

**TOWN OF PENDLETON**  
July 14, 2014

A regular meeting of the Town Board of the Town of Pendleton was held at the Town Hall, 6570 Campbell Blvd. Pendleton, N.Y. on the 14<sup>th</sup> day July 2014 at 8:00 P.M. One Public Hearing was scheduled for 7:30 P.M.

**PUBLIC HEARING**

Supervisor Riester called the Public Hearing to order at 7:30 P.M.

Clerk Pienta read the Public Hearing Notice that was published in the Union Sun & Journal on July 7, 2014. The purpose of the Public Hearing was to amend the Town Code §213 Solid Waste to restrict the application of bio-solids in the Town of Pendleton. Attorney Claude Joerg arranged for Mary Ellen Pembroke, a Stenographer, to transcribe the hearing.

***EXACT COPY OF STENOGRAPHER'S REPORT FOLLOWS:***

***24 pages including exhibits 1 & 2***

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STATE OF NEW YORK  
COUNTY OF NIAGARA : TOWN OF PENDLETON

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In the Matter of Public Hearing

On

Town Code Amendment 213

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Public Hearing held at the Town Hall,  
Pendleton, Niagara County, New York on the 14th  
day of July, 2014, commencing at approximately  
7:30 P.M.

Mary Ellen Pembroke, Court Reporter  
5430 Carleton Lake Drive, Lockport, NY 14094  
(716)433-4178

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APPEARANCES:

JAMES RIESTER,  
Town Supervisor

CLAUDE A. JOERG, Esq.  
Town Attorney

TERRY J. PIENTA,  
Town Clerk

AIMEE JARVIS,  
Councilman

DAVID LEIBLE,  
Councilman

RONALD MORRISON,  
Councilman

DONALD FISCHER,  
Councilman

EXHIBITS

PAGE

- 1. NY Apple Assoc Packet 9
- 2. Email 12

(Exhibits attached)

1 MR. RIESTER: Call the public hearing to  
2 order on the town code of amendment 213.  
3 Terry.

4 THE CLERK: Please take notice that the  
5 Town Board of the Town of Pendleton, Niagara  
6 County, New York has scheduled a public hearing  
7 for the 14th day of July, 2014 at 7:30 P.M. at  
8 the Pendleton Town Hall.

9 The purpose of the hearing is to receive  
10 public input on the proposed amendment to the  
11 town code, Chapter 213, solid waste to restrict  
12 the application of bio-solids in the Town of  
13 Pendleton.

14 The full text of the proposed amendment is  
15 available for public inspection at the Office  
16 of the Town Clerk and on the website;  
17 [www.Pendleton.NY.US](http://www.Pendleton.NY.US).

18 All interested parties will be heard.

19 MR. RIESTER: Thank you.

20 Who would like to speak first?

21 MS. SIRACUSE: Sara Siracuse, 6988 Monroe  
22 Street, Pendleton, New York.

23 I have, actually have three questions. I

1 don't know if they can actually be answered.

2 MR. RIESTER: We're not answering  
3 questions. We're accepting public comments.  
4 It's not a discussion type thing.

5 MS. SIRACUSE: I'll put it to you this way  
6 which is if the current land application  
7 permits already given do not require the owner  
8 of that farm to come and get a permit from the  
9 Town of Pendleton before the land application  
10 then I am against this fifty page ordinance  
11 that I don't feel makes any sense, okay.

12 MR. RIESTER: Okay Joe.

13 MR. FRAWLEY: Joe Frawley, 5082 Mapleton  
14 Road, Lockport, New York.

15 Just three things that I noticed in draft  
16 document. I felt that the rates for the fines  
17 for violations, the initial violation, the  
18 \$250.00 seemed a little bit light.

19 You know you're talking a lot of money on  
20 the table here that I'm certain someone would  
21 consider paying a \$250.00 fine and getting a  
22 slap on the wrist and also later on in the  
23 document there is a \$2,500.00 fine for the

1 application portion for making false statements  
2 or false documents so I would certainly be in  
3 favor of beefing those up to make it what, a  
4 little more painful in that event and lastly in  
5 the separation part of the document the  
6 separation portion with regards to dispensation  
7 for personal residences 2000 feet is what  
8 majority of all taxpayers asked you to do which  
9 I commend you for doing that.

10 I don't understand why there is a clause  
11 in there unless there is consent from a  
12 property owner which kind of creates a Peyton  
13 Place situation that if I own a piece of  
14 property next door and if it's bad for all my  
15 neighbors and food processing plants and bad  
16 for the school because I consent, maybe they  
17 want me to pay some money to consent and put on  
18 my property, that the 2000 foot buffer doesn't  
19 exist and I would like to see you rework that  
20 portion of the document if you would, please.

21 MR. RIESTER: Okay.

22 MR. FRAWLEY: Other than that I commend  
23 you on putting the ordinance together.

1           One more thing if I may. I just happened  
2           to think about it.

3           Where did CRA get the data for the  
4           analytical to set the basis for metals and  
5           carcinogens, do you know where those levels  
6           came from?

