

**CHAPTER 20**  
**SOLID WASTE**

**PART 1**

**SOLID WASTE MANAGEMENT**

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**PART 1**

**SOLID WASTE MANAGEMENT**

**§101. TITLE, SCOPE AND LEGISLATIVE INTENT.**

1. Title. This Part shall be known and may be cited as the "Solid Waste Management Ordinance of Vernon Township."
2. Scope.
  - A. The provisions of this Part shall apply to:
    - (1) Administration and enforcement procedures for the location, design, construction, operation and maintenance of solid waste processing or disposal facilities.
    - (2) Issuance of permits and the collection of all fees therefor.
    - (3) Checking plans.
    - (4) Initial and regular inspection.
    - (5) Making record plans of the facilities provided hereunder.
    - (6) Administrative procedures for implementation and enforcement of this Part.
    - (7) Providing penalties for violation hereof.
  - B. In interpreting and applying the provisions of this Chapter they shall be deemed to be the minimum requirements for the promotion of the public health, safety, comfort, convenience and general welfare.
3. Legislative Intent. Solid waste processing or disposal facilities, improperly operated or policed, constitute an actual or potential threat to the public health, safety and welfare. While acknowledging the role of the Pennsylvania Department of Environmental Protection in the field of solid waste and recognizing the limited preemption of regulation effected by the Pennsylvania Solid Waste Management Act and Succeeding related legislation and regulations the Board of Supervisors has determined the importance of local regulation and enforcement in protecting the public against the threats imposed by the operation of a solid waste processing or disposal facility.

(Ord. 1983-1, -/-/1983, §I; as amended by Ord. 1997-2, 3/6/1997)

**§102. ORGANIZATION.**

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### 1. Board of Supervisors.

- A. General. The Board of Supervisors is hereby authorized and directed to enforce all of the provisions of this Part.
- B. Employment of Consultant. The Board of Supervisors may employ an engineering consultant to review each permit application made hereunder who shall review same and submit recommendations to the Supervisors within 30 days of his receipt thereof. Said consultant may also assist with the promulgation of regulations and enforcement where appropriate.
- C. Rules and Regulations.
- (1) The Board of Supervisors is hereby authorized and directed to write, revise, revoke and enforce other rules and regulations for the design, construction, operation and maintenance of solid waste management facilities in addition to the provisions of this Part, whether of general or specific application, that are deemed necessary for the prevention of nuisances or hazards to public health and safety.
  - (2) The Board of Supervisors is also authorized and directed to enforce any and all other rules and regulations in addition to the provisions of this Chapter, whether of general or specific application, that are deemed necessary for the administration and enforcement of this Chapter.
- D. Deputies. The Board of Supervisors may deputize such officers, assistants, inspectors and employees as may be necessary to enforce and carry out the provisions of this Part.

2. Penalties. Any person, firm or corporation who shall violate any provision of this Part or the rules, regulations or standards hereunder, upon conviction thereof in an action brought before a district justice in the manner provided and for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [Ord. 1998-2]

(Ord. 1983-1, -/-/1983, §II; as amended by Ord. 1997-2, 3/6/1997; and by Ord. 1998-2, 3/5/1998)

### §103. DEFINITIONS.

For the purpose of this Part the terms defined in this Part shall have the meaning stated therein.

**ABATEMENT** - the restoration, reclamation or recovery of a natural resource adversely affected by the activity of a person or permittee.

**AGRICULTURAL WASTE** - poultry and livestock manure or residual materials in liquid or solid form generated in the production and marketing of poultry, livestock fur bearing animals and their products; provided, that such agricultural waste is not hazardous. The term includes the residual materials generated in producing, harvesting and marketing of all agronomic, horticultural and silvicultural crops or commodities grown on what are usually recognized and accepted as farms, forests or other agricultural lands.

**APPLICANT** - any person of municipality or other entity filing a preliminary or final application for permit under the provisions of this Part.

**BOARD OF SUPERVISORS** - the Board of Supervisors of Vernon Township, Crawford County, Pennsylvania.

**CAPTIVE FACILITIES** - facilities which are located upon lands owned by a generator of residual waste and which are operated to provide for the treatment or disposal solely of such generator's residual waste. Such lands shall be on the same property parcel or contiguous to the generation site.

**DEP** - the Department of Environmental Protection of the Commonwealth of Pennsylvania and its authorized representatives. [Ord. 1997-2]

**DISPOSAL** - the incineration, deposition, injection, spilling, dumping, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the water of the Commonwealth.

**DUMP** - for the purposes of this Chapter a dump is a site upon which solid waste is or was placed in a manner not in compliance with this Chapter.

**FOOD PROCESSING WASTE** - residual materials in liquid, solid or semisolid form generated in the slaughtering of poultry and livestock or in processing and converting fish, seafood, milk, meat and eggs to food products; it also means residual materials generated in the processing, converting or manufacturing of fruits, vegetables, crops and other commodities into marketable food items.

**FOOD PROCESSING WASTE USED FOR AGRICULTURAL PURPOSES** - the use of food processing waste in normal farming operations as defined in this Part.

**HAZARDOUS WASTE** - any garbage, refuse or sludge and other discarded materials including solid, liquid, semisolid or contained gaseous material resulting from any activity or any combination of the above which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population.

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- (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

In addition, such wastes shall be considered "hazardous " if classified as such by the State of Pennsylvania.

**MUNICIPALITY** - a city, borough, incorporated town, township or county or any authority created by any of the foregoing.

**MUNICIPAL WASTE** - any garbage, refuse, industrial lunchroom or office waste and other material including solid, liquid, semisolid or contained gaseous material resulting from operation of residential, municipal, commercial or institutional establishments and from community activities and any sludge not meeting the definition of residual or hazardous waste hereunder from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.

**NORMAL FARMING OPERATIONS** - the customary and generally accepted activities, practices and procedures that farms adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products; and in the production, harvesting and preparation for market of agricultural crops and commodities; provided, that such operations are conducted in compliance with applicable laws and provided that the use or disposal of these materials will not pollute the air, water or other natural resources of the Commonwealth. It includes the storage and utilization of agricultural and food process wastes for animal feed and includes the agricultural utilization of septic tank cleanings and sewage sludges which are generated offsite. It includes the management collection, storage, transportation, use or disposal of manure, other agricultural waste and food processing waste on land where such materials will improve the condition of the soil, the growth of crops or in the restoration of the land for the same purposes.

**PERMITTEE** - any applicant to whom a permit has been issued under this Chapter.

**PERSON** - any individual, partnership, corporation, association, institution, cooperative enterprise, Federal government or agency, State institution and agency or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of this Chapter prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

**POLLUTION** - contamination of any air, water, land or other natural resources of the Township such as will created or is likely to create a public nuisance or to render such air, water, land or other natural resources harmful, detrimental or injurious to public health, safety or welfare or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wild animals, birds, fish or other life.

**PROCESSING** - any technology used for the purpose of reducing the volume or bulk of municipal or residual waste or any technology used to convert part or all of such waste material for offsite reuse. Processing facilities include but are not limited to transfer facilities, composting facilities and resource recovery facilities.

**PUBLIC NUISANCE** - any violation of any provisions of this Part, any rule or regulation of the Township, any order of the Township or any term or condition of any permit shall constitute a public nuisance.

