

December 13, 1993

Mr. Teele moved that Resolution No. 282-93 be presented at this time, which was seconded, and carried by a voice vote.

RESOLUTION NO. 282-93

ADOPTING PROPOSED LOCAL LAW NO. 4 FOR THE YEAR 1993

By Mr. Tomlinson, Chairman, Planning & Conservation Committee

WHEREAS, a public hearing on Local Law No. 4 for the Year 1993, Land Spreading of Food Processing Wastes, has been held on December 13, 1993,

NOW, THEREFORE, BE IT RESOLVED that the St. Lawrence County Board of Legislators hereby adopts Local Law No. 4 for the Year 1993.

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Mr. Tomlinson moved that Resolution No. 282-93 be adopted, seconded by Mr. J. Smith and Mr. Morse, and carried by a roll call vote with twenty (20) yes votes, one (1) no vote (Dunham) and one (1) Legislator absent (Ashley).

PROPOSED LOCAL LAW NO. 4 FOR THE YEAR 1993  
LAND SPREADING OF FOOD PROCESSING WASTES

§ 1. Title

This local law shall be known as and may be cited as the "Land Spreading Law of St. Lawrence County."

§ 2. Statement of Legislative Findings and Intent

The St. Lawrence County Board of Legislators finds that the application to land of certain liquid wastes that arise from food processing operations can pose a threat to the public health, safety and welfare by polluting the groundwater supplies on which individuals and, in some cases, municipalities depend for their potable water supply. Land application of food processing wastes can be an acceptable waste management technique if proper application procedures are observed by the applicator.

New York State regulations found at 6 NYCRR Part 360, Subpart 4, are not sufficiently stringent to prevent the contamination of groundwater by the mis-application of food processing wastes. Remediation of contaminated groundwater is a difficult, time-consuming and expensive proposition.

It is the intent of this local law to complement 6 NYCRR Part 360, Subpart 4 and thereby control the potentially negative environmental effects of

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land spreading of food processing wastes through the issuance of an applicator's permit with requirements for planning and standards for application of wastes. If 6 NYCRR Part 360, Subpart 4 (Land Application Facilities) is amended in such a manner as to provide standards that are substantially comparable to those found in this local law and thereby offer comparable protection of water resources, then this local law shall be repealed.

§ 3. Statutory Authority

This local law is enacted pursuant to the general police powers granted local governments in Article 9, Section 2(c) of the Constitution of the State of New York and in New York State Municipal Home Rule Law, Article 2, § 10 (1)(a)(II) to protect and enhance the well-being and safety of the citizenry and to protect and enhance the physical and visual environment. Further, this local law is enacted pursuant to Article 27, Title 7 § 27-0711 of Environmental Conservation Law.

§ 4. Applicability

This local law shall be applicable to all territory within St. Lawrence County, New York.

§ 5. Definitions

For the purposes of this Local Law the following terms, phrases, words and their derivatives shall have the meaning given herein. Where not otherwise indicated and when consistent with the context, words used in the present tense include the future, words used in the singular number include the plural number and masculine pronouns include the feminine. The word "shall" is always mandatory and not merely directory.

"Applicant" is any generator of food processing waste, either located within or outside of the territory of St. Lawrence County, who intends to apply food processing wastes to lands within St. Lawrence County.

"Bedrock" is cemented or consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials, including decomposed and weathered rock and saprolite.

"Community Water Supply Well" is a public water supply system having at least 15 service connections used by year-round residents.

"County" shall refer to St. Lawrence County, New York.

"Disposal" is the final placement or treatment of food processing wastes without the intention of reusing or recycling any portion of the residue, with the exception of making nutrients available to crops via land

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spreading.

"Drainage Swale" is a shallow depression in the surface of the land which carries runoff from areas being land spread to a discharge point located outside of the property boundaries of a site.

"Food Processing Waste" is any semi-solid or liquid food residue that is non-recognizable but identifiable by analysis or is certified as solely a by-product of plant, fruit, meat, fish and poultry processing, aquaculture, or dairy processing (e.g., milk and cheese whey, whey permeate or lactose, brewery and winery waste, and by-products from canned, frozen, or preserved meats, fish or fruit and vegetable processing operations).