7           MR. RIESTER: I'm not sure Joe where Dave  
8           got those.

9           MR. JOERG: I got 'em.

10          MR. RIESTER: Where did you get them?

11          MR. FRAWLEY: I know you won't answer  
12          questions so my statement is to you --

13          MR. JOERG: Joe, let me answer the  
14          question. Claude Joerg for the Board.

15          Because we were asked that by Niagara  
16          County and in response to us was you may  
17          understand where it came from.

18          Town of Palermo passed an ordinance  
19          regarding these matters 2001 and when the Town  
20          of Palermo passed this ordinance it received  
21          the approval of the Department of Agriculture  
22          and Markets regarding such ordinance. Now the  
23          ordinance did not have the same setbacks that

1           were in this particular local law but as far as  
2           the concentrations of metals these were all  
3           approved by Ag and Markets in that particular  
4           ordinance so therefore I used those same levels  
5           because they had already received approval from  
6           Ag and Markets.

7           MR. FRAWLEY: I guess does anybody know  
8           what those levels mean by comparison to the  
9           data with the present product that was going to  
10          be used and spread on our fields, whether those  
11          levels equate to those standards?

12          MR. RIESTER: I'm not sure what the equate  
13          material has in it so I'm guessing what we're  
14          looking at is baseline and say this is what it  
15          is and we're not, we don't want to build up of  
16          these metals.

17          MR. FRAWLEY: Well I would hope that the  
18          levels of those items would certainly be  
19          greater than or at least equal to what are,  
20          what's on the board right now as far as what  
21          these people want to spread.

22                 If it's higher than what that data is  
23          coming in at it's a moot point and means

1 nothing but our concern is and always has been  
2 they were over the level of what's allowed than  
3 certain metals that were in there.

4 MR. RIESTER: When I was down at the DEC  
5 meeting and their job was to convince me to  
6 convince you that it was a good thing and they  
7 would go on, have tests baseline and then watch  
8 to make sure that these things didn't increase  
9 in levels.

10 We can sort of give us a baseline but in  
11 their own permitting process they're saying  
12 they would test and before they put in any more  
13 they would test and make sure they're not  
14 increasing whatever heavier metals, whether it  
15 be cadmium or whatever. I'm not sure what you  
16 do about it once it's there, you know, but  
17 other than wait I guess.

18 Thank you Joe.

19 Anybody else like to speak?

20 MR. SMITH: Yes. Brendan Smith, Smith  
21 Orchards, 4960 Mapleton Road, Pendleton.

22 Umm, I been in contact with New York Apple  
23 Association and the last meeting you guys want

1 some documentation supporting your ordinances.

2 MR. RIESTER: Right.

3 MR. SMITH: And New York Apple Association  
4 supports the Pendleton 2000 foot setback and I  
5 have those documents with me right here. I  
6 also included, they also reference the two  
7 documents that support the 2000 foot from  
8 Cornell University that I submitted earlier.

9 MR. RIESTER: Right.

10 MR. SMITH: And it references that in this  
11 letter so I bunched that altogether so it stays  
12 with what he's doing so I'd like to submit that  
13 to you --

14 MR. RIESTER: Okay.

15 MR. SMITH: -- for your documentation.

16 MR. JOERG: Get it marked in by the  
17 stenographer.

18  
19 (Whereupon NY APPLE ASSOCIATION, INC.  
20 PACKET was marked Exhibit 1 for  
21 Identification.)

22  
23 MR. SMITH: Okay and then I have another,

1 I have another. It's somewhat disturbing I  
2 have a e-mail from New York State Apple  
3 Association that they received -- see we have  
4 been in contact with Ag and Markets on my  
5 situation that if this is applied and they give  
6 that right to farm across the street that my  
7 rights to farm is taken away and I told them  
8 that they need to address this and  
9 unfortunately they're apprehensive on it  
10 because they don't want to do it, no one has  
11 ever done it in the state, no one has ever put  
12 it so close that it would affect someone else  
13 but the disturbing e-mails that I have state  
14 that the department has not received a request  
15 from any of the affected municipalities to  
16 review local laws that may limit land  
17 application of this material.

18 I found this out today. So they didn't  
19 get -- and I'm wondering why they said they did  
20 not get the secret so what I did is I took the  
21 cover letter that CRA sent --

22 MR. RIESTER: Right.

23 MR. SMITH: -- and I e-mailed it back to

1           that Jim Allen with New York State Apple  
2           Association and said this is what the Town of  
3           Pendleton sent them so something is going on.  
4           Hopefully the documents went to Ag and Markets  
5           and hopefully they just lost them or something  
6           because they're saying they didn't see them and  
7           that would explain.

