

**EAST COVENTRY TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2024-268

FOOD PROCESSING RESIDUAL ORDINANCE

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF EAST COVENTRY TOWNSHIP, CHAPTER 10 (HEALTH AND SAFETY) TO REPEAL AND REPLACE IN ITS ENTIRETY PART 6 (LAND APPLICATION OF FOOD PROCESSING RESIDUAL) TO IMPLEMENT REGULATIONS FOR LAND APPLICATION OF FOOD PROCESSING RESIDUAL (FPR) CONSISTENT WITH RULES AND REGULATIONS PROMULGATED BY THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION.

The Board of Supervisors of the Township of East Coventry does hereby **ENACT** and **ORDAIN** as follows:

SECTION I. - Amendment to Code

The Codified Ordinances of East Coventry Township, Chapter 10 (Health and Safety) is hereby amended by deleting the existing Part 6 (Land Application of Food Processing Residual) in its entirety and replacing it with an amended and restated Part 6 entitled “Land Application and Storage of Food Processing Residual” as follows:

Part 6 Land Application and Storage of Food Processing Residual

Section 10-601 Purpose.

1. The purpose of this Part is to establish uniform standards for land application and storage of food processing residual (“FPR”), as the term FPR is defined by the Pennsylvania Department of Environmental Protection (“PA DEP”), in the Township. While the Township recognizes that PA DEP and the Courts of the Commonwealth have determined that land application of FPR is a

“normal agricultural operation”; and that the land application of FPR should comply with PA DEP rules, regulations, standards and best management practices, including those set forth in the Food Processing Residual Management Manual, PA DEP document number 245-5400-100, as may be amended or revised (collectively “FPR Manual”). The Township also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such land application of FPR through the standards set forth in the following provisions.

Section 10-602 Required Minimum Distances.

1. Unless otherwise agreed, in writing, by permission of the owner of the feature listed, the minimum setback of land application of FPR from the listed features is as follows:

Property line: 50 feet

Occupied buildings: 300 feet

Individual (private) water well: 300 feet

Public water well: 300 feet

Upgradient from a surface water source: 1,000 feet

Intermittent stream: 100 feet

Perennial streams 100 feet

Exceptional value wetlands as defined by PA DEP or the Environmental Protection

Agency: 100 feet

Sinkhole: 100 feet

Sinkhole drainage area: 100 feet

Perimeter of pond or undrained depression: 25 feet

Bedrock outcrop: 25 feet

2. The above isolation distances shall be depicted on a USGS Map with a scale not to exceed 1" = 200.'

Section 10-603 Slopes.

1. Subject to compliance with all other provisions of this Part, land application of FPR is permitted on land having slopes of less than 15%.

2. Land application of FPR on land having slopes of greater than 15% but less than 20% is permitted on such slopes with well-established crop cover or adequate crop residue cover as required pursuant to PA DEP guidelines and regulations applicable to land application of FPR. Land application of FPR on slopes of 20% or more is discouraged.

3. Application of FPR on slopes of 20% to less than 25% is only permitted by subsurface injection approved by PA DEP.

4. Application of FPR on slopes of 25% or greater is prohibited.

5. For purposes of this Part, slopes shall be determined by the most current United States Geological Survey (“USGS”) slope maps or actual topographical survey plan prepared and sealed by a surveyor professional licensed in the Commonwealth of Pennsylvania. In the event of a conflict between a USGS slope map and a sealed survey plan, the sealed survey plan will be used to determine slopes.

Section 10-604 Ground Water, Seasonal High-Water Table, Bedrock.

1. The regional groundwater depth under the site to which FPR will be applied must be greater than 4 feet.

a. For purposes of this Part, in the absence of actual measurements performed and certified by a licensed hydrogeologist, regional groundwater depth will be based upon USGS and Pennsylvania Geologic Survey.

b. In the event that regional groundwater depths applicable to a proposed FPR land application site are not available through USGS or Pennsylvania Geologic Survey, actual groundwater depths, measured and certified by a hydrogeologist must be provided.