"Generator" is the person who produces the food processing waste as a result of a commercial food production process.

"Groundwater" is water below the land surface in the saturated zone of the soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

"Independent Food Processing Waste Contractor" or "Land Spreading Contractor" is a person who is land spreading food processing wastes under a contractual arrangement with a generator.

"Land Spreading" or "Land Application" is the application of food processing wastes to the surface of a site or by injection into the upper soil layer of a site, with or without having first mixed the food processing wastes with manure in manure storage systems.

"Person" is any person, firm, partnership, association, corporation, company, municipality or organization of any kind.

"Private Property" is any real property or building, whether inhabited, uninhabited or vacant, and including yards, grounds, driveways, structures and other areas belonging to a person.

"Place of Business" is the location of any seasonal or year-round commercial use that requires an on-site, non-community potable water supply.

"Plot" is an area of land within a site upon which land application has been planned or has occurred.

"Residence" is a seasonal or year-round dwelling intended for habitation, whether or not currently occupied.

"Residential Potable Water Well or Supply" is a drilled, driven or dug

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well or a spring intended to supply the potable water to a residence or place of business.

"Site" is any parcel of land on which a land application plot or plots is/are located.

"Surface Water Body" is any lake, pond, river, stream, perennial stream, spring, wetland regulated pursuant to New York State Environmental Conservation Law, or artificial impoundment.

#### § 6. Exemptions

The following activities are exempt from the requirements of this local law:

- a. The land application of food processing wastes produced by an applicant and requiring disposal, in quantities of less than 5000 gallons per day, computed as a yearly average.
- b. Liquid manure produced as part of dairy or livestock agricultural operations into which has been mixed less than 10% by volume food processing wastes at the time of land spreading. Liquid manure storage facilities used to store food processing waste shall meet the USDA SCS technical bulletin section IV design criteria 313 (2/86) or 425 (10/83) or equivalent sealing specifications.

#### § 7. Permit

- a. No generator shall dispose of food processing wastes by land application without having first obtained a permit from the County Department of Public Health. No independent food processing waste land spreading contractor shall land spread food processing wastes for a generator without adhering to the requirements set forth in the generator's permit. The responsibility for complying with the requirements of the permit shall, in any event, rest with the generator.
- b. First-time application for such permit and applications for subsequent renewals shall be made on forms provided by the County Department of Public Health and shall be accompanied by a first-time fee of \$100.00 and an annual renewal fee of \$50.00. A permit application shall be reviewed and acted upon within 45 consecutive calendar days by the Department of Public Health. Failure to act within the 45-day period shall constitute approval by default for a period of one year following the date of receipt of the application plus 45 days. Permits shall be issued by the County Department of Public Health and shall be valid for a period of one calendar year following the date of approval and are revocable for good cause, following a hearing pursuant to § 10.b.(2).

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- c. Permits may be amended by mutual consent of the generator and the County. The County may, at the request of the applicant at the time of application, include a contingency plan for emergencies as part of the permit. An emergency shall be defined as an unusual temporary event or condition which causes the need for food processing wastes to be land-applied in excess of quantities specified in § 8.a.(5)."
- d. The County Department of Public Health shall, within 10 days from the date of receipt, publish a notice of receipt of an application in the official newspaper(s) of the County. Such notice shall specify the types of food processing wastes to be land-applied and the names of the towns within which land application is proposed. Information specified in § 8. and contained in the issued permit shall be a matter of public record, available on request, for a nominal copying fee to be set by the Department of Public Health.

§ 8. Required Permit Application Information

- a. The following information shall be provided in a land spreading permit application on forms provided by the County:
  - (1) The name, address and phone number of the waste generator. The corporate name and name of the plant manager, as appropriate, shall be indicated.
  - (2) The name, address and phone number of any independent land spreading contractor who will be used to land spread the generator's wastes.
  - (3) A description of the food processing wastes to be land applied by either the generator or any independent land application contractors, including daily quantities, chemical and physical characteristics, and volumes.
  - (4) A description of the proposed methods of disposing of the food processing wastes, including the method of land application and the daily quantities involved in each method (i.e. spray irrigation, tank truck with horizontal bar spreader, high pressure applicator, addition to liquid manure storage systems, etc.). If more than one independent land application contractor is being used by the generator, the land application method for each contractor shall be indicated.
  - (5) A topographic map or maps at a scale of 1:24000 (USGS 7.5-minute quadrangles are recommended) showing all proposed land application sites. Each site shall be annotated to indicate:
    - the type of waste being applied