**REFUSE** - any and all solid wastes.

**RESIDUAL WASTE** - any garbage, refuse, other discarded material or other waste including solid, liquid, semisolid or contained gaseous materials resulting from industrial, mining and agricultural operations and any sludge from an industrial, mining and agricultural water supply treatment facility, wastewater treatment facility or air pollution control facility; provided, that is it not hazardous.

**SANITARY LANDFILL** - a place where sanitary landfilling is practiced.

**SANITARY LANDFILLING** - a method of disposing of refuse on land without creating nuisance or hazards to public health or safety by utilizing the principles of engineering to confine the refuse to the smallest practical volume and to cover it with a layer of earth at the conclusion of each day's operation or at such more frequent intervals as may be necessary.

**SOLID WASTE** - any waste including, but not limited to, municipal, residual or hazardous waste including solid, liquid, semisolid or contained gaseous materials.

**SOLID WASTE PROCESSING OR DISPOSAL FACILITIES** - any facility, land or other area used for the processing or disposal of solid wastes.

**STATE** - the Commonwealth of Pennsylvania.

**TOWNSHIP** - Vernon Township, Crawford County, Pennsylvania.

(Ord. 1983-1, -/-/1983, §III; as amended by Ord. 1997-2, 3/6/1997)

#### **§104. APPLICATIONS AND PERMITS.**

##### **1. General.**

- A. The Board of Supervisors is hereby authorized to issue permits for all elements of solid waste management including the alteration of existing facilities or systems. All such permits shall be nontransferable, shall be for a term of 1 year and shall be subject to the fees set forth in subsection (2). All permits so issued shall be conditioned upon observance of the laws of the State of Pennsylvania, the ordinances of this Township and the rules and regulations authorized herein.

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- B. The Board of Supervisors has determined that a municipality owned and operated facility can more effectively be operated and regulated to protect the public health, safety and welfare than can a privately owned and operated facility. Therefore, all solid waste processing and disposal facilities permitted under this Part within Vernon Township shall be municipally owned and operated.

### 2. Permits.

- A. Permit Required. It shall be unlawful for any person or municipality to use or continue to use their land or the land of any other person or municipality for solid waste processing or disposal without first obtaining a permit from the Township and DEP as required by this Part and the laws of the State. However, this Subsection shall not apply to: [Ord. 1997-2]

- (1) Short-term storage of by-products which are utilized in the processing or manufacturing of other products to the extent that such byproducts are not hazardous and do not create a public nuisance or adversely affect the air, water or other natural resources of this Township. As defined in this Part the term "by-products" shall mean a secondary or additional product, anything produced in addition to the principal product.
- (2) Agricultural waste produced in the course of normal farming operations nor the use of food processing wastes in the course of normal farming operations; provided, that such wastes are not classified by DEP as hazardous. [Ord. 1997-2]
- (3) Individuals who dump or deposit solid waste resulting from only their own residential activities onto the surface of ground owned or leased by them when such wastes do not thereby create a public nuisance or adversely affect the public health.
- (4) Captive facilities, as defined herein, which process or dispose of residual wastes.

### B. Preliminary Application for Permit.

- (1) A preliminary application, briefly describing the construction and operation of the solid waste processing or disposal facility for which the permit is requested shall be submitted to the Board of Supervisors by the applicant. The preliminary application shall be in writing and shall be made on forms prescribed, prepared and furnished by the Township and shall set forth such information as the Township may require.
- (2) The preliminary application shall at a minimum contain information as required by the Pennsylvania Department of Environmental Protection of a Phase I application and shall be submitted to the Township concurrent with the Phase I application submission to DEP. After receiving the application and after receiving the Phase I approval by DEP a preliminary

site investigation shall be made by the Board of Supervisors or its designated representative. Phase I approval by DEP regarding the proposed construction, alteration, excavation, repair or operation of a solid waste processing or disposal facility shall be a prerequisite to preliminary approval by the Township. [Ord. 1997-2]

- C. Submission of Preliminary Application to Engineering Consultant. Upon receipt of the preliminary application and requisite fee, the Township shall submit the preliminary application to its consulting engineer who shall review same and submit recommendations to the Township within 30 days of his receipt thereof.
- D. Notice of Action Upon Preliminary Application. Within 30 days of receipt of a complete preliminary application for permit the Board of Supervisors shall hold a public hearing to review said application. Within 45 days after said public hearing the Board of Supervisors shall notify the applicant in writing if there is any apparent cause for summary disapproval. The involved agencies may recommend conditions for approval of the permit for which such preliminary application was filed. In the event such conditions are recommended, the Board of Supervisors shall state such condition in the notice. In the event there is no apparent cause for summary disapproval and upon Phase I approval by DEP the Board of Supervisors shall provide notice in writing to the applicant of preliminary application approval. [Ord. 1997-2]
- E. Applicant and Annual Renewal Permit.
  - (1) The applicant for permit to construct or operate a solid waste processing or disposal facility shall submit to the Board of Supervisors a final application on forms and with such information shall contain at a minimum the information required by DEP for a Phase II permit application. The Township shall submit the final application to its consulting engineer who shall review the same and submit recommendations to the Supervisors within 30 days of the receipt of the same.
  - (2) Permits shall be renewed annually. A renewal permit noting any operational changes for the following year's work shall be submitted to the Board of Supervisors not more than 60 days nor less than 30 days before the expiration date of the permit in effect.
- F. Issuance, Denial and Renewal of Permits.
  - (1) Upon approval of the final application the Board of Supervisors shall issue a permit for the operation of a solid waste processing or disposal facility as set forth in the application and further conditioned by the Township.
  - (2) No permit shall be issued by the Township unless and until all approvals and permits have been issued by DEP. The Township shall have 60 days after receipt of Phase II from DEP to submit comments to DER on the permit. [Ord. 1997-2]

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- (3) No permit shall be issued by the Township unless and until an acceptable performance bond has been posted with the Township.
- (4) Annual renewal permits will be issued only when the Board of Supervisors finds that the current work and any operational changes for the following year comply with the conditions of this Chapter.
- (5) An applicant will be notified in writing if final application for a permit or renewal permit has been denied. The notification shall state the basis for denial and provide the application the opportunity to be heard on the reasons for denial.

### G. Amendments to Permit.

- (1) No major alterations of location, waste types, design, construction or required appurtenances of a solid waste processing or disposal facility for which a permit has been issued hereunder may be made until an amendment to such permit is issued by the Board of Supervisors.
- (2) Application for such amendment shall require:
  - (a) Proof of concurrence of all other affected agencies.
  - (b) Submission of any plans, maps, drawings, specifications or onsite tests necessary to show that such alteration will continue to comply with all of the provisions of this Part.
- (3) The Board of Supervisors shall issue such an amendment upon determination that such alteration will comply with all of the provisions of this Part.

### H. Validity.

- (1) The issuance or granting of a permit hereunder shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Part or any other laws or requirements. No permit presuming to give authority to violate or cancel the provisions of this Part shall be valid.
- (2) The issuance of a permit based upon plans and specifications shall not prevent the Board of Supervisors from thereafter requiring the correction of errors in said plans and specifications or from preventing construction, modification, alteration, repair or operation being carried on thereunder when in violation of this Part.