2. The minimum seasonal-highwater table depth under a site to which FPR will be applied must be greater than 20 inches.

a. The seasonal-highwater table is determined by the presence of mottling as determined by a licensed hydrogeologist or soil scientist.

b. If the FPRs to be applied are certified as FPRs which have been stabilized by a “Process that Significantly Reduces Pathogens” and a “Process that Further Reduces Pathogens” recognized as acceptable by PA DEP, the seasonal high-water table minimum depth may be reduced to 12 inches.

3. The minimum bedrock depth under a site to which FPR will be applied must be greater than 20 inches.

a. Bedrock depth must be determined by a licensed hydrogeologist or soil scientist.

b. If the FPRs to be applied are certified as FPRs which have been stabilized by a “Process that Significantly Reduces Pathogens” and a “Process that Further Reduces Pathogens” recognized as acceptable by PA DEP, the bedrock minimum depth may be reduced to 12 inches.

Section 10-605 Erosion and Sediment Control, Field Markings.

1. Prior to the land application of FPR, the property owner to which FPR is proposed to be applied must submit to the Township a farm conservation plan for erosion and sediment control prepared in accordance with Pennsylvania Code Title 25, Chapter 102 (“E & S Plan”). The E & S Plan must be implemented and maintained by the property owner. Township approval of the E & S Plan must be obtained prior to the land application of FPR.

2. Prior to the land application of FRP, if the land to which FRP is to be applied is not clearly delineated (that is, for example, in a meadow condition without a ploughed field or identifiable crop), the property owner must mark the area to which FRP will be applied (for example, by way of corner stakes and where boundaries change direction).

Section 10-606 Quality, Sampling, Testing and Certification.

1. FRP for land application in the Township must meet the minimum quality standards for “food processing wastes used for agricultural purposes” required by PA DEP and Chapter 287 of Title 25 of the Pennsylvania Code as may be amended or restated from time to time.

2. FRP for land application in the Township must not contain any “hazardous waste” or “residual waste” as defined by Chapter 287 of Title 25 of the Pennsylvania Code, or any non-FRP waste.

3. The property owner of the land to which FRP will be applied must provide, at their option, one of the following to the Township: 1) prior to land application, the results of the Toxic Characteristics Leaching Procedure (TCLP) test, the American Society for Testing Materials (ASTM) water leaching test, or such other test acceptable to the Township on the FRP to be applied and a written certification, made under penalty of perjury, that said results are true, correct and representative of the FRP to be applied; or, 2) at least 7 days prior to application, a sample of the FRP to be applied, which sample must be sufficient in form, substance and size for the Toxic Characteristics Leaching Procedure (TCLP) test, the American Society for Testing Materials (ASTM) water leaching test, or such other test acceptable to the Township. In the event FRP is stored on-site, in the alternative, the property owner may choose to provide the Township with access to stored FRP to conduct its own sampling, provided that such access is provided 10 days prior to application. Further, the property owner hereby authorizes the Township to use the sample to conduct testing of the FRP to determine, among other things, that the FRP does not contain

substances that would, for example, classify the FPR as residual waste or hazardous waste under PA DEP regulations. In the event any test performed or test results obtained under this Section indicate that the FPR to be land applied contains any substance that would reclassify the FPR as residual waste or hazardous waste under PA DEP regulations, said reclassified FPR shall not be land applied in the Township.

4. The property owner of the land to which FPR are applied must provide the Township with annual access to the lands upon which FPR is applied in the event the Township desires to take samples of soil to verify compliance. The property owner hereby authorizes the Township to use the sample to conduct soil chemistry testing to ensure that the land application of FPR is not introducing, for example, higher than acceptable levels of heavy metals or synthetic organics onto the land. The lifetime heavy metal loading rates of FPR applied to the land may not exceed the limits set forth in the FPR Manual.

5. The property owner of the land to which FPR are applied must provide the Township with an annual report, by the end of January for the prior fiscal year in which FPR is applied, which annual report shall include the minimum record keeping information set forth in the FPR Manual (See, FPR Manual, Chapter 8). The Township reserves the right, but is not obligated, to conduct soil testing to verify information contained in the annual report.