8           MR. RIESTER: I wonder if it's a different  
9           department. I'm sure Dave knows though.

10          MR. SMITH: I don't know but they're  
11          supposed to reply by the 18th.

12          MR. RIESTER: The only one was Niagara  
13          County.

14          MR. SMITH: Right. Why aren't these guys  
15          replying if it's more restrictive?

16          So this is what Ag and Markets said. I  
17          want to submit this to you, this document so  
18          you guys can go after that and let's see and  
19          that was pretty much --

20          THE CLERK: The addresses that it was sent  
21          to was in that package and those addresses were  
22          agreeable but you're saying they didn't receive  
23          it from the --

1 MR. SMITH: According to this e-mail she  
2 said that they received nothing from any  
3 municipality requesting a decision on an  
4 ordinance to see if it was more restrictive.

5 They also said this document, that if  
6 anything is more restrictive than normal, that  
7 they typically will say that it's too  
8 restrictive and the guy has the right to farm  
9 but luckily Niagara County and the Town of  
10 Pendleton has also implemented a right to farm  
11 ordinance or law, whatever and if they say that  
12 he has a right to farm I'm asking you to  
13 provide me with my right to farm so --

14 MR. RIESTER: All right.

15  
16 (Whereupon EMAIL was marked Exhibit 2  
17 for Identification.)

18  
19 MR. SMITH: Hopefully you guys can go then  
20 through your law.

21 MR. RIESTER: I don't know if we have a  
22 right to farm law, per se. We follow the  
23 county.

1 MR. SMITH: You're following the county  
2 and county has a right to farm and that means  
3 after a decision from New York State Ag and  
4 Markets and after a decision from  
5 New York State DEC if that means the Town of  
6 Pendleton, which you guys represent us, if the  
7 Town of Pendleton files an Article 78 within  
8 that thirty days of New York State Ag and  
9 Markets filing an Article 78 representing us,  
10 the residents --

11 MR. RIESTER: Right.

12 MR. SMITH: -- that you guys should do it.  
13 ?

14 MR. RIESTER: Okay.

15 MR. SMITH: That's, you know, pretty much  
16 the gist but I'm happy with the ordinance. I'm  
17 happy that you guys went through with it. I'm  
18 happy with everything on it.

19 The most important thing is that 2000 foot  
20 and that should not be changed, that 2000 foot  
21 because that is critical. That provides a safe  
22 distance and that safe distance is documented  
23 by scientists with Cornell University, two

1 separate scientists from two separate  
2 departments so that should be able to protect  
3 your 2000 foot and that's the most critical  
4 thing in that whole document.

5 MR. RIESTER: Right.

6 MR. SMITH: Thank you.

7 MR. RIESTER: Thank you. Ann Marie.

8 MS. REED: Ann Marie Reed, R-e-e-d, 6630  
9 Sheetram Road, Pendleton.

10 Umm, my first I have to ask a question.  
11 Are you accepting written responses and to what  
12 date are you accepting them or are you not?

13 MR. RIESTER: We did and I believe the  
14 date's past now.

15 MS. REED: The date's past, okay.

16 I have a lot of questions so, but I will  
17 pose them as concerns.

18 MR. RIESTER: Okay.

19 MS. REED: I'm concerned the ordinance  
20 that we are talking about tonight does not  
21 affect the current application, it only  
22 addresses what is proposed for future, to  
23 protect us in the future opposed to now. Umm,

1 I'm concerned that we didn't go after the  
2 siting permit but yet we're still addressing  
3 siting but yet it was required as part of them  
4 to apply.

5 Umm, does the draft amendment, no, I'm  
6 sorry. Does the draft amend other ordinances  
7 or articles of the town, umm, and I'm concerned  
8 as to which one would prevail and why the  
9 amendments were not notated in the draft.

10 Umm, there was little information on  
11 biosolid. In fact, there was no definition on  
12 biosolid, umm, and I don't understand why it  
13 wasn't set up as a separate ordinance since it  
14 is separate from federal regulations under  
15 40CFR. I found the ordinance draft title  
16 conflicting.

17 A penalty for dropping sewage sludge  
18 should be stiffer than \$250.00. When you're  
19 working with a, when one of the companies is  
20 nine billion dollars I think we could make it a  
21 little stiffer than \$250.00.

22 Umm, 213-1 addresses offal and obnoxious.  
23 I would just like to read to you what that

1 means.

2 Offal is waste or by-products of a  
3 process. That was already in our ordinance.

4 Secondly was obnoxious, unpleasant,  
5 disagreeable, nasty, distasteful, offensive  
6 objectionable.

7 Well, I object. I object to this stuff  
8 being agreed, brought in our town. This was  
9 already in our code so why can't we object on  
10 the fact of obnoxious and offal.

11 I found very little information addressing  
12 air controls, certain buffer for pathogens,  
13 testing, restricting NEC metals. Metals were  
14 the same for the most part at the state but in  
15 your own regulation you can be stricter. It's  
16 home rule. We can be stricter than the state  
17 so why are we not being stricter than the  
18 state, especially when it concerns toxins and  
19 pathogens. You have a definition there for  
20 agriculture. Agriculture is not just food  
21 farming. It includes plants, nurseries, trees  
22 and that's missing as well as cotton. Cotton  
23 is not something you eat.

