps submitted as part of the application.

7. Nuisances. The proposed sludge spreading operation will not have an undue negative impact on the abutters due to unreasonable levels of noise, odors, or outdoor lighting.

Within 7 days after reaching its decision, the Board shall notify the applicant in writing of the action taken by the Board.

A permit issued under this ordinance shall be valid for a period of 5 years from the date of issuance, but shall be subject to annual review by the Board. Each March, a certified CEO shall make a report to the Board on the status of each permit. In the absence of a CEO, the report may be given by another Town Officer at the request of the Planning Board. The Board shall then assure that the conditions of the permit were met for the previous year. A permit to add one or more site(s) to an existing permit shall lapse at the same time as the original permit.

III. MONITORING

A. Monitoring of all testing and spreading shall be supervised by a certified Code Enforcement Officer, in conformity with EPA standards or more stringent standards set by the Etna Planning Board. Failure to comply with these standards shall be a violation of this ordinance.

B. Testing of sludge: All materials shall be tested using levels, tests and standards as set by the EPA document #40 CFR Part 503 regulation approved by the EPA (11-25-92) with a test frequency at least as strict as EPA standards, set by the Town of Etna, and carried out by an independent laboratory, and with the option of increasing the stringency of all tests, levels, standards and frequencies as deemed necessary by the Etna Planning Board. Minimum testing shall be as follows:

1. within 72 hours of delivery to the site prior to any spreading
2. 60 and 120 days after spreading (for loading only)
3. prior to any additional material being spread
4. at the discretion of the Planning Board to insure that standards are maintained between scheduled testings

C. The cost of all testing will be paid by the license holder

D. The Town of Etna will only accept sludge that has been processed by "in vessel composting" which means that the sludge is maintained in a heating vessel at 55 degrees Celsius for ten days or longer

IV. TESTING OF WATER WELLS

A. Any persons having land abutting the spreading areas shall be entitled to have their water wells tested -

1. before spreading, for baseline
2. yearly, while permit remains in effect
3. yearly for five years after permit ends

B. all cost of testing will be paid by the permit holder

C. testing facility will be designated by the Planning Board

V. FIELD STACKING

A. Conditions for field stacking materials:

1. materials to be field stacked shall be placed on and covered with a waterproof material to prevent leaching into the

soil and becoming airborne.

2. each load of material shall be kept separate from the other for testing.

VI. OVERSEEING OF SPREADING

A. 48 hours written notice will be given to the CEO by certified mail or hand delivery with signature.

B. At the CEO's discretion, a time shall be given to the permittee to spread. The spreading shall be overseen by the CEO or an appointed alternate.

VII. ENFORCEMENT AND PENALTIES

1. Enforcement

A. The CEO may enter the proposed sludge spreading operation site at any reasonable hour to inspect the property for compliance with this ordinance. The CEO's entry onto the property under this paragraph is not a trespass.

B. The CEO may issue a summons to any person who violates this ordinance.

C. When authorized by the Selectmen, the CEO may represent the municipality in court in the prosecution of alleged violations of this ordinance.

2. Liability and penalties for violations. Any person, including but not limited to a landowner, the landowner's agent or a contractor, who violates any of the provisions of this ordinance is liable for the penalties set forth in 30-A MRSA Section 4452.

VIII. RIGHT TO APPEAL

The Appeals Board of the Town of Etna shall have the power to hear and determine appeals from any person aggrieved by the decision of the Planning Board in the matter of this ordinance.

IX. APPEAL PROCEDURE

A. Appeals must be filed in accordance with Article 35, "Board of Appeals Ordinance for the Town of Etna", Section VIII.

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Adopted 4/94

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ND NAVIGATION
Title 38

Title 5, chapter 375,¹
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Title 5, chapter 375,

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1993, c. 373, § 3, eff.

notice to the depart-

-249, among other
responsibilities and
omental Protection,

WASTE MANAGEMENT
Ch. 13

the Commissioner of Environmental Protection
and the Department of Environmental Protection.

1991 Amendment. Laws 1991, c. 734, § 1, in
subsec. 4, added sentence that provided that ex-
penses not used for direct, substantive partici-
pation were not eligible for reimbursement.

1992 Amendment. Laws 1992, c. 373, § 3, in
subsec. 2, substituted "department may hold" for
"department shall hold", provided that the hearing
be conducted in accordance with chapter 375, sub-
chapter IV of Title 5, and deleted provision autho-

rising the meeting to be held in the municipality
where the proposed facility is to be located or in
the vicinity thereof, as the municipal officers agree.