- I. Expiration. Every permit issued by the Board of Supervisors under the provisions of this Part shall expire by limitation and become null and void 1 year after the date of issuance, or if the construction, alteration, repair or operation authorized by such permit is not commenced within 120 days or authorized extension thereof from the date of such permit or if the construction, alteration, repair or operation authorized by such permit is suspended or

abandoned at any time after the work can be recommended a new permit shall be first obtained to do so and the fee therefor shall be 1/2 the amount required for a new permit for such work; provided, no changes have been or will be made in the original plans and specifications for such work and, provided further, that such suspension or abandonment has not lasted beyond the permit renewal date.

- J. Fees. A fee for each preliminary application, final application and permit renewal hereunder shall be paid to the Township in an amount as established, from time to time, by resolution of the Board of Supervisors. Such fees shall fully reimburse the Township for all review costs. [Ord. 1997-2]
- K. Costs. All costs of testing, monitoring, sampling, boring, gas control systems, subsidence monitoring surveying and all other actions required to be taken by the permittee or applicant hereunder shall be borne by such applicant or permittee.

(Ord. 1983-1, -/-/1983, §IV; as amended by Ord. 1997-2, 3/6/1997)

## §105. INSURANCE.

### 1. Performance Bonds.

- A. With the exception of municipalities, all applicants, as a condition of the issuance of a solid waste processing or disposal permit, shall post a performance bond with the Township adequate to defray necessary expenses in the amount that the Board of Supervisors determines is necessary to undertake corrective measures to protect the public health, safety and welfare.
- B. The bond may contain a provision giving the surety the option to cancel the bond upon first giving notice in writing not less than 90 days before the effective date of the cancellation to the Board of Supervisors providing that such cancellation shall not impair any right of the Township to reimbursement for correction of conditions resulting from violations of such terms, conditions, laws, statutes, ordinances or regulations, which violation occurred before the effective date of cancellation of the bond whether the work of correction was performed before or after such effective date.
- C. The performance bond shall remain in effect until issuance of a certificate of completion by the Board of Supervisors.
- D. The required bond may be in the form of bond from a corporation qualified to do business as a surety within the State, cash or an approved letter of credit from a financial institution regulated by the Federal or State government or other such form as the Board of Supervisors may approve.

- 2. Liability Insurance. All applicants under the provisions of this Part shall furnish proof to the Board of Supervisors of liability insurance covering all aspects of their activities

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under this Part. No personal injury policy shall be for less than \$500,000 per person or \$1,000,000 per accident. No property damage policy shall be for less than \$500,000 per accident. Such liability protection shall be maintained throughout the term of the facility operation and for a period of 10 years following facility closure unless otherwise specified by the Supervisors. All policies required by this Part shall have a minimum cancellation period of not less than 90 days after receipt in writing of the notice of cancellation by the Board of Supervisors.

(Ord. 1983-1, -/-/1983, §V)

### §106. SUPERVISION OF SOLID WASTE MANAGEMENT FACILITIES.

#### 1. Supervision by Permittee.

- A. The permittee shall provide responsible supervisory control during grading, landfilling or other operations to insure compliance with approved plans and with all applicable codes. When required by the Board of Supervisors the permittee shall secure (A) engineering and/or (B) geological and/or (C) foundation engineering or other professional services to implement supervisory control. The engineers or geologists shall be qualified and shall be licensed or otherwise approved to practice in the State.
- B. The permittee shall submit periodic progress reports as required by the Board of Supervisors and shall certify in writing to the satisfactory completion of the various stages of the work.

#### 2. Inspection by Township.

- A. The Board of Supervisors will inspect every solid waste processing or disposal facility located within the Township. Whenever a violation of any item pertinent to the provisions of this Chapter is discovered the Board of Supervisors shall make such further inspections as are deemed necessary to determine whether all violations which are the cause for such notice of violation have been corrected. After the lapse of 5 days or other such time as the Board of Supervisors has specified on the notice of violation for such violations to be remedied such violations shall be deemed a willful failure to comply with the provisions of this Part or condition of such permit and cause for suspension or revocation of permit or action upon the performance bond.
- B. One copy of the inspection report on which violations of any item of sanitation pertinent to the provisions of this Part shall be inscribed shall be left at the landfill site by the Board of Supervisors. Another copy of the aforementioned inspection report shall be filed by the Board of Supervisors with the records of the Township and be available to the public during regular business hours.

(Ord. 1983-1, -/-/1983, §VI)

§107. ENFORCEMENT.

1. Right of Entry. Upon presentation of proper credentials the Board of Supervisors or their duly authorized representative or deputy may enter at reasonable times during operating hours any part of any solid waste processing or disposal facility to perform any duty imposed upon them by this Part. No person, firm or corporation shall deny or prevent, obstruct or attempt to deny, prevent or obstruct such entry.
2. Municipal Liability.
  - A. The grant of a permit or approval of a solid waste processing or disposal facility shall not constitute a representation, guarantee or warranty of any kind by the Township or by any official or employee thereof of the practicability or safety of the proposed use and shall create no liability upon the Township, its officials or employees.
  - B. The Board of Supervisors or any of its duly authorized representatives or deputies charged with the enforcement of this Part, acting in good faith and without malice, in the discharge of its duties, shall not thereby render itself personally liable and it is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any action or omission in the discharge of its duties.
3. Violation Deemed Nuisance. The construction, alteration, repair, operation or use of any solid waste processing or disposal facility in violation of any of the provisions of this Part or the conditions of any permit or certificate hereunder hereby are declared to be public nuisances and where determined to constitute a nuisance in fact shall be abated by alteration, repair, rehabilitation, demolition or removal in accordance with the procedures specified in this Section without prejudice to the right of the Township to institute other enforcement proceedings authorized by this Part.
4. Notice of Violation.
  - A. If at any stage of the work the Board of Supervisors determines by inspection that the facility is being operated contrary to this Part, the permits/certificates issued hereunder or approved plans; or,
  - B. Further operation of the facility as authorized is like to endanger any persons, property (public or private), or watercourse or result in the deposition of debris on any public way; then,
  - C. The operation of the facility may be ordered stopped by written notice of violation served on any person(s) operating the facility or causing the operation of the facility. The person(s) shall forthwith stop the operation of the facility immediately after the receipt of this notice. The conditions shall be corrected by prescribed and stated methods of abatement within 5 days or other such time limit prescribed on the notice of violation. The Board of Supervisors shall authorize the work to proceed if adequate corrective measures have been taken.