1 Will the taxpayers pick up the cost for  
2 monitors and testing?

3 I saw no cost in it associated to them,  
4 the companies or individuals that may be  
5 spreading this. I think they should be picking  
6 up the tab, not the taxpayers and I saw nothing  
7 in there on legumes. I didn't bother going  
8 through the rest. I wasn't, I was very  
9 concerned with just the first fifteen, twenty.

10 Yes I read it all but I wasn't going to  
11 address it all. I'm not going to. I'm  
12 concerned that this is going in for future and  
13 I think we should get it right the first time,  
14 not the second time.

15 Finally I would like to address one thing.  
16 New York State, the DEC issued a land  
17 application permit and I'm concerned as to why  
18 this town did not address and I understand you  
19 have these ordinances but the land application  
20 permit is specific to one company spreading  
21 waste from two different digestors of which  
22 they only own one and I'm concerned that we are  
23 not going after that and opposed to putting

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this in and just throwing it in piecemeal.

So, that's all I have to say.

MR. RIESTER: Thank you. Anyone else?

(No response.)

MR. RIESTER: Motion to close the public hearing?

MR. LEIBLE: Move.

MS. JARVIS: Second.

MR. RIESTER: All in favor say I.

THE BOARD: I.

MR. RIESTER: Opposed?

(No response.)

MR. RIESTER: Carried.

(Public Hearing concluded at approximately 8:20 P.M.)

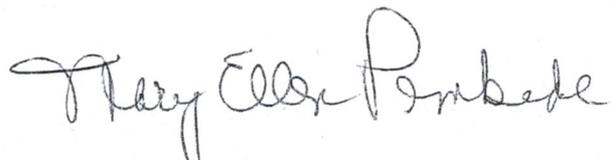
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C E R T I F I C A T I O N

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I, MARY ELLEN PEMBROKE, Court Reporter and Notary Public in and for the County of Niagara, New York, do hereby certify that I reported in machine shorthand the testimony in the above-styled cause; and that the foregoing pages were transcribed under my personal supervision and constitute a true record of the testimony in this proceeding.

In witness thereof, I have hereunto set my hand this 16th day of July, 2014.



MARY ELLEN PEMBROKE  
Notary Public  
State of New York  
County of Niagara  
Comm. Expires 9/30/14



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NEW YORK APPLE ASSOCIATION, INC.

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July 14, 2014

Brendan Smith  
Smith's Orchard  
4960 Mapleton Road  
Pendleton, New York 14094

RE: Municipal Waste Application

Dear Mr. Smith,

I am writing in response to the issue that was brought to my attention regarding the application of municipal solids to agricultural land in close proximity to your orchard. The Town of Pendleton's and the New York State Department of Environmental Conservation's allowing of Class "B" solids to be applied to the land in close proximity to your food processing facility is in my view, a high risk food safety and human health risk and potentially litigious for all parties if a foodborne illness results. Federal food safety regulations (Good Agricultural Practices) identify the application of biosolids and animal waste to fruit and vegetable production land, as a high risk activity that should be avoided. Potential human pathogens contained in the biosolids can be easily transferred from the land application site to your food processing facility via airborne, insects, animals, and humans. A buffer zone of 500 feet is **inadequate**, and 2000 feet or greater would exponentially decrease the risk of pathogen contamination.

I would support the findings and the opinions expressed to you by both Dr. Randy Worobo and Dr. Jean Bonhatal from Cornell University that clearly identified the risks to your operation, if this petition is granted, without the proper set back or buffer zone.

The buying public needs to be reassured that their purchases are safe and that the risks that may be caused by pathogens, in the biosolids, are mitigated by an adequate buffer zone.

If you could pass my letter on to the Town of Pendleton and the NYS DEC, it would provide them with the known risks of their proposed allowing of biosolids in close proximity to your food processing facility; which would make the Town of Pendleton and the NYS DEC liable for any future lawsuits associated with foodborne illness outbreaks, due to their recommendation to allow the application of the biosolids to the land adjacent to your food processing facility.

Regards,

James S Allen  
President

F:\USER\USA\Support Letters\NY Apple Letter B Smith 7-14-14 - LH.doc



Cornell University  
New York State  
Agricultural Experiment Station

Dr. Randy W. Worobo  
Professor of Food Microbiology  
College of Agriculture and Life Sciences  
Department of Food Science  
630 West North Street  
Geneva, NY 14456-0462  
Telephone: 315-787-2279  
Fax: 315-787-2284  
E-mail: rww8@cornell.edu

May 9, 2014

Brendan Smith  
Smith's Orchard  
4960 Mapleton Road  
Pendleton, New York 14094

RE: Municipal waste application

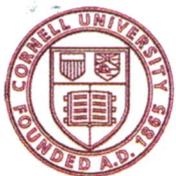
Dear Mr. Smith,

I am writing in response to the issue that was brought to my attention regarding the application of municipal solids to agricultural land in close proximity to your orchard. The Town of Pendleton's and the New York State Department of Environmental Conservation's allowing of Class "B" solids to be applied to the land in close proximity to your food processing facility is in my view, a high risk food safety and human health risk, and potentially litigious for all parties, if a foodborne illness results. Federal food safety regulations (Good Agricultural Practices) identify the application of biosolids and animal waste to fruit and vegetable production land, as a high risk activity that should be avoided. Potential human pathogens contained in the biosolids can be easily transferred from the land application site to your food processing facility via airborne, insects, animals, and humans. The proposed buffer zone of 500 feet is **inadequate**, and 2000 feet or greater would exponentially decrease the risk of pathogen contamination.