6. The property owner of the land to which FPR are applied must keep a log of daily activities including, at a minimum, the following: type, percentage of solids and weight or volume of FPR that is land applied; name and mailing address of each generator of FPR that is land applied; transportation records of FPR that is land applied (including a chain of custody from FPR generator to land application); a sketch of the area to which FPR are applied (for example, a USGS map overlaid with an outline of the area to which FPR are applied); the FPR land application rate; and pH records of the FPR applied. The aforementioned log must be made available by the property

owner to which FPR are applied to the Township for inspection or copying, upon request by the Township, and within 1 business day of the Township's request. The log, or portions of it may be marked confidential by the property owner; and, if marked as such, the Township will treat any physical copy of the log as confidential, subject to disclosure requirement under the Pennsylvania Right-to-Know Law.

7. In the event the FPR to be land applied must be stabilized pursuant to PA DEP rules or regulations prior to application, the property owner of the land to which FPR will be applied must provide a certification acceptable to the Township that the FPRs have been stabilized by a "Process that Significantly Reduces Pathogens" and a "Process that Further Reduces Pathogens" recognized as acceptable by PA DEP, and a summary of the manner of stabilization.

Section 10-607. Storage of Food Processing Residual.

1. Prior to storage of FPR in a holding tank or other structure affixed to the land (FPR Storage Tank"), or construction of an FPR Storage Tank, the property owner of the land on which an FPR Storage Tank is proposed to be located must provide the Township with a sketch plan and narrative plan ("FPR Storage Plan"), signed and sealed by engineer, architect, or other design professional acceptable to the Township and licensed in the Commonwealth of Pennsylvania, showing and certifying that the FPR storage and design of the FRP Storage Tank comply with all applicable local, state and federal rules, regulations and statues, including this Part 6 and PA Code Title 25, Chapter 299, as applicable; and certifying that the size (volume) of the proposed FPR Storage Tank is a suitable size (and not oversized) for land application on the acreage of the tract of land on which the FPR Storage Tank is located. FPR stored in an FPR Storage Tank must only be applied to the parcel or contiguous tract of land upon which the FPR Storage Tank is affixed.

2. The FPR Storage Plan must include a narrative describing proposed notification, response, and clean-up measures to be implemented in the event of a leak or spill of FPR from the

FPR Storage Tank. The FPR Storage Plan must also include a narrative describing proposed maintenance and inspection schedule for the FPR Storage Tank to ensure proper working order of the FPR Storage Tank and related improvements, and the structural integrity of the FPR Storage Tank.

3. The FPR Storage Plan must be submitted to the Township prior to use or construction of an FPR Storage Tank. The FPR Storage Plan may be updated or amended for time to time, with Township verification of compliance.

Section 10-608. Water Supply Protection.

1. The property owner of the land to which FPR are proposed to be applied must, or the owner of an FPR Storage Tank, as the case may be, prior to the storage or application of FPR, submit a narrative plan to the Township providing for a temporary and permanent water supply in the event of contamination of a water supply by FPR (“Water Supply Plan”). The Water Supply Plan must provide a temporary water within 48 hours of notice of contamination and a permanent water supply within 90 days of notice of contamination, and the estimated costs to provide a temporary water supply and permanent water supply, and the means by which the property owner intends to financially secure the costs of implementing the temporary water supply and permanent water supply, if required. Prior to storage or application of FRP, the property owner of the land on which FPR are to be stored must submit to the Township a Water Supply Plan and provide adequate financial security for the implementation thereof.

Section 10-609. Nuisance Prevention.

1. Land application and storage of FPR must be conducted in a manner that limits odors, vermin, ponding of liquids to those associated with a normal agricultural operation.

2. Land application and storage of FRP must not adversely impact soil composition, ground water, the food chain or environment more than a normal agricultural operation.

3. FPR may not be applied to land where root vegetables which may be eaten raw will be grown within 2 years of said FPR application.

Section 10-610. Records, Compliance with Laws and Regulations, Notice.

1. Prior to the storage or land application of FPR, or any change to an existing FPR storage or land application activity, the property owner of land upon which FPR are stored or applied must complete and deliver to the Township a Food Processing Residual Land Application and Storage Compliance Review Form providing documentation and certification that the storage and land application of FPR will comply with all federal, state and local laws, rules, regulations and ordinances. The provided documentation shall include at a minimum all documentation the property owner and/or land applier submitted to the PA DEP.

