

TOWN OF NEW PORTLAND

Biosolids and other Residuals
Management Ordinance

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TITLE

This ordinance shall be known and cited as the "Town of New Portland Biosolids and other Residuals Management Ordinance".

ARTICLE I: Authority, Applicability, and Availability

This ordinance is adopted pursuant to 30-A MRSA Sec. 3001, 38 MRSA Sec. 131-U et seq. and 30-A MRSA Sec. 4354. The provisions of this ordinance shall govern all land and all structures within the boundaries of the Town of New Portland.

A certified copy of this ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public during Town Clerk's hours. Copies shall be made available to the public at reasonable cost to be charges to the person making the request. Notice of availability of this ordinance shall be posted in the town office.

Persons or entities wishing to land spread Biosolids and other residuals, shall obtain a permit from the New Portland planning board (hereinafter "the board") for land application and storage of Biosolids and other residuals as well as commercial composting operations and shall be subject to the provisions of this ordinance.

ARTICLE II: Definitions

A. APPLICANT: The term "applicant" shall hereinafter refer to any landowner or authorized agent, contractor or consultant who seeks a permit from the Town of New Portland for the purpose of delivery, storage, or land application of biosolids or other residuals within the Town of New Portland.

B. AQUIFER: See "significant groundwater aquifer".

C. BOARD: The term "Board" refers to the New Portland planning board.

D. BIOSOLIDS: The term "biosolids" refers collectively to sludge and septage.

E. COMPOSTING OPERATION: The term "composting operation" refers to any commercial activity designed for the biological decomposition and stabilization of organic matter under aerobic conditions of high temperature, resulting in a humus-like product that can be used as a soil amendment. Composting activities that are exempt from obtaining a permit from DEP or require a permit under the permit-by-rule standards are exempt from this definition.

F. DEPARTMENT OF ENVIRONMENTAL PROTECTION: The term "Department of Environmental Protection" more commonly referred to as "DEP" refers to the State of Maine Department of Environmental Protection including the Board of Environmental Protection and the Commissioners and/or its successor agencies.

G. EXPANSION AND/OR ENLARGEMENT: The expansion and/or enlargement of an activity shall mean the increase in the size or capacity of an operation regulated under this Ordinance and shall include the following: construction and/or enlargement of any building or structure, new spreading sites, and any increase in the size of operation.

H. HYDROGEOLOGIC IMPACT STUDY: The term "Hydrogeologic Impact Study" refers to a hydrogeologic impact study prepared by a State of Maine Certified Geologist with confirmed experience in hydrogeology.

I. MINOR CHANGE OR REVISION: A minor change or revision shall mean any change in the activity that does not include an expansion and/or enlargement.

J. NUTRIENT MANAGEMENT PLAN: The Nutrient Management Plan is a plan developed for farming operations which balances crop nutrient needs with the application of soil amendments and includes consideration for residual nutrients within the soil from previous crop residue and application of soil amendments. It is based upon total farm nutrient needs.

K. OPERATOR: The term "operator" refers to any person who has legal control of a site or storage facility subject to this Ordinance. This person may be the owner, an agent, a lessee of the owner or an independent contractor.

L. OWNER: The term "owner" refers to any person who alone or in conjunction with others owns the real property upon which is located a landspreading site or storage facility subject to this ordinance.

M. PRIMARY SAND AND GRAVEL AQUIFER RECHARGE AREAS: The term "primary and gravel aquifer recharge areas" refers to the surface directly overlying sand and gravel formations that provide direct replenishment of the ground water in sand and gravel and fractured bedrock aquifers. The term does not include areas overlying formations that have been identified as unsaturated and are not contiguous with saturated formations.

N. RESIDUALS: The term "residuals" refers to those materials included but not limited to pulp and paper mill wastewater and sludge, vegetable and fish processing residuals, and ash from wood incinerators generated from municipal, commercial or industrial facilities that are suitable for controlled land application with resulting vegetative assimilation, attenuation of material components and soil condition improvement.