If you could pass my letter onto the Town of Pendleton, and the NYS DEC, it would provide them with the known risks of their proposed allowing of biosolids in close proximity to your food processing facility, which would make the Town of Pendleton and the NYS DEC liable for any future lawsuits associated with foodborne illness outbreaks, due to their recommendation to allow the application of the biosolids to the land adjacent to your food processing facility.

Regards,

Randy W. Worobo  
Professor of Food Microbiology  
Cornell University  
Department of Food Science  
New York State Agricultural Experiment Station  
Geneva, NY 14456



Cornell University

**Cornell Waste Management Institute**

Department of Crop & Soil Sciences  
817 Bradfield Hall t: 607-255-1187  
Ithaca, NY 14853 e: cwmi@cornell.edu  
<http://cwmi.css.cornell.edu>

May 12, 2014

Brendan Smith  
Smith's Orchard  
4960 Mapleton Road  
Pendleton, New York 14094

RE: Municipal waste application

Dear Mr. Smith,

I am writing in response to an issue that was brought to my attention regarding the application of municipal solids to agricultural land in close proximity to your orchard. The Town of Pendleton's and the New York State Department of Environmental Conservation's allowing of Class "B" biosolids to be applied to the land in close proximity to your food processing facility, in terms of food safety and risk to human health, because of the proximity of your food processing facility to the fields where biosolids—sludge from treated human feces are proposed to be spread.

As hard as policy developers try, it is hard to make rules that cover every combination of possibilities so that human health is protected in every case. I feel as a society, we have worked very hard to ensure that food safety is a top priority so that we can prevent foodborne illness, however this practice in this case is counter to protecting foodsafety. Federal food safety regulations (Good Agricultural Practices or Best Management Practices) identify the application of biosolids and animal waste to fruit and vegetable production land, as a high-risk activity that should be avoided. Potential human pathogens contained in the biosolids can be easily transferred from the land application site to your food processing facility via bio aerosols, insects, animals, and humans. In this case, the proposed buffer zone of 500 feet is **inadequate**. If we look at reaserch on how far vectors can travel in the air, the buffer or food safety zone should be at least 2000 feet or greater and would exponentially decrease the risk of pathogen contamination. One farmers right to farm should not put another farmers business at risk of contaminating food products or put them out of business. These treated biosolids will have pathogens in them, that could easily affect the orchards ability to sell any of their product.

In a literature review, that looks at facilities where organic material is managed including biosolids where the process greatly reduces pathogens to below background levels the following. The activity of spreading biosolids could have greater implications.



## BIOAEROSOLS

- A number of studies show that concentrations of bioaerosols around composting facilities are elevated at times to distances on the order of 200-500 meters (**650-1640 feet**). Bioaerosols are particles of microbial, plant or animal origin and may be called organic dust. This can include live or dead bacteria, fungi, viruses, allergens, bacterial endotoxins (components of cell membranes of Gram-negative bacteria), antigens (molecules that can induce an immune response), toxins (toxins produced by microorganisms), mycotoxins (toxins produced by fungi), glucans (components of cell walls of many molds), pollen, plant fibers, etc.
- Microorganisms are frequently adsorbed onto dust particles.
- Many bioaerosols are known to cause symptoms and/or illness, including a wide range of adverse health effects and infection. Individuals may become sensitized to some bioaerosols. For further information review:

### [summary](#)

[cwmi.css.cornell.edu/Sludge/biosolidssummary.pdf](http://cwmi.css.cornell.edu/Sludge/biosolidssummary.pdf)

File Format: PDF/Adobe Acrobat

Public health concerns regarding the use of bio- solids are growing, especially from .... pathways (e runoff), and the possibility of ...

Please pass this letter onto the Town of Pendleton, and the NYS DEC, so they are provided with the known risks of their proposed allowance of spreading biosolids in close proximity of your food processing facility.

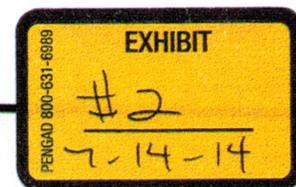
Regards,



Jean Bonhotal  
Director, Cornell Waste Management Institute



**Brendan Smith**



**From:** Jim Allen [jimallen@nyapplecountry.com]  
**Sent:** Monday, July 14, 2014 10:15 AM  
**To:** Brendan Smith  
**Subject:** FW: Email re Smith Orchard

This is the reply I got from Ag and Markets

---

**From:** Czub, Jacqueline (AGRICULTURE) [<mailto:Jacqueline.Czub@agriculture.ny.gov>]  
**Sent:** Thursday, June 12, 2014 1:32 PM  
**To:** [Jimallen@nyapplecountry.com](mailto:Jimallen@nyapplecountry.com)  
**Cc:** Bays, Jim (AGRICULTURE); Czub, Jacqueline (AGRICULTURE)  
**Subject:** Email re Smith Orchard

Hi Jim – Jim Bays asked that I reach out to you with respect to an email you received Mr. Brendan Smith from Smith's Orchard in Pendleton regarding the application of municipal solids to land. We have been in touch with Mr. Smith and also heard his concerns about the application of such material on land adjacent to his farm.