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5. Abatement. After notice of violation has been served upon the owner or persons in charge or control of a solid waste processing or disposal facility and the violation has not been corrected within the time limit prescribed on the notice of violation the Board of Supervisors may abate the public nuisance by the methods described in the notice of violation.
6. Abatement Costs. The Board of Supervisors may recover the costs of abatement performed by the Township by either of the following methods or combination thereof:
  - A. Special Property Assessment.
    - (1) The entire costs to the Township of abatement pursuant to the provisions of subsection (5) of this Section may become a special assessment against the property upon which the abatement occurred as hereinbelow described and all applicants consent to such assessment by the making of a preliminary application. The Board of Supervisors shall notify, in writing, all parties concerned of the amount of such assessment resulting from such work. If the total assessment determined as provided for in this subsection is not paid in full within 10 days after receipt of such notice from the Board of Supervisors, as the case may be, the Board of Supervisors shall record in the Office of the County Recorder a statement of the total balance still due and the legal description of the property. From the date of such recording such balance due shall be a special assessment against the property.
    - (2) The assessment shall be collected at the time and in the same manner as ordinary taxes of the Township are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary taxes of the Township. All the laws applicable to the levy, collection and enforcement of the taxes of the Township shall be applicable to such special assessment.
  - B. Action on Performance Bond.
    - (1) The entire costs to the Township of abatement pursuant to subsection (5) of this Section. The Board of Supervisors shall notify, in writing, all parties concerned of the amount of such costs of abatement. If such abatement costs are not paid in full within 10 days after receipt of such notice from the Board of Supervisors, the Board of Supervisors may take action upon the performance bond, declare the bond forfeited and proceed to enforce and collect the amount of liability forfeited thereon.
7. Revocation or Suspension of Permit. Any permit granted by the Township as provided in this Part shall be revocable or subject to suspension at any time the Township shall determine that:
  - A. Such permit was issued in error or contrary to the provisions of this Part or was issued on the basis of false information furnished to the Township by the permittee and no substantial reliance in good faith to the permittee has occurred.

- B. Such permit was secured by the fraud of the permittee.
  - C. The permittee or party to whom such permit was issued has failed to comply with any provisions of this Part or conditions of such permit.
  - D. The operation constitutes a public nuisance, a health hazard or is adversely affecting the environment or economic and industrial development of the area.
8. Service of Notices. Whenever in this Part a notice is required to be served such notice shall be served by registered or certified mail addressed to the permittee or party to whom a permit or certificate was issued hereunder at the address shown on the application for such permit or certificate or subsequent written notification of change of address of such permittee or party delivered to the Township.
9. Restraining Violations. In addition to any other remedies provided in this Part the Board of Supervisors may institute a suit in equity in the name of the Township in the Court of Common Pleas of Crawford County for an injunction to restrain a violation of this Part the rules, regulations or standards adopted hereunder or to restrain any and all violations of Act 97, the Pennsylvania Solid Waste Management Act, as amended, or the rules and regulations promulgated thereunder or to restrain any public nuisance or detriment to the health, safety, welfare or environment of the residents of this Township.

(Ord. 1983-1, -/-/1983, §VII)

#### **§108. PROHIBITED ACTIVITIES.**

It shall be unlawful for any person or municipality to:

- A. Unless otherwise authorized by this Part to dump or deposit or permit the dumping or depositing of any solid waste onto the surface of the ground or underground or into the waters of the Commonwealth, by any means, unless a permit for such disposal has first been obtained from the Township.
- B. Construct, alter or operate a solid waste processing or disposal facility within the Township contrary to the provisions of this Part.
- C. Store, collect, transport, process, burn or dispose of solid waste within the Township contrary to the laws, rules, regulations, standards of orders of the State of Pennsylvania.
- D. Transport any solid waste within the Township in any vehicle which permits the contents to blow, sift, leak or fall therefrom.
- E. Refuse, hinder, obstruct, delay entry, threaten or otherwise interfere with any employee of this Township or any employee of a contractor while in the performance of their duties as authorized by this Part after such employee identifies himself and gives notice of his purpose.

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- F. Make any false statement in any application required by this Part.
- G. Operate a sanitary landfill such that the perimeter of the disposal area occurs within 500 feet of a residence, an industrial or commercial plant or other structure or improvement unless engineering and geological data acceptable to the Township is submitted which would indicate an alternative minimum separation distance. The operator shall also be required to surround the perimeter of the facility with a triple row of coniferous trees which shall be spaced not more than 8 feet apart and be a minimum 8 feet in height.
- H. Operate a solid waste processing or disposing facility whereby any noxious or offensive odors, putrid or polluted water or other discharge, smoke, soot, ash, refuse, rubbish or filth of any nature whatsoever are blown, carried or discharged in any manner onto public roads or upon premises of other persons or municipalities. The solid waste management facility site itself shall not be allowed to become littered or be unsightly and shall be strictly policed by the permittee.
- I. Operate a solid waste processing or disposal facility whereby unauthorized dumping is allowed to occur and solid waste allowed to accumulate outside of the fence or access gate which borders the solid waste management facility. The operators of a solid waste management facility shall routinely police the outside perimeter and areas immediately adjacent thereto including any transportation routes within 1/4 mile of the entrance to the solid waste processing or disposal facility and shall prevent said areas from becoming littered, unsightly and offensive to other persons.
- J. To operate said facility except between the hours of 8:00 a.m. to 5:00 p.m. prevailing local time, Monday through Friday and from 10:00 a.m. prevailing local time through 5:00 p.m. prevailing local time on Saturday.

(Ord. 1983-1, -/-/1983, §VIII)

### §109. ADDITIONAL REQUIREMENTS AFFECTING SOLID WASTE PROCESSING OR DISPOSAL FACILITIES.

#### 1. Site Approval Board.

- A. Creation and Membership. There is hereby created a Site Approval Board consisting of seven members, none of whom shall hold elected or appointed Township office during membership on the Board for each application for a permitted processing or disposal facility. Members shall be appointed by the Township Supervisors to serve on a Board until the application assigned to that Board has been acted upon by the Board. No less than four members of the Board shall be residents of Vernon Township. One member shall be a professional engineer who is familiar with current solid waste management practices and one member shall be a chemist. The Chairman of the Board shall promptly notify the Supervisors of any vacancies on the Board and such

vacancies shall be filled. All members of the Board shall be compensated in a manner to be hereafter established by resolution of the Board of Supervisors, which compensation shall be charged to the applicant and payable as part of the application fee.

- B. Operation. The Site Approval Board shall review each application for a permit together with its accompanying project impact report, apply the prevailing siting criteria and approve or deny the application. The reviewing engineer retained by the Township shall be available to the Board for consultation on matters pertinent to the application.
  - C. Effect of Decision. The approval or denial by the Board of the application shall be binding on the Township Supervisors unless such decision is contrary to the report of the consulting engineer and is reversed by unanimous vote of the Township Supervisors.
2. Perimeter Fencing. An appropriate fence which will provide external security and prevent solid waste from being blown or otherwise removed from the site shall be erected around the perimeter of any land on which a solid waste processing or disposal facility will be operated. Said fence to be at least 8 feet in height and said facility shall also be surrounded with a triple row of coniferous trees which shall be spaced not more than 8 feet apart and be at least a minimum of 8 feet in height.
  3. Township Road Protection. All applicants under the provisions of this Chapter shall be required to enter into an agreement with the Township obligating the applicant to repair any damage caused to Township roadways by vehicles transporting solid waste to or from the solid waste management facility. Said agreement shall be in accordance with terms and specifications formulated in the discretion of the Board of Supervisors as individual cases and circumstances may warrant. The Township shall further require an applicant to post a bond with a responsible corporate surety to guarantee performance under the agreement, said bond to be in an amount determined by the Supervisors which will be sufficient to repair any damage which they project might occur to any Township road by virtue of its being an access road to a solid waste processing or disposal facility. Said bond may be included in and made a part of the access road to a solid waste processing or disposal facility. Said bond may be included in and made a part of the performance bond required under §105 of this Part.
  4. Administrative Fund. All applicants under the provisions of this Part shall be required to enter into an agreement with the Township obligating the applicant to pay a fee to the Township, on a monthly basis, based on a charge per ton or per unit volume of refuse processed or disposed of on land within the Township. The necessity of the fee will be considered on a case by case basis and be within the sound discretion of the Board of Supervisors. The amount of any charge shall also be within the sound discretion of the Board of Supervisors and calculated to fully compensate the Township for any administration, inspection, maintenance or other expenses projected by the Supervisors to be incurred or occasioned by the operation of a solid waste management area within the Township.