O. SEPTAGE: The term "septage" refers to waste, refuse, effluent, sludge and other materials from septic tanks, cesspools or other similar facilities. For the purpose of this ordinance, septage is defined as a mixture of liquids and solids derived from household (domestic) sanitary wastewater, and shall include holding tank waste and sanitary wastewater and solids from tanks connected to commercial establishments such as restaurants and motels. Pit and vault privy waste, and portable toilet waste, may be included as septage if it is not contaminated with solid waste. Wastes from septic tanks or any other similar facilities which are significantly different in character and origin (e.g. an industrial process) are not septage, and are subject to other applicable standards.

P. SLUDGE: The term "sludge" refers to the semi-solid or liquid residual generated from a municipal, commercial or industrial wastewater treatment plant.

Q. SPECIAL WASTE: Excepting biosolids and other residuals as defined and referred to in this ordinance, "special waste" as defined in 38 M.R.S.A. Section 1303-C (34), means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

1. Debris and residuals from non hazardous chemical spills and cleanup of those spills;
2. Contaminated soils and dredge spoils;
3. Asbestos and asbestos-containing waste;
4. Sand blast grit and non liquid paint waste;
5. High and low pH waste;
6. Spent filter media residue;
7. Shredder residue; and
8. Other waste designated by the Board, or rule.

R. SIGNIFICANT GROUNDWATER AQUIFER: The term "significant groundwater aquifer" refers to any formation of soil or fractured bedrock that contains recoverable quantities of water greater than ten gallons per minute from a six-inch well. The "Hydrogeologic Data for Significant Sand and Gravel Aquifers" map prepared by the Maine Geologic Survey is hereby referenced. In the event that on-site testing required pursuant to this Ordinance identifies additional aquifers or identifies boundaries of aquifers that are different from those mapped, the results of the on-site testing shall take precedence.

S. STANDARD SOIL TEST: The term "Standard Soil Test" refers to a measurement of soil pH, cation exchange capacity (CEC), potassium, Phosphorous, magnesium, calcium, and organic matter. The correct technique for obtaining a soil sample for the test has been established by the University of Maine at Orono Soil

Testing Service.

T. STORAGE FACILITY: The term "storage facility" refers to one which contains biosolids and/or other residuals. There are two basic categories for storage facilities: temporary and permanent. Such facilities in use for less than one hundred eighty (180) days shall be deemed temporary and such facilities in use for more than one hundred eighty (180) days shall be deemed permanent. Examples of temporary storage facilities include field stacking and temporary earthen pits. A field stacking site is a land area consisting of suitable soils and slopes no greater than fifteen percent (15%), located away from wells and surface waters, protected from surface runoff and providing for infiltration of leachate on a crop area in order to facilitate the storage of biosolids and other residuals.

ARTICLE III: PURPOSE

The purpose of this ordinance is as follows:

- to provide an opportunity for effective notice and public input during the local review process;
- to monitor and enforce biosolids and other residual usage;
- to ensure adequate remedy for any damage that may occur;
- to protect the health and safety of the residents of the Town of New Portland
- to protect the economic interest of the residents of the Town of New Portland
- to enhance and maintain the quality of the environment, and to conserve natural resources through regulation of storage and land application of biosolids and other residuals on all applications for licensing of the land application and/or storage sites of biosolids and other residuals.

New Portland desires to work in partnership with the Department of Environmental Protection (hereinafter "DEP") by establishing in this Ordinance a local procedure for the following activities:

- a public hearing process to review all land application sites;
- an inspection process to review all land application activities and storage sites;
- a notification process to keep the Town informed of all land application activities;
- and identification of local sensitive environmental areas.