→ The Department has not received a request from any of the affected municipalities to review local laws that may limit the land application of this material (equate). In prior reviews of local laws that regulated the application of whey, human septage and sludge, the Department relied upon DEC and their administration of the State's Solid Waste Laws when making decisions on the beneficial use of such waste to farm operations. Local Laws that regulate agricultural activities are examined and compared to State Law that regulates the same activity. In general, if a local law is more limiting than State Law, the Department has found the local law to be unreasonably restrictive in possible violation of AML §305-a(1).

Given that DEC reviews and issues permits for the application of waste to agricultural fields. If a field has been permitted and the farmer adheres to the permit conditions contained within the document, the Department has protected that farmer from local laws that may be more limiting in the application of such bio-solids to agricultural fields.

I hope this insight is helpful. Please note that on May 29<sup>th</sup> staff provided an overview of the Department's role in reviewing activities, such as the application of wastes to agricultural fields, to local officials that met in Buffalo, NY with DEC to discuss Quasar and its application of bio-solids on permitted agricultural fields.



**Supervisor Riester** reported the total expenditures that were authorized and paid in the month of June:

General Fund	\$	68,681.24
Highway	\$	40,532.79
Water	\$	7,523.80
Sewer	\$	7,960.30
Refuse	\$	38,174.78
Farmer's Market	\$	1,736.72
Trust & Agency	\$	637.23

## **OTHER REPORTS**

**Supervisor Riester** reported that the sales tax collected for the month of May was \$119,953.06. This is an increase of \$3,388.69 from May 2013. The year to date received is \$624,708.20 which is a decrease of \$18,713.07 from 2013. He also reported he will be attending a meeting with other towns regarding a health care insurance consortium. The hopes are that having a large group participate the Towns/Cities/County can provide better health care at an affordable price.

**Councilman Leible** reported that the Building Department issued 14 violations, 8 remain outstanding. Total outstanding year to date is 20. He also reported that the Highway Department chipped brush, changed rotted driveway pipe on Oakwood and Dunnigan Rd., installed new pipe and driveway aprons on Aiken and Main Rd. repaired several bubblers in Pendale and two in Creekview subdivisions, patched cracks and holes on Oakwood and Old Tonawanda Creek Rd., seeded plow damage in subdivisions, and maintained parks, cemeteries and athletic fields. He also thanked Councilman Morrison for the 4<sup>th</sup> of July Celebration.

**Councilman Morrison** thanked everyone that participated in the July 4<sup>th</sup> celebration. that would include the Wendelville Fire Department, the Highway Department and all of the Vendors that participated to help make it a success. He also reported that the electronic recycling came for the 3<sup>rd</sup> time to pick up 18 – 20 pallets. He also told everyone how he received a phone call from Supervisor Riester the morning of the 4<sup>th</sup> informing him that there were several port a potties delivered to the Wendelville Fire Hall. Councilman Morrison called Modern and they thankfully picked up the port a potties and delivered them to the right place.

**Councilman Fischer** thanked Councilman Morrison for all the work and said that the Wendelville Fire Police did a great job directing the traffic. Hr also reported that he has some ideas for the Town's Trail heads and will be talking with Councilman Morrison about going ahead with the project.

**Councilwoman Jarvis** also thanked Councilman Morrison for a job well done for the 4<sup>th</sup> of July celebration. She also reported that the Old Town Garage and the salt shed needs repairs to the roof.

**Attorney Joerg** – nothing to report

**NEW BUSINESS**

RESOLUTION 88 - 14

**ISSUE NEGATIVE DECLARATION FOR §213 WASTE DISPOSAL & LANDFILL**

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
Nays 0

Resolved that based upon the findings made for Local Law 01-14 amendment to §213 Waste Disposal & Landfill will not result in any adverse environmental impact.

RESOLUTION 89 - 14

**AUTHORIZATION TO SIGN SEQR FORM FOR §213 WASTE DISPOSAL & LANDFILL**

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
Nays 0

Resolved, that based upon the issuing of a negative declaration for §213 Waste Disposal & Landfill the Town Board authorizes the Supervisor to sign the SEQR for §213 Waste Disposal & Landfill.

RESOLUTION 90 - 14

**LOCAL LAW 01 - 14 TOWN CODE AMENDMENT §213 WASTE DISPOSAL AND LANDFILLS**

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
Nays 0

Resolved to pass Local Law 01-14 (amending §213) as presented during the Public Hearing and posted to the Town's website.