(Ord. 1983-1, -/-/1983, §IX)

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### §110. CERTIFICATES; REVOCATION OR SUSPENSION.

#### 1. Certifications.

- A. Certificate Required. No use of a completed sanitary landfill may be made until a certificate of completion has been issued by the Board of Supervisors.
- B. Application. Whenever any sanitary landfill has been completed and is proposed for use the owner of such sanitary landfill shall file an application for a certificate of completion with the Township.
- C. Issuance. A certificate of completion shall be issued to the owner of a sanitary landfill for which a permit has been issued hereunder when the Board of Supervisors determines that all conditions of such permit have been fulfilled.
- D. Release of Performance Bonds. Upon the issuance of a certificate of completion hereunder the performance bond required hereunder shall be released.
- E. Costs. All expenses and costs for testing, monitoring, sampling boring, gas control systems, subsidence monitoring devices, subsidence monitoring surveying and all other tests, surveys or requirements determined to be necessary by the Board of Supervisors for issuance of the certificate of completion hereunder shall be paid by the applicant for such certificate of completion prior to issuance thereof.

#### 2. Revocation or Suspension of Certificate of Completion. The Board of Supervisors may revoke or suspend any certificate issued hereunder upon its finding that:

- A. Such certificate was issued in error or was issued on the basis of false information furnished to the Board of Supervisors by the permittee and no substantial reliance in good faith to the detriment of the permittee has occurred.
- B. Such certificate was secured by the fraud of the permittee.
- C. The permittee or party to whom such certificate was issued has failed to comply with any provisions of this Part or condition of such permit.
- D. The operation constitutes a public nuisance, a health hazard or is adversely affecting the environment or economic and industrial development of the area.

(Ord. 1983-1, -/-/1983, §X)

### §111. SPECIAL REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE STORAGE PROCESSING OR DISPOSAL FACILITIES.

- 1. Emergency Control Plan. The applicant shall file with the Township Fire Department, other area fire departments, emergency response teams, hospitals and police

departments as designated by the Supervisors, an emergency control plan including, at a minimum, the following provisions:

- A. The applicant shall familiarize emergency personnel with the physical layout of the processing or disposal facility and the designated transportation route to said facility.
  - B. Seminars shall be conducted for emergency personnel on the properties of the hazardous wastes being processed at the facility and the associated hazards of such wastes including the various types of illness or injuries which could result from fires, explosion or accidental releases of hazardous materials anywhere within the Township.
  - C. At least once every 6 months the applicant shall conduct a seminar for the local fire department and any other emergency personnel designated by the Supervisors emphasizing response and control of potential accidental releases of hazardous materials.
  - D. An applicant shall be required to provide at its expense any specialized equipment necessary for the Township fire department or other designated emergency response teams to respond to accidental releases of hazardous materials.
  - E. The applicant shall be required to pay any costs which the Township, nearby hospitals or medical clinics and nearby volunteer fire ambulances and rescue companies incur as a result of maintaining such emergency facilities, equipment and personnel which would not be maintained but for the proximity of the disposal facility. The applicant shall be required to make such payment within 30 days upon presentation of written evidence documenting costs covered by this subsection.
2. Access Route. A single access route to the processing or disposal facility shall be designated by the Supervisors which shall be the sole and exclusive route by which vehicles transporting hazardous substances approach the processing or disposal facility. The applicant shall provide at its expense route designation signs to enable the Township to safely implement this requirement. The applicant shall be solely and strictly liable for the enforcement of this provision and failure to do so will result in the revocation of any operational permit issued hereunder.
  3. Hours of Operation. In order to insure maximum road safety and maintenance during winter months all deliveries of hazardous materials to the facility shall be made between 7:00 a.m. and 5:00 p.m. during the months of November through March of each year.
  4. Insurance and Financial Responsibility. The applicant shall file with the Township a plan of accident and liability insurance including certification of the issuance of appropriate policies and shall maintain such policies throughout the term of its operation and for a minimum 30 year period thereafter. The scope and amounts of such insurance shall be in accordance with State and Federal regulations and

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requirements except as otherwise required in this subsection pertaining to the designation of the named insured on the liability policy. The applicant shall file with the Township evidence of financial responsibility for proper operation, closure and damages arising during construction, operation and closure of the facility. To the extent that an applicant is a subsidiary or interlocking with another business entity the parent entity or interlocking business entity shall be included as the named applicant and included as the named insured on any policy of insurance required hereunder. Such parent entity or interlocking business entity shall in all respects have the standing, responsibility and liability of the applicant under the terms of this Part, the Pennsylvania Solid Waste Management Act and any applicable Federal or State acts.

5. Communications. The applicant shall be required to provide the Township with copies of all reports and communications or any kind made to or received from regulatory agencies, including but not limited to, the Pennsylvania Department of Environmental Protection and the Environmental Protection Agency. [Ord. 1997-2]
6. Liability Standards.
  - A. No person or municipality shall generate, store, transport, treat or dispose of hazardous waste within Vernon Township unless such generation, storage, transportation, treatment or disposal is authorized by the rules and regulations of the Department of Environmental Protection, this Part and any other agency exercising jurisdiction over hazardous waste. [Ord. 1997-2]
  - B. The generation, storage, transportation, treatment and disposal of hazardous waste are hereby declared to be activities which subject the person carrying on those activities to strict liability for harm although he has exercised utmost care to prevent harm regardless whether such activities were conducted prior to the enactment hereof.
  - C. Liability of Generators of Hazardous Waste.
    - (1) The term "generator" refers to a manufacturer that produces hazardous wastes. A generator shall be liable to the Township and to any injured parties resulting from the improper transportation, processing or disposal of hazardous waste in Vernon Township, whether by a permitted operator or by a nonpermitted person or entity. This liability shall exist absolutely, strictly and without regard to the care exercised by the generator in the selection of reputable waste transporters and disposal facilities. This liability shall extend to compensatory damages to claimants as well as the cost of clean up operations including clean up of an improperly maintained waste disposal facility.
    - (2) It shall be unlawful for a generator to cause hazardous waste to be transported to and disposed of at a permitted site within the Township without first executing and filing with the Township a written acknowledgement of the joint and several liability imposed hereunder, an endorsement of the contracted transporter and disposal facility and an agreement to share in payment of consequential damages on a formula

prorating the percentage of damages to the percentage of all waste disposed at the facility represented by the amount of waste generated by the generator from the inception of the facility to the date of the incident or incidents giving rise to the claim. The form of the aforesaid acknowledgement and agreement shall be provided by the Township to the operator of a permitted facility who shall, in turn, be responsible for obtaining execution of same by the generator and filing with the Township prior to accepting waste from that generator. It shall be unlawful for a generator to cause hazardous waste to be transported to and disposed at a permitted site without first insuring that its required assessment is paid to the Environmental Response Compensation and Liability Fund as established elsewhere in this Part.