2. Upon receipt of a Food Processing Residual Land Application and Storage Compliance Review Form the Township will: review the documentation provided to ensure compliance with all federal, state and local laws, rules, regulations and ordinances; and mail a one-time notice to property owners within 500 feet of the boundary of the tract upon which storage or land application of FRP is proposed alerting them of the submitted Food Processing Residual Land Application and Storage Compliance Review Form and recommending property owners review the testing guidelines posted on the PA DEP website and test their private wells prior to the commencement of FPR land application.

3. The property owner of land upon which FPR are stored or applied, on behalf of themselves, their successors and assigns acknowledges and agrees that the Township will maintain records provided to it and a list of parcels of land upon which FPR is stored or applied, in a manner and for a length of time deemed administratively necessary in the Township's sole discretion; and, further acknowledges and agrees that those records may constitute public records subject to public disclosure under the Pennsylvania Right-to-Know Law unless otherwise exempt thereunder.

4. This Part is intended to supplement and not supersede the laws of the Commonwealth or rules and regulations promulgated by PA DEP or any other agency having jurisdiction over and application of FPR which are more stringent than provisions hereof.

5. If a law of the Commonwealth of Pennsylvania, law of the Federal Government, holding of the Pennsylvania Supreme Court or holding of the United States Supreme Court determines that land application of FPR is not a “normal agricultural operation” this ordinance shall null and void and automatically repealed.

Section 10-611. Violations and Penalties.

1. Any person who shall violate any provision of this Part 6 or who, being the owner of a lot, shall permit such violation to occur thereon, shall, upon conviction before a District Judge, be sentenced to pay a fine of not less \$1,000.00 for each separate offense plus costs and attorney’s fees incurred in the prosecution of such violation. Each day that FPR is land applied in violation of this Part 6 shall constitute a separate violation punishable by a separate fine or penalty. In addition to the penalty provisions herein, the Board of Supervisors may authorize institution of proceedings in equity to compel compliance with this Part and/or seek to enjoin temporarily or permanently the land application of FPR.

2. The Township, by allowing land application of FPR or taking any other action pursuant to this Part 6, does not waive, reduce, lessen, or impair the lawful police powers vested in the Township under applicable federal, state, and local laws and regulations.

SECTION II. – Severability

The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council

that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III. – Failure to Enforce not a Waiver

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV. – Effective Date

This Ordinance shall take effect and be in force from and after its approval as required by the law.

SECTION V. – Repealer

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.

ORDAINED AND ENACTED by the Board of Supervisors of East Coventry Township, Chester County, Pennsylvania, this 12th day of February, 2024.

**BOARD OF SUPERVISORS OF
EAST COVENTRY TOWNSHIP**

Attest:


Eugene C. Briggs, Secretary

By:


Ray Kolb, Chairman

NOTICE

NOTICE is hereby given that the East Coventry Board of Supervisors, at its public meeting on February 12, 2024 at 7:00 p.m. at the East Coventry Township Building, 855 Ellis Woods Road, Pottstown, Pennsylvania 19465, will consider and could vote to adopt an ordinance amending the Code of Ordinances of East Coventry Township, Chapter 10 (Health and Safety), to delete the existing Part 6 (Land Application of Food Processing Residual) in its entirety and replace it with an amended and restated Part 6 entitled “Land Application and Storage of Food Processing Residual” to implement regulations for the storage and land application of food processing residual (FPR) consistent with rules and regulations promulgated by the Pennsylvania Department of Environmental Protection.

Copies of the proposed Ordinance are available for public inspection at the Township Offices, 855 Ellis Woods Road, Pottstown, Pennsylvania 19465 where a copy of the proposed ordinance may be obtained at a charge not greater than the cost thereof, the offices of the Pottstown Mercury, 307 Derstine Avenue, Lansdale, PA 19446 and the Chester County Law Library, after enacted, 201 West Market Street, Suite 2400, West Chester, Pennsylvania 19380-0989 during normal business hours.

**MARK A. HOSTERMAN, ESQUIRE
WISLER PEARLSTINE, LLP**

Solicitor for the Township of East Coventry