**LOCAL LAW 01 - 14**

**ARTICLE I**

**Transport into Town**

**§ 213-1. Prohibited acts.**

No person, firm or corporation shall transport into said Town of Pendleton any garbage, dead animals, offal matter or other obnoxious matter of any sort or nature whatsoever.

**§ 213-2. Penalties for offenses.(1)**

A violation of any of this Article shall be construed and is hereby declared to be a violation and is punishable by imprisonment of not more than fifteen (15) days or by a fine of not more than two hundred fifty dollars (\$250.00), or both, for each violation.

**ARTICLE II**

**Siting of Facilities**

**§ 213-3. Title.**

This Article shall be known as and may be cited as the "Waste Disposal and Landfills Law of the Town of Pendleton."

- A. Solid waste management facilities, land application facilities, waste storage facilities, anaerobic digestion facilities, incineration facilities, recycling facilities, and sanitary landfills are by their very nature potentially dangerous to both the town citizenry and to their surrounding natural environment.

- B. The contamination of groundwater tables, nearby creeks and streams and the pollution of the air are real threats which are posed by such operations. Contamination of any water supply may be very expensive or even impossible to remediate.
- C. The Town's existing community character may be adversely and unalterably impacted by the location and operation of such facilities within the Town in close proximity to water supplies, residences, schools and food processing facilities. Property values within the Town may decrease with the expansion of such facilities.
- D. Solid waste is a deleterious substance; that improperly maintained solid waste management facilities emit obnoxious fumes and odors and loud noises; that such facilities cast dust and particles upon neighboring persons and properties; that such facilities attract rodents, scavengers, birds, vermin and other beasts and become breeding places therefore.
- E. Solid waste can produce harmful liquids which drain off, over and into the soil; that certain solid wastes contribute to an increase in mortality or an increase in serious, irreversible or incapacitating illness; that solid wastes cause or significantly contribute to a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; that municipal sludge is a product of residential, commercial and industrial users and contains pathogens, chemicals and other substances from these users, some of which alone or in combination are dangerous; that such substances may include PCBs, pesticides, solvents, flame retardants, carcinogenic materials, asbestos, viruses, pharmaceuticals, arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, zinc, selenium, tin, toxics, and a host of other deleterious substances; that the quality of solid waste can vary greatly over time and location depending upon the nature of sources and the compliance with disposal regulations for these and other hazardous substances;
- F. Currently there exists a difference of opinion among experts as to whether it can be dangerous for humans to consume crops grown on land used for the spreading of municipal sludge or to drink milk or consume products of animals which graze on such land; that until more definitive information is available there is a need for careful management of valuable farm land.
- G. The Town's manpower and financial resources are such that the Town would have serious difficulty regulating and monitoring the disposal of solid waste generated or originating outside of the Town while striving to effectively regulate and monitor that which is generated within the Town; that the inability of the Town to regulate and monitor the disposal of solid waste coming into the Town from outside sources could result in serious health problems for Town residents and environmental damage to property within the Town.
- H. Operation of discharge, disposal, land application and solid waste storage facilities in the Town could unavoidably and adversely affect the Town in a manner that imposes a heavy burden on its citizens which greatly outweighs any slight advantage of having sludge and/or septage waste disposal available and any economic benefit such private business may incur. Moreover, the operation of these facilities is a subject of legitimate public concern to the Town residents, making access to as much accurate and current information about the scope and effect of disposal and land application operations a necessity.
- I. Current federal and state regulations of solid waste management facilities, land application facilities, waste storage facilities, anaerobic digestion facilities, incineration facilities, recycling facilities, and sanitary landfills are insufficient to relieve the foregoing concerns.
- J. Therefore, it is the duty and intent of the Town Board to protect the inhabitants of the Town of Pendleton through an exercise of its police powers by regulating the siting of solid waste disposal, incineration, recycling operations, solid waste management facilities and sanitary

landfills and by requiring maximum utilization of safety and health factors to ensure the continued well-being of the town citizenry and to ensure that the environment will not be adversely affected when such facilities are situated within a zoning use district in the Town of Pendleton, regardless of the district's designation under existing zoning ordinances.

**It Is The Purpose Of The Town By This Local Law, To:**

- A. Regulate and restrict the operations of solid waste disposal, solid waste management and land and storage application facilities within the Town of Pendleton in order to promote a clean, wholesome and attractive environment for the entire community.
- B. Reduce the risk of pollution from solid waste disposal operations by restricting the scope and size of such activities.
- C. Ensure that accurate, current information about solid waste disposal operations within the town is available to public officials and citizens.
- D. Protect the residents of the Town from undesirable effects of waste disposal operations, including:
  - 1. Unaesthetic results, including odors, excessive traffic, dust and noise.
  - 2. Deterioration in property values associated with adjacent or proximate waste disposal operations that may interfere with the orderly development of properties.
- E. Exercise the Town's police powers under the Municipal Home Rule Law and 130 and §136 of the Town Law for the physical and mental well-being and safety of its citizens and to regulate and restrict land application facilities, waste facility siting, and waste disposal operations pursuant to the specific authority of §27-0711 of the Environmental Conservation Law which authorizes towns to impose stricter controls on waste disposal operations than state law requires.