- D. It shall be presumed as a rebuttable presumption of law that a person or municipality which stores, treats or disposes of hazardous waste shall be liable without proof of fault, negligence or causation for all damages, contaminations or pollution within 1/2 mile of the perimeter of the area where hazardous waste activities have been carried out (1 mile in the case of ground water or well pollution). Such presumption may be overcome by clear and convincing evidence that the person or municipality so charged did not contribute to the damage, contamination or pollution.
- E. Upon presentation of a proper claim for consequential damages arising from the generation, storage, transportation, treatment or disposal of hazardous waste, compensatory damages shall be paid to the claimant within 60 days of presentation of such claim.
- F. Compensatory damages shall be payable within the above time period for all nature of harm arising from the above activities regardless of fault or the attempted exercise of due cause and shall include but not be limited to:
  - (1) Reasonable and necessary medical expenses.
  - (2) Temporary living expenses where evacuation is required.
  - (3) Relocation expenses where necessary for the health, safety or welfare of residents.
  - (4) Treatment and/or replacement of livestock or pets.
  - (5) Damage to real estate and improvements thereon.
  - (6) Loss of real estate value within a 1 mile radius of a processing or disposal facility and beyond such radius if the loss of value is proven to be attributable to the existence or operation of the facility.
  - (7) Ground water and well pollution within a 3 mile radius of a processing and disposal facility and beyond such radius where there is documented movement of contamination from the site.

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7. Transportation by Licensed Haulers. No person or municipality shall transport hazardous waste within Vernon Township unless such person or municipality has first obtained a license for the transportation of hazardous waste from the Department of Environmental Resources, a copy of which shall be on file with the Township Secretary during any period when such transportation occurs. Hazardous waste shall be transported within the Township only by vehicles registered and licensed by the Pennsylvania Department of Transportation and inspected as required by the rules of the Department of Transportation. It shall be the duty of the operator of a solid waste processing or disposal facility to insure that no hazardous waste is transported to or accepted at the facility in violation of this requirement, the breach of said duty resulting in revocation of any license issued hereunder.
  
8. Generation, Transportation, Storage, Treatment and Disposal of Hazardous Waste.
  - A. It shall be unlawful for any person or municipality who generates, transports or stores hazardous waste to transfer such waste unless such person or municipality complies with the rules and regulations of the Department of Environmental Protection and the terms or conditions of this Part and any applicable permit or license and any applicable order issued by the Department of Environmental Protection. [Ord. 1997-2]
  
  - B. It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:
    - (1) Maintain such records as are necessary to accurately identify the quantities of hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, the method of transportation and the disposition of such wastes and, where applicable, the source and delivery points of such hazardous waste. In the case of a land disposal facility such records shall include but not be limited to a map or other diagram clearly indicating the characteristics and location of each hazardous waste disposed of at that facility.
    - (2) Label any containers used for the storage, transportation or disposal of such hazardous waste so as to identify accurately such waste.
    - (3) Use containers appropriate for such hazardous waste and for the activity undertaken.
    - (4) Furnish information on the general chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes.
    - (5) Use a manifest system as required by the Department to assure that all such hazardous waste generated is designated for treatment storage or disposal of such treatment, storage or disposal facilities (other than facilities where the use of a manifest system is not necessary) approved

by the Department of Environmental Protection and the Township. [Ord. 1997-2]

- (6) Carry out transportation activities in compliance with the rules and regulations of the Department of Environmental Protection, the Department of Transportation and the Township including the transporting of all hazardous waste only by the safest available means and by the safest available route. [Ord. 1997-2]
- (7) Treat, store and dispose of all such wastes in accordance with the rules and regulations of the Department of Environmental Protection and the Township and permits, permit conditions and orders of the Department and the Township. [Ord. 1997-2]
- (8) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.
- (9) Maintain such operation, trained personnel and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.
- (10) Immediately notify the Department of Environmental Protection and the Township of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the Department and the Township and take immediate steps to contain and clean up the spill or discharge. [Ord. 1997-2]
- (11) Conduct an inspection and prepare a chemical analysis of hazardous waste accepted at the facility and maintain an appropriate laboratory in which to perform that analysis as required by State and Federal regulations. With respect to small generators, defined as those producing 50 tons or less of hazardous waste per annum, an inspection and chemical analysis shall be performed on every container of hazardous waste accepted at the facility.
- (12) Install appropriate monitoring and maintenance systems and other devices for the detection of any emissions from the facility into the air or ground water and to conduct daily inspections of those systems and to maintain an appropriate laboratory in which to perform that analysis as required by State and Federal regulations.
- (13) Have an adequate system for assuring that no hazardous waste is accepted for disposal unless such waste is of the kind which the facility is capable of disposing of safely and is permitted to accept.

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- (14) Be properly designed and constructed so that its use will be the safest method of disposing of the hazardous waste proposed to be disposed of at the facility.
  - (15) Have an adequate system for preventing, detecting, stopping and cleaning upon any emissions into the air or water, both during the facility's operation and for as long thereafter as the facility is deemed to be a significant threat to the public health, safety or welfare or to the environment.
  - (16) Have an adequate security system for preventing potentially harmful intrusions onto the facility site by people, wildlife, domestic animals or farm animals both during the facility's operation and as long thereafter as the Township deems the facility to be a significant threat to the public health, safety or welfare or to the environment.
  - (17) Have the financial means and technical ability to operate such facility and to maintain it after closure in accordance with the provisions of all applicable Federal, State and local acts and ordinances pertaining thereto.
  - (18) Store, treat or dispose of hazardous waste other than that which is transported to the facility by vehicles licensed or approved by the Department of Environmental Protection and registered, licensed and inspected by the Pennsylvania Department of Transportation.
9. Probationary License. When an initial application for a processing or disposal facility permit is filed with the Township the initial Township permit may be issued for the normal 1 year period but shall contain restrictions designed to limit the volume of waste being processed at the facility. The exact nature of the restrictions shall be determined by the Supervisors after consultation with the Township consulting engineer and the applicant and be calculated to insure a safe and controlled start-up. These restrictions may be removed by the Township at the end of the first year of operation or such earlier or later time as the applicant establishes that the process being utilized at the facility and the facility itself are being safely and properly operated. The restrictions may include a limitation on the number of hours of operation per day, the number of days per week, the number of weeks per year or the volume of hazardous waste accepted for disposal at the facility or such other restrictions as will effectuate the intent of this Subsection.
10. Fees and Costs. A minimum fee for each preliminary application, final application and permit renewal hereunder shall be paid to the Township in an amount as established, from time to time, by resolution of the Board of Supervisors. The applicant shall reimburse the Township within 30 days of demand all expenses incurred by the Township occasioned by the application including, but not limited to, engineering or other expert services, hearing, legal expenses and research and investigation expenses. [Ord. 1997-2]
11. Compliance Monitor. The Township shall designate a person or persons to monitor the operation of a licensed facility on a full-time basis to insure compliance with the

terms of this Part, conditions of the license and any orders issued hereunder. Said individual shall have full and free access to the entire facility during its hours of operation regardless of the number of shifts and shall make monthly reports to the Township on forms to be designated by the Township. Prior to the issuance of any license pursuant to this Part the applicant shall be required to pay to the Township a cash sum equal to the amount of the salary determined by the Supervisors to be adequate compensation to the compliance officer or officers during the 1 year term of the license. Each such compliance monitor shall agree in writing not to accept employment by any employer who owns a direct or indirect interest in a hazardous waste generating, processing or disposal facility for at least 1 year after termination of employment with the Township as a compliance monitor. Compliance monitoring under this Part shall be considered as an addition to any resident State inspectors which may hereafter be created and/or assigned to a permitted facility by the Environmental Quality Board or other Federal or State agency or department. The powers and duties of the compliance monitor shall include but not be limited to the following:

- A. Making daily inspections of the facility and its monitoring system.
  - B. Making random inspections of hazardous waste shipments to the facility including arranging for an independent chemical analysis on a random basis unless a resident State inspector is present at the facility and conducting an independent chemical analysis of hazardous waste shipments. The operator shall be liable for the cost of the independent chemical analysis and shall enter into a contract on a form provided by the Township with an independent chemist selected by the Township on terms and conditions specified in the form contract. Failure to make timely payment as required by such contract will result in the revocation of any permit issued hereunder.
  - C. Entering onto the facilities site at any time with or without prior notice to the owner of the facility.
  - D. Inspecting and copying any records, reports, communications, information or test results pertaining to the purposes of this Part.
  - E. Having the power to revoke or suspend a facility's permit if entry or inspection is refused, hindered or thwarted.
  - F. Requiring the facility operator to provide adequate office space and equipment for use by the compliance monitor.
  - G. Bringing complaints or suggestions or complaints to the attention of the operator.
12. Criteria for Siting of Facilities. The following criteria for siting of hazardous waste treatment and disposal facilities includes environmental, social and economic considerations of concern of Township residents, the satisfaction of which is mandatory prior to the issuance of a Township permit hereunder:

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- A. The applicant must satisfy and remain in conformance with criteria and standards for siting hazardous waste treatment and disposal facilities established by the Department of Environmental Protection pursuant to the Pennsylvania Solid Waste Management Act of 1980, Act 97. [Ord. 1997-2]
- B. No storage, treatment or disposal of hazardous waste shall be permitted in these areas or in proximity to the point of impacting these areas:
- (1) 100 Year Floodplain. An area inundated by floods including from hurricanes and storm surges with a probability of occurring once in 100 years on a 1% chance of occurring in any 1 year.
  - (2) Fresh Water Wetlands. Those land surfaces inundated by surface or ground water with a frequency sufficient to support, under normal circumstances, a prevalence of vegetative or aquatic life that requires saturated or seasonably saturated soil conditions for growth and reproduction. Wetlands include swamps, marshes, bogs and similar areas such as sloughs, wet meadows, river overflows, mud flats and natural ponds.
  - (3) Oil and Gas Fields. Areas within which active or abandoned, shallow or deep oil and gas wells and gas storage fields exist.
  - (4) Public and Private Water Supply Watersheds. Those areas draining to existing or planned storage reservoirs used for public drinking water supplies or storage reservoirs used for public drinking water supplies or storage reservoirs planned or under construction to be used for drinking water supplies; those areas within 1,000 feet of a well used for public or private drinking water supplies; those areas within the geologic formation or group of formations that is capable of yielding usable quantities of potable ground water to wells or springs presently being pumped (or having the potential for being so pumped) within 500 feet horizontally of a facility site, boundary.
  - (5) Natural Areas of Designated Township, County, State, Regional or Natural Significance. Natural areas not in public trust that have been designated by executive or legislative policy as being of Township, County, State, regional or national significance due to recreational, histories, educational and aesthetic value, importance as a natural resource or value to local economy.
  - (6) Dedicated Lands in Public Trust. Funds in public trust dedicated to uses which are incompatible with hazardous water facilities including parks, forest, wilderness and recreational areas, historic sites, game lands or other natural areas.
  - (7) Air Quality Considerations. Area must be downwind from the direction of prevailing winds in relation to adjacent populated areas with a population density of greater than three persons per acre.

- (8) Proximity of Incompatible Facilities and Structures. Must be a linear distance of not less than .25 miles from hazardous waste facility boundaries to:
  - (a) Airport.
  - (b) School.
  - (c) Hospital.
  - (d) Church.
  - (e) Commercial Centers.
  - (f) Nursing Home.
  - (g) Industrial Plant with twenty or more employees.
- (9) Stream Proximity. Shall not be within 200 feet of the nearest stream or within an area that has an underground stream which is a principal source of public drinking water or the sole source of drinking water for a private residence.
- (10) Proximity of Incompatible Uses. Must be a linear distance of not less than 1 mile from hazardous waste facility boundary to:
  - (a) A unit of the National Park system.
  - (b) A State, county or municipal park or picnic area.
  - (c) A national area or wild area designated by any Federal, State or local body or board.
  - (d) Any identified potential impact area of a national, State or local wildlife area or environmental center.
  - (e) A State forest or State gameland unless the circumstances of a particular application justify closer proximity which, in all events, shall not be less than .25 miles.
- (11) Endangered Species Area. An area which is a habitat of a rare, threatened or endangered species of a plant or animal protected by the Federal Endangered Species Act of 1973 or recognized by the Pennsylvania Fish or Game Commission.
- (12) The proposed disposal facility will not be located within a densely populated area or within 1 mile of a property owner who objects to the proximity of the site or within a distance of more than 1 mile from an objecting property owner if the Township deems such greater distance

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appropriate because of the nature of the hazardous waste proposed to be disposed of at such disposal facility. The objection of such property owner shall be given great weight but may be overruled by the Site Approval Board as hereinafter described.

- (13) Hydrogeologic Consideration. The proposed facility shall not be located within an area in which the underlying geologic formation, the nature of the soil or the underground water would be incompatible with the ability of the proposed facility to contain the hazardous waste disposed of therein or with the ability to detect, stop and clean up any harmful escape of the hazardous waste from the facility.

C. The following economic factors shall be reviewed and considered as an adequate basis for rejection of an application if not addressed by the applicant in a written form satisfactory to the Township:

- (1) Net loss of revenues to the Township and/or surrounding municipalities.
- (2) Increase in services or costs thereof to be provided by the Township and/or surrounding municipalities.
- (3) Adverse effect on the economy of the Township and/or surrounding municipalities.
- (4) Adverse effect on the value of any real estate or businesses within the Township and/or surrounding municipalities.
- (5) Adverse safety, welfare, environmental, social or economic impact to the Township or its residents and the surrounding municipalities and its residents.
- (6) Net increase in cost to Township for monitoring the facility.
- (7) Adverse effect on the current population or population growth projections for the Township and/or surrounding municipalities.
- (8) Adverse effect to the agricultural, industrial, commercial, recreational and other economies within the Township or the County and not be located within an agricultural area as designated pursuant to the Act of June 30, 1981 (P.L. 128, No. 43), known as the "Agricultural Area Security Law."