Regulatory Authority

Laws 1991, c. 734, § 8, eff. April 3, 1992, provid-
ed.

"Notwithstanding the Maine Revised Statutes,
Title 5, section 8064, the Maine Waste Manage-
ment Agency may adopt rules necessary to imple-
ment this Act prior to the submission of the agen-
cy's next regulatory agenda."

§ 1310-T. Application fee

In addition to any fees imposed pursuant to section 352, the applicant shall pay a fee of \$50,000 at the time of filing an application for a solid waste disposal facility. An application is considered incomplete and the department shall defer any review or processing of the application until the applicant has paid the full \$50,000 fee. The fee must be deposited in the Maine Environmental Protection Fund and used only to make reimbursements and grants to the intervenor in the applicant's license proceedings pursuant to section 1310-S. The applicant releases all control over this money and does not retain any rights to audit the spending of these funds once the fee has been deposited in the Maine Environmental Protection Fund. Any portion of the fee not disbursed by the department for these purposes is reimbursed to the applicant, together with any interest that may have accrued on that portion. Upon request, the commissioner shall provide an audit report to the applicant after all the application and appeal proceedings before the department have concluded.

1989, c. 350, § B-250.

Historical and Statutory Notes

Amendments

1989 Amendment. Laws 1989, c. 350, § B-250,
among other changes, redistributed the responsi-

bilities and duties of the Board of Environmental
Protection, the Commissioner of Environmental
Protection, and the Department of Environmental
Protection.

§ 1310-U. Municipal ordinances

Municipalities are prohibited from enacting stricter standards than those contained in this chapter and in the solid waste management rules adopted pursuant to this chapter governing the hydrogeological criteria for siting or designing solid waste disposal facilities or governing the engineering criteria related to waste handling and disposal areas of a solid waste disposal facility. Except as provided in section 2173, municipalities are further prohibited from enacting or applying ordinances that regulate solid waste disposal facilities owned by the agency or a regional association.

Under the municipal home rule authority granted by the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, municipalities, except as provided in this section, may enact ordinances with respect to solid waste facilities that contain standards the municipality finds reasonable, including, without limitation, conformance with federal and state solid waste rules; fire safety; traffic safety; levels of noise heard outside the facility; distance from existing residential, commercial or institutional uses; ground water protection; and compatibility of the solid waste facility with local zoning and land use controls, provided that the standards are not more strict than those contained in this chapter and in chapter 3, subchapter I, articles 5-A and 6¹ and the rules adopted under these articles. Municipal ordinances must use definitions consistent with those adopted by the board.

A municipality adopting an ordinance under this section shall forward a copy of the ordinance to the commissioner within 30 days of its adoption.

1989, c. 325, § E, 33; 1989, c. 360, § A-3; 1989, c. 360, § B-251; 1991, c. 62, § A-32, eff. May 1, 1991.

¹ Sections 480-A et seq. and 481 et seq. of this title.

MAINE MUNICIPAL ASSOCIATION

Legal Services
37 Community Drive
Augusta, Maine 04330-9411

WILLIAM W. LIVENGOOD
REBECCA WARREN SHEL
RICHARD P. FLEWELLING
ELLERBE P. COLE
JOSEPH J. WATHEN

Telephone (207) 623-8428

April 21, 1994

Tom Maher, Chairman
Planning Board
Town of Etna
P.O. Box G
Etna, Maine 04434

VIA FAX

Re: Proposed Sludge Ordinance

Dear Tom:

You have asked for comments on David Wright's letter of April 14th. Mr. Wright states that the DEP has determined that sludge utilization sites are "solid waste facilities" and therefore that pursuant to 38 M.R.S.A. §1310-U, municipal sludge ordinances cannot be more stringent than departmental rules. This is the preemption issue I identified on page two of my letter of March 21st.

There is no doubt that §1310-U, copy enclosed, preempts more restrictive municipal regulation of solid waste facilities. The question here is whether or not sludge utilization sites constitute "solid waste facilities." The definitions under the state's waste management laws (38 M.R.S.A. §1303-C) provide no clear answer to this question, and to my knowledge there is no Maine court decision resolving the issue. Quite frankly, one can find some support in the statutes for either view, and until a court decides (or the legislature clarifies), the matter may well remain in doubt.

The upshot of all this is that an ordinance which is more restrictive than state regulations is liable to be court-tested either preemptively by a would-be permit applicant or by the municipality in a judicial enforcement action. I am unable at this time to predict with any confidence the probable result.

Very truly yours,

Richard P. Flewelling
Richard P. Flewelling
Senior Staff Attorney

RPF:akd
Enclosure