**§ 213-5. Definitions.**

A. Unless indicated herein or unless the context shall otherwise require, the terms and words used in this Article shall have the same meaning as those defined in Article 27 of the Environmental Conservation Law and regulations promulgated by the New York State Department of Environmental Conservation.

B. The following terms and words shall be defined as follows:

**AGRICULTURE** – The cultivation and production of crops for human consumption. “Agriculture” shall include the use of land for the grazing of dairy cows or other animals whose products are consumed by humans.

**ANAEROBIC DIGESTION FACILITY**- Shall mean any facility which accepts, manure, food waste, fats, oils, greases, sludges resulting from the treatment process at wastewater treatment plants (Bio solids), energy crops, glycerin, or silage waste for the purpose of producing biogas and digestate waste.

**BEDROCK** – Cemented or consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials.

**CONSTRUCTION AND DEMOLITION DEBRIS** – Wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving materials and tree stumps.

**CONSTRUCTION AND SITING PERMIT** - The permit issued by the Town which allows for the construction or modification of a anaerobic digestion facility, disposal of solid waste facility, incineration facility, industrial waste disposal facility, recycling facility, sanitary landfill facility, or solid waste management facility within any zoning and/or use district within the Town of Pendleton.

**DEC**-The New York State Department of Environmental Conservation.

**DIGESTATE WASTE**- Bio solid waste in liquid, semi-solid or solid form and which is a by product of the anaerobic digestion process.

**DISPOSAL** – The deposit, discharge, distribution, dumping, injection, leaking, placing, removal, spilling, spreading, storage, or transportation of any digestate waste, solid waste and/or industrial wastes into or on any land or water.

**DOMESTIC SEWAGE** - Any mixture of domestic sewage or other waste that passes through a sewer system to a publicly owned treatment works for treatment, including the contents of holding tanks and portable toilets (domestic sewage means untreated sanitary waste that passes through a sewer system);

**FACILITY** – All contiguous land and structures or other improvements used for a solid waste management facility. Each solid waste management facility located on non-contiguous parcels of land shall constitute a separate facility.

**GARBAGE** – Putrescible solid waste, including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods, “GARBAGE” originates primarily in home kitchens, stores, markets, restaurants and other places where food is stored, prepared or served.

**HAZARDOUS WASTE** – A solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or biological characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or cause or significantly contribute to a substantial present or potential hazard to human health or the environment when otherwise managed. Such wastes shall include but not be limited to wastes which are bioconcentrative, highly flammable, explosive, highly reactive, toxic, poisonous, radioactive, irritating, sensitizing or infectious, and shall include wastes that are solid, semi-solid or liquid or contain gases. The final determination of whether or not a waste is hazardous shall be made by the Town.

**INCINERATOR FACILITY**- A facility utilizing a controlled process by which solid, liquid or gaseous combustible wastes are burned and changed into gases and the residue produced contains little or no combustible materials.

**INDUSTRIAL WASTE**- Waste in liquid, semisolid or solid form that results from industrial or commercial processes, including, but not limited to, factories, processing plants and repair and cleaning establishments, which wastes include, but are not limited to, sludges, oils, solvents, spent chemicals and acids. This Article shall apply to hazardous wastes as defined in § 27-1101 of the Environmental Conservation Law or 42 U.S.C.

§ 6903(5).

**LAND APPLICATION FACILITY** – A facility used for the storage or disposal of digestate waste from a solid waste management facility for agricultural use of bio solids, septage, sludge, and other permitted land applied solid wastes to the soil surface or injected into the upper layer of the soil as defined under the Solid Waste Management Regulations Part 360-4.

**LANDFILL**- Any disposal area for solid wastes in or upon the ground surface. Includes solid waste management facilities.

**LEACHATE** – A liquid, including any suspended components in the liquid, which has been in contact with or passed through solid waste.

**NYCRR** – New York Codes, Rules and Regulations as they exist upon the effective date of this local law and as may thereafter be amended.

**OPERATING AND SITING PERMIT** - The permit issued by the Town which allows for the operation of a anaerobic digestion facility, disposal of solid waste facility, incineration facility, industrial waste disposal facility, landspreading facility, recycling facility, sanitary landfill facility, or solid waste management facility within any zoning and/or use district within the Town of Pendleton.

**OPERATOR** – The person responsible for the operation of a solid waste management facility.

**OWNER** – The person who owns all or any part of the real property and/or improvements upon which a solid waste management facility is operated.

**PERSON**-Any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

**PROCESSING FACILITY** – A combination of structures, machinery or devices utilized to reduce or alter the volume, chemical or physical characteristics of solid waste through processes such as baling or shredding prior to delivery of such waste to a resource recovery facility, sanitary landfill or incinerator, and excludes collection vehicles.

**RESOURCE RECOVERY FACILITY** – A combination of