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- the rate of application
- the number of days per 7-day week on which land spreading will occur
- the name of the generator and, if one is being used, the name of the independent land application contractor
- the property boundary(ies) of each site, and the location of the nearest items found in § 9. d.
- the physical boundaries and actual location of land spreading plots within the outer property boundary of each site
- the type of land use or crop on the site, as in § 9. e.
- the USDA-SCS soil texture of the site and information on minimum depth to bedrock and groundwater

§ 9. Land Application Standards

Land-applied food processing wastes shall comply with the following standards:

- a. All land spreading sites shall be approved by the County Department of Public Health prior to land application of wastes.
- b. There shall be no land spreading between the times of local sunset and sunrise.
- c. Liquid wastes that contain viable pathogens, such as those from meat or poultry processing, shall not be applied to fields used for growing crops that may be consumed in a raw form by humans.
- d. The minimum horizontal distance from the perimeter of the site to be used for land application shall meet or exceed the following:

<u>Item</u>	<u>Minimum Horizontal Separation Distance (in feet)</u>
residence or place of business	500
residential potable water well or supply	500
community water supply well	1500
surface water body	500

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drainage swale

100

The County may require greater separation distances than those indicated in order to protect the public health, safety and welfare if at a particular site physiographic circumstances warrant.

- e. Land spreading sites shall be limited to cultivated cropland, tree plantations, pasture or hayland. Other sites may be approved on a case-by-case basis.
- f. Land spreading plots shall be limited to a slope of 12% or less when the soil temperatures are above 32 degrees F (0 degrees C). When the ground is frozen or snow covered, land spreading shall be restricted to plots with slopes of 3% or less. Slope shall be measured as an average value over the shortest dimension of a plot.
- g. Land spreading plots shall only be located on soils that are USDA-classified as "deep" (i.e. 40 or more inches to bedrock). A minimum vertical separation distance of at least 36 inches from groundwater shall normally be required, however, in recognition of the common seasonal occurrence of temporary high groundwater, the County may vary the minimum vertical separation distance to groundwater on a case-by-case basis and for fields with agricultural tile drainage, with corresponding limitations on the rate of application, in order to protect the public health, safety and welfare.
- h. Equipment used for land application shall be equipped with a distribution system capable of spreading the waste evenly over each plot.
- i. Discharge limitations shall be as follows:
  - (1) The volume of liquid waste land spread:
    - shall not alter the characteristics or structure of the soil such that the crop is adversely affected or erosion or permeability problems occur.
    - shall be limited to prevent ponding, except for temporary conditions following rainfall events. If ponding occurs, defined as standing liquid equal to or greater than 3" in depth, all spreading shall cease immediately.
    - shall be limited to prevent runoff. If runoff occurs, all spreading shall cease immediately.
  - (2) In order to prevent runoff or control odor, the County may require the waste to be incorporated into the soil.

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- (3) The maximum weekly volume of liquid waste applied shall be limited to 13,500 gallons per acre per week (1/2 inch) except that when the ground is frozen or snow covered it shall be limited to 6,800 gallons per acre per week (1/4 inch).
- (4) During periods of the year when soil temperatures are above 32 degrees F (0 degrees C) the maximum weekly volume of liquid waste shall be limited according to Table 1.

Table 1.

Maximum Weekly Volume of Liquid Waste to be Applied to Land Spreading Plots (gallons/acre/week or inches/week)

Soil Texture (USDA-SCS)	Application Rate
Sand	13,500 (1/2 in.)
Sandy Loam	27,000 (1 in.)
Loam	27,000 (1 in.)
Silt Loam	27,000 (1 in.)
Clay Loam	20,000 (3/4 in.)
Clay	13,500 (1/2 in.)