This Ordinance also recognizes the value that biosolids and other residuals can provide to the town's agricultural and forest land. The use of biosolids and other residuals on agricultural land enable local farmers to improve the productivity of their land. The land application of biosolids and other residuals as well as commercial composting activities are cost effective resource management strategies for residential municipal waste. The application of biosolids and other residuals shall be performed in a manner that also recognizes recreational, residential and commercial land use activities that share the town's rural landscape.

ARTICLE IV: EXEMPTIONS

Homeowners within the Town of New Portland may dispose of septage from their septic systems on their own property in accordance with Chapter 420 (State of Maine Septage Management Rules) and are hereby exempt from this Ordinance as long as they maintain compliance with Chapter 420. These property owners must notify the Town's Code Enforcement Officer (hereinafter "CEO") before any such disposal shall be done under Chapter 420.

Private/domestic composting shall be exempt from this Ordinance.

ARTICLE V: MATERIALS PROHIBITED

Land application of special waste is prohibited in the Town of New Portland.

ARTICLE VI: APPLICATION PROCEDURE

A. Procedure

1. An applicant wishing to deliver, store or land apply biosolids and other residuals in New Portland shall file an application form with the Board. The application shall be submitted at least one hundred eighty (180) days before the date of first delivery, storage or land application, to ensure adequate time for inspection and review under this Ordinance.

2. The expansion and/or enlargement of any regulated activity shall require a modification permit from the Board and shall be based upon the requirement for permitting a new site. Minor changes or revisions to the original application shall be submitted to the CEO for review and approval. The CEO may request the Board's input prior to making a decision about the proposed change. The applicant shall be responsible for making any permit modifications with DEP as required.

3. The applicant shall submit up to twenty (20) copies (town will specify the number) of the application at least thirty (30) days prior to the Board meeting at which the applicant wishes to be heard.

4. Applications must have DEP approval before submission. All applications for initial permits shall be accompanied by a non-refundable fee of One Hundred Fifty Dollars (\$150.00). These fees shall be established in a Town Fee Schedule, reflecting additional costs directly related to administering this Ordinance, revised from time to time by the New Portland Board of Selectmen and payable to the Town of New Portland.

5. The Board may require that a qualified consultant or consultants review all or part of an application. The consultant(s) shall estimate the cost of review and make recommendations which will result in compliance with this

ordinance and DEP regulations. The consultant(s) shall estimate cost of such review and the applicant shall deposit with the Town the full estimated cost which the Town shall place in an escrow account. The Town shall pay the consultant(s) from the escrow account and reimburse the applicant if funds remain after payments are completed. If escrow funds are insufficient, the applicant shall deposit additional funds with the Town, based on consultant(s) estimate, sufficient for completion. The consultant(s) shall be mutually acceptable to the Town and the applicant.

6. The Board may require the applicant to undertake any study which it deems reasonable and necessary to insure that the requirements of this Ordinance are met. The costs of all such studies shall be paid by the applicant.

7. One properly submitted, the Board shall review the application to determine whether it is complete or whether additional information is required. If the application is found to be incomplete the Board shall notify the applicant, in writing, within ten (10) days as to what additional information is necessary to complete the application. The applicant will have ten (10) days to provide the additional information requested by the Board.

8. A public hearing shall be held within thirty-five (35) days of the Board determination that the application is complete. Notice of the date, time and place of the hearing shall be published in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing. Abutting property owners, as shown on New Portland tax maps and records, shall be notified by certified mail, by the Town and paid for by the applicant, at least seven days prior to initial Board consideration of an application. This notice shall indicate the time, date and place of Board consideration of the application. Notice shall also be posted in three (3) public places designated by the Board. Failure to receive notice shall not invalidate a public hearing held if the requirements of this subsection have been met.

9. The Board shall decide whether the application should be approved with conditions, or denied within thirty-five (35) days of the issuance of a license from the DEP or within seventy (70) days of the Town's public hearing, whichever date is later, unless additional information is requested by the Board. If additional information is requested then the Board shall make a decision on the application within 35 days of receipt of the requested information.

10. No spreading or stock piling of any biosolids will be done on an aquifer or flood plane. Maps of "Hydrogeologic Data for Significant Sand and Gravel Aquifers", prepared by the Maine Geologic Survey are required for the application.

B. Submissions

A permit application, filed on forms provided by the Code Enforcement Office to land apply or store biosolids and/or other residuals or for commercial composting operations in New Portland, good for one year, shall include the following information:

1. A copy of the complete application submitted to DEP for the proposed activity including all required permit attachments. (see below)
2. Fees as required by Article VI.A.4 of this Ordinance.
3. Property location shown on a 7.5 minute USGS topo map copy.
4. Accurate site plan map drawn to scale 1":500', including tax maps and the most recent aerial photograph possible, that clearly indicates property lines, abutters, existing water well locations within three hundred (300) feet, areas suitable for spreading, required setbacks, storage areas, proximity to any primary sand and gravel aquifer recharge area and/or significant groundwater aquifer, waterbody/courses, roads, swales, steep slopes (greater than 15%), buildings and environmentally sensitive areas.
5. Baseline well tests performed on all wells within 300' of application and storage sites. (to be paid by the applicant)
6. A narrative explaining the reasons for choosing the designated areas and setbacks.
7. A standard soil test performed by a certified lab for each proposed land application field.
8. A medium intensity Natural Resources Conservation Service (NRCS) soil survey map or similar map prepared by a Maine Certified Soil Scientist. If an NRCS map is used, it must be verified by a Maine Certified Soil Scientist.
9. If field stacking or field storage of biosolids and/or other residuals is proposed, and on-site soil investigation performed by a Maine Certified Soil Scientist of the stacking or storage site is required.
10. The Board may require submittal by applicant of Hydrogeologic impact study which would be based on the size, location, surrounding uses, or other characteristics of the proposed site. If required, the impact study shall be prepared by a State of Maine Certified Geologist with experience in hydrogeology at the applicant's expense.
11. The applicant shall submit all biosolids and other residual analysis reports, annual reports and any other data required as per the DEP permit to the CEO at the time of initial application.

(See article 7-B-2b)

12. A plan for the submission of the results of soils tests to be performed annually prior to the application for the biosolids and other residuals for the duration of the permit sought, including the proposed sampling schedule, sampling locations, and parameters to be measured.

13. Nutrient Management Plan. A Plan must be submitted to the Board which has been reviewed and approved by the Somerset County Soil & Water Conservation District and said plan must meet the standards and specifications of the District.

14. A signed indemnification agreement containing the language set forth in Article VIII C3.

C. Submission Waivers

The Planning Board may modify or waive any of the submission requirements when it determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting land owners or the general health safety and welfare of the Town.

ARTICLE VII: PERMIT RENEWALS

A. Applicants that plan to continue operations shall obtain an annual renewal permit from the CEO within fifteen (15) working days of the expiration of their existing permit. Any applicant that does not obtain the annual renewal permit shall submit an application to the Board for a new permit. The renewal permit shall be obtained for any activity that plans to continue operations regardless of any lapse, not to exceed three (3) years, in land application, storage, composting, etc.

B. The applicant shall submit the following information to the Board in writing for permit renewal applications:

1. The names of the applicant and the land owner and the date of the original permit.
2. A copy of the annual biosolids and other residuals utilization report as required by and submitted to DEP.
3. The applicant shall submit a non-refundable annual renewal fee of One Hundred Fifty Dollars (\$150.00).

C. The Nutrient Management Plan shall be revised annually based upon results of an annual soil test and crop needs.

ARTICLE VIII: PERFORMANCE STANDARDS

A. General Standards

1. Storage and land application of biosolids and other residuals

is prohibited in New Portland unless approval has first been obtained from DEP and the Board, except as otherwise provided for by DEP under Chapter 420 or subsequent amendments for homeowner land application of septage from their own septic system.

2. Biosolids and other residuals may be stored on site in New Portland in either an approved permanent or an approved temporary storage facility as provided in the current DEP Regulations. If temporary field stacking is to occur there must be precautions taken to prevent leaching and runoff. No temporary field stacking shall be done on sites with an eight percent (8%) or greater slope. The maximum volume stacked at any site shall be limited to the amount approved for land application on each field. With Board approval, one stacking site serving more than one field may be allowed.

3. Land application shall be allowed only from April 15 to November 15 but shall not occur if ground is saturated, frozen or snow covered or on sites with a slope greater than fifteen percent (15%).

B. Testing Requirements

1. Site Testing and Monitoring

At the discretion of the Board, or by written petition to the Board by the owner of an existing well located within three hundred (300) feet of any site proposed for storage or land application of any biosolids or other residuals, the Board may require an annual water analysis of any such well, per State Drinking Water Standard, paid for by the applicant.

If spreading is to be done within One Thousand (1000) feet of the Shoreland Zone the applicant must test the water from the body of water in two locations. First location is at site, second is one half mile south on the same side of water body. All testing shall be in accordance with the most current edition of Standard Methods for Examination of Water and Wastewater published by the American Public Health Association as approved by the EPA. Tests shall be conducted by State licensed laboratory qualified to test water and the results shall be furnished to the CEO and/or the Board on a semi annual schedule. All testing costs are to be paid for by the applicant. First test to be submitted with the application for the permit. If any future testing shows higher amounts of bacteria and/or pathogens and/or heavy metals than the first test, spreading will be immediately suspended and permit revoked.

2. Characteristics of Biosolids and other Residuals

A. Copies of the results of mandated State tests must be submitted to the Board upon receipt by the applicant. The Board may require random spot checks of biosolids or other residuals taken at the point of delivery. At the discretion of the Board,

the cost of one random test per year will be borne by the applicant. All testing shall be in accordance with the most current edition of Standard Methods for Examination of Water and Wastewater published by the American Public Health Association as approved by the EPA. Tests shall be conducted by a State licensed laboratory qualified to test biosolids and the results shall be furnished to the CEO and/or Board on a schedule approved by the Board.

B. No biosolids or other residuals may be delivered to, stored or land applied in New Portland if testing required by this Ordinance indicates that the maximum permissible concentrations and/or loading limits appearing in the DEP Regulations and/or the US EPA 40 CFR part 503 are exceeded.

3. Site Criteria

A. No biosolids or other residuals may be applied to land with a slope of greater than fifteen percent (15%).

B. Where the proposed application site has a slope of fifteen percent (15%) or less, no biosolids or other residuals may be land applied within the following setback areas:

- Residences, classified bodies of water including: lakes, ponds, and streams, water supply well-three hundred feet
- Intermittent streams-100 feet
- Public roadways, drainage gullies, property boundaries-50 feet

C. Additional updated site criteria as established by the Department of Environmental Protection Regulations must also be met within the timeframe established by the DEP.

C. Additional Requirements

1. The applicant shall agree to furnish the CEO with copies of all conditions and limitations imposed by the DEP as well as prompt notice of any changes in the composition of the material and further testing required by the DEP and the results of those tests and any annual change in site application or storage plans.

2. The applicant or its agent shall agree to notify the CEO in writing of delivery of any biosolids or other residuals to Town and to inform the CEO of the proposed land application timetable and who is to do the actual land application. The party responsible for land applying biosolids or other residuals shall notify the CEO as soon as possible prior to land application and in any event not later than three (3) working days prior to land application.

3. The applicant shall covenant and agree to indemnify, and hold harmless and defend Town of New Portland its agents and employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the work to be performed

under the permit. The applicant hereby assumes all liability and responsibility for injuries, claims, or suits for damages, to persons or property of whatsoever kind or character, whether real or asserted, occurring during the time that work is being performed under the permit or arising out of the performance of same.

4. The applicant shall procure and maintain during the life of the permit, a \$35,000. escrow account and such Liability and Property Damage Insurance as shall protect the performance of work covered by the permit from claims damages or personal injury, including accidental death, as well as from claims for property damage which may arise from the operations under permit, whether such operations be by the applicant or by anyone directly or indirectly employed by them. The amounts of such insurance shall be as follows: the applicant shall maintain Liability Insurance and Property Damage Insurance in the amount of no less than \$1,000,000 for Bodily Injury to any one person and no less than \$1,000,000 per occurrence of Property Damage with a \$2,000,000 aggregate liability coverage for both Bodily Injury and Property Damage.

ARTICLE IX: MODIFICATION OF CONDITIONS AND REVOCATION OF PERMIT

A. The CEO with proper notice shall have the right to enter all land application and storage sites at all reasonable hours for the purpose of inspecting the site for compliance with this Ordinance.

B. If the CEO finds violations of any permit conditions or of any obligations imposed by this Ordinance or DEP Regulations, the CEO shall issue a written notice to the land owner, the Board, the applicant, the operator (if different for the land owner) and notify DEP.

C. The applicant and/or operator who violates this Ordinance or the conditions of approval as well as the owner who knowingly permits such violations to occur shall be guilty of a civil violation and shall be subject to a civil penalty of not more than Twenty Five Hundred Dollars (\$2,500.00) for each offense. Each day such a violation is permitted to exist after notification shall constitute a separate offense.

D. When it is shown that there has been a previous conviction of the same party within the past two years for violation of this ordinance a penalty up to Twenty Five Thousand Dollars (\$25,000.00) may be assessed.

ARTICLE XI: APPEALS

A. The Board of Appeals shall have the power to hear and decide appeals when it is alleged that the Planning Board disregarded pertinent information when making their decision or did not follow the procedural guidelines of this Ordinance.

B. Appeals Procedure

1. Making an Appeal

A. An appeal resulting from any decision on the part of the Board may be taken to the Board of Appeals by an aggrieved party. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

B. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

1. A concise written statement indicating what relief is requested and why it should be granted.

2. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

C. Upon being notified of an appeal, the CEO or the Board, as appropriate, shall transmit to the Board of Appeals all the papers constituting the record of the decision being appealed.

D. The Board of Appeals shall hold a public hearing on the appeal with thirty five (35) days of its receipt of an appeal request.

2. Decision by Board of Appeals

A. A majority of the Board of Appeals shall constitute a quorum for the purpose of deciding an appeal. A member who abstains shall not be counted in determining whether a quorum exists.

B. The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse any decision of the Board, or to decide in favor of the applicant on any matter on which it is required to decide under this Ordinance, finding that such decision was unsupported by substantial evidence in the record. The Board of Appeals may reverse any decision of the Board only upon finding that such decision was contrary to specific provisions of this Ordinance.

C. The person filing the appeal shall have the burden of proof.

D. The Board shall decide all appeals within thirty five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

E. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well

as the reasons or basis therefore, and the appropriate order, relief or denial thereof.

C. Appeal to Superior Court

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court pursuant to Rule 80D of the Maine Rules of Civil Procedure within thirty (30) days from the date of any decision of the Board of Appeals.

D. Reconsideration

The Board of Appeals may reconsider any decision within thirty (30) days of its original decision.

ARTICLE XII: VALIDITY, SEVERABILITY AND CONFLICT WITH OTHER ORDINANCES

A. Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section of this ordinance.

B. Whenever the requirements of this Ordinance are inconsistent with the requirements of any other ordinance, code or statute, the more restrictive requirements shall apply.

ARTICLE XIII: AMENDMENTS

The Ordinance may be amended by Town Meeting vote. Amendments may be initiated by a request of the Board, the Board of Selectmen, or by petitions bearing the signatures of registered New Portland voters equal to , or in excess of ten percent (10%) of the votes cast in the last gubernatorial election in the Town. The Board of Selectmen shall conduct a public hearing on any proposed amendment.