### 13. Environmental Response, Compensation and Liability Fund.

- A. Creation. In recognition of the enormous costs of remedying, containing and cleaning up improper problems resulting from hazardous waste management, the seriousness of water pollution, air pollution, explosion, fire and direct poisoning and the significance of individual pain and suffering resulting from improper waste management, there is hereby created a Vernon Township Environmental Response, Compensation and Liability Fund. An account in the

name of the fund will be established in a banking institution in Crawford County into which shall be deposited assessments made against hazardous waste storage processors and disposal facility operators. The administration and control of the fund shall be the direct responsibility of a trust committee as hereinafter described, subject only to the right of the Township Supervisors to select the banking institution used as a depository and replace same at their sole discretion.

B. Assessments. The following assessment shall be paid on a quarterly basis directly to the fund for immediate deposit into the fund:

- (1) Until such time as the fund balance equals or exceeds \$500,000, each operator of a permitted facility shall pay an amount equal to 105% of gross revenues received from generators for processing and disposal of hazardous waste at the permitted facility.
- (2) After the fund balance equals \$500,000 and until such time as the fund balance equals \$5 million each operator of a permitted facility shall pay an amount equal to 5% of gross revenues received from generators for processing and disposal of hazardous waste at the permitted facility.
- (3) Annual interest earned by the fund will remain in and be added to the balance of the fund until the fund balance equals \$5 million. After the fund balance equals \$5 million the annual interest will be paid from the fund to the permittee pro-rated, provided that the fund maintains a balance of \$5 million and the Supervisors choose not to exercise the power herein conferred to increase the required balance of the fund. The Supervisors may hereafter, by resolution, increase or decrease the amount of the percentage assessment to replenish, maintain or build the fund to an adequate balance to meet the purposes of the fund or increase or decrease the required amount of the fund.

C. Administration. The fund shall be administered by a trust committee for the uses set forth in this subsection. The trust committee shall consist of three members and decisions regarding the administration of the fund and payments therefrom shall be by majority vote. Membership shall be comprised of one Township supervisor or designate, a trust officer from the banking institution into which the fund is deposited and a representative of the permittee. Decisions of the trust committee are final and binding upon applicants to the fund.

D. Uses of the Fund.

- (1) Excess Liability. In the event that a claim against a generator, transporter, processor, storer or disposal operator is reduced to judgment and the judgment creditor has completed garnishment and execution procedures against all insurance policies, funds and assets of the judgment debtor, then the fund may be garnished to satisfy any excess unsatisfied judgment

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for compensatory damages. The fund shall not operate as excess to any coverage or assets for judgments predicated on punitive damages.

- (2) **Insufficient Funds.** In the event that a permitted operator is ordered by any court or Federal, State or local agency to clean up improperly managed hazardous waste and the party that caused the damages is determined to lack sufficient funds, assets or insurance coverage to perform the necessary operations effectively and no other Federal or State monies are available for that purpose, then the Committee may apply necessary funds to the maximum of the balance of the fund to effectuate a cleanup without prejudice to the right of the fund to recover cleanup costs from the party that caused the damages.
- (3) The Committee shall have the discretion to reimburse the Township General Fund upon request of the Township Supervisors for expenditures made in furtherance of the purposes of this Part not otherwise reimbursed or for other purposes as then deemed necessary to promote and protect the public health, safety and welfare.
- (4) The trust shall use the fund as an operating bond as set forth in subsection (15) of this Part and thereafter as security for continued compliance with the other terms of this Part.
- (5) **Small Claims.** Claims in an amount equal to or less than the prevailing limits subject to arbitration in Crawford County (presently \$5,000) may be made by any aggrieved or injured party directly to the fund by application to the trust committee which shall hold hearings and render decisions within 30 days of proper application. The Township Supervisors shall hereafter, by regulations, devise suitable procedures for fair hearings and the trust committee shall be governed thereby.
- (6) **Termination of the Fund.** The fund shall be maintained for a period of 30 years following closure of the site or release of the applicant from further liability by the Pennsylvania Department of Environmental Protection. Thereafter, upon complete and unqualified discharge of the permittee from any and all liability from claims by all persons or entities and upon discharge under all bonds and by the applicable State and Federal regulatory agencies the balance of the fund shall be paid over to the permittee. [Ord. 1997-2]
- (7) **Liability of Fund.** The existence of this fund shall not render the Township or any other assets or resources of the Township liable for payment of any claims arising from the generation, transportation, processing or disposal of hazardous waste. The liability of the fund to discharge the purposes of this Part shall be limited to the amount actually in the fund. No person shall make claim directly against the fund; the fund shall be only used as set forth below.

14. Cooperative Agreements. The applicant shall be required to enter into an agreement or agreements with the Township in a form or forms satisfactory to the Township to minimize or eliminate local concerns regarding the operation of the facility. Execution by the applicant of any such agreement shall be a prerequisite to the issuance or reissuance of any permit required hereunder. Such agreement shall include but not be limited to:
  - A. Elements of the disaster control plan.
  - B. Matters pertaining to the compliance monitor and payment for independent chemical analysis.
  - C. Matters pertaining to assessments and collection thereof for the fund created elsewhere in this Chapter.
  - D. Matters pertaining to the economic considerations set forth in subsection (13)(C) of this Section.
  
15. Temporary Operating Bond. The applicant shall file with the Township a bond on a form prescribed and furnished by the Township, payable to the Township conditioned so that the applicant shall comply with the requirements of this Part and all applicable Federal and State laws. Liability under such bond shall be for the duration of the operation and for a period of up to 10 full years after final closure of the site or for so long after closure as the Township determines the permit site is likely to constitute a significant threat to the public health, safety or welfare or to the environment. Such bond shall be executed by the applicant and a corporate surety license to do business in the Commonwealth; provided, however, that the applicant may elect to deposit cash, certificates of deposit or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania in an amount equal to the sum of the bond. The applicant shall, prior to commencing operation, deposit \$10,000 or 25% of the amount of the bond, whichever is greater. Interest accumulated by such collateral shall become a part of the bond. The Township may require additional bonding at any time to meet the intent of this Subsection. If the applicant abandons the operation of the facility, fails or refuses to comply with the terms of this Part or violates any Federal or State act pertaining to the operation of the facility the Township shall declare the bond forfeited. When the balance of the ERC & L Fund equals or exceeds \$10,000 or 25% of the amount of the bond the Township may discharge the bond on the condition that the trust agrees to treat the first \$10,000 of the fund as a bond for purposes of this Subsection.

(Ord. 1983-1, -/-/1983, §XI; as amended by Ord. 1997-2, 3/6/1997)

#### **§112. APPEALS.**

1. Any person who feels aggrieved by any action of the Township may within 10 days of the act for which redress is sought appeal to the Board of Supervisors, in writing, setting forth in a concise statement the act being appealed and the ground for its reversal.

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2. The Board of Supervisors shall, within 10 days following the receipt of each written appeal, schedule a hearing date and notify the appellant in writing of the date and time of the scheduled hearing. The appellant may appear on his own behalf or through counsel and may present his witnesses.
3. Within 10 days following the date of such hearing the Township shall notify all parties in writing of the determination of said hearing and the reason therefore.

(Ord. 1983-1, -/-/1983, §XII