- (5) The total pounds of chloride applied shall be limited to 170 pounds per acre per year or 340 pounds per 2-year period. The County may apply an absolute ceiling on either a temporary or permanent basis on quantities of sodium chloride or other salts on land spreading plots based on such factors as background groundwater concentrations or probable stress on crops.
- (6) The total pounds of nitrogen applied per acre per year shall be limited to the nitrogen needs of the crop minus any other nitrogen, including fertilizer or manure, added to the land spreading site. Nitrogen applied can be calculated on the basis of plant available nitrogen, as long as the release of nitrogen from the organic material is credited to future years.
- (7) For whey, not including whey by-products, where the nitrogen content has not been determined through sampling and analysis, the nitrogen application rate shall be controlled by limiting the yearly hydraulic application rate for a plot to 27,150 gallons per acre (1 in.) the first year, 20,360 gallons per acre (3/4 in.) the second year and 13,600 gallons per acre (1/2 in.) the third and succeeding years.



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§ 10. Penalties

a. General

Any person found guilty of violating any provision of this Local Law shall be subject to penalties set forth in this section. The County is not restricted from recovering court costs from the prosecution of cases under this Local Law.

In the event that a person shall be found guilty of violating this local law he shall be liable for civil penalties in the amount of reasonable attorney's fees, cost of expert witnesses, cost of performance of testing, and any other such reasonable and necessary costs associated with prosecution of the criminal action.

b. Violations

- (1) Persons land-applying food processing wastes in violation of this law shall be deemed guilty of a Class A misdemeanor punishable by a period of incarceration in the St. Lawrence County Correctional Facility of up to 60 days and/or a fine of not less than \$500.00 and not to exceed \$1000.00 plus the cost of any damages resulting from the land application, including the reasonable cost of analyzing soil, surface water and groundwater, installing monitoring wells and providing remediation, as appropriate. Each occurrence of a violation shall constitute a separate offense.
- (2) A violation under this subsection shall create a liability to the people of the County for a civil penalty not to exceed \$1000.00 to be assessed after a hearing or opportunity to be heard, upon due notice and with the right to specification of the charges and representation by counsel at such hearing.
- (3) Each occurrence of a violation of this local law shall constitute a separate violation for the purposes of civil liability.
- (4) If a person is found guilty of a violation of this local law under this subsection and it is the Court's judgement that remediation of the site is appropriate, the Court may require the posting of a cash or performance bond and/or the forfeiture of capital, goods and/or property or other assurance to secure compliance with such an order.

§ 11. Enforcement

- a. The enforcement of this local law shall be the responsibility of the St. Lawrence County Public Health Department, which shall have the authority to issue citations for violations. The County Public Health Department is authorized to request the County Attorney or the District Attorney to commence an action in any court of

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competent jurisdiction to enjoin any violation of this local law and/or to seek criminal and/or civil penalties for violation thereof, as mentioned in § 11. The County Public Health Department may call upon the St. Lawrence County Soil and Water Conservation District staff for technical assistance and the Sheriff's Department, the New York State Police or other law enforcement agencies for assistance as necessary to enforce this local law.

- b. Upon receipt of a complaint by a property owner on whose private property land spreading in violation of this local law has occurred or upon receipt of a *bona fide* complaint or report of off-site impacts from land spreading, the County Public Health Department shall investigate such complaint and maintain a record of same.
- c. The County Attorney is authorized to commence an action in any court of competent jurisdiction to enjoin any violation of this local law or to seek criminal and/or civil penalties for violation thereof.
- d. Revenues resulting from monetary penalties recovered pursuant to this Local Law shall be placed in a St. Lawrence County revenue account expressly established for this purpose. Such revenues may be applied toward the costs of investigations and research, impact mitigation and remediation, as appropriate.

§ 12. Conflicting Laws

- (a) Where the provisions of this local law deviate or conflict with the applicable New York State Environmental Conservation Law and regulations found at 6 NYCRR Part 360, the more stringent provisions of this local law shall take precedence, in accordance with § 3 of this law. The provisions of this law shall not be interpreted as obviating any requirements or restrictions wherever it is possible to conform with the provisions of both this law and the New York State Environmental Conservation Law.

§ 13. Severability

If any part or provision of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, the remainder of this local law or the application thereof to other persons or circumstances shall not be affected thereby, and the County Board of Legislators hereby declares that it would have enacted this law without the invalid provision or application, as the case may be, had such invalidity been apparent.

§ 14. Effective Date

This local law shall take effect upon compliance with the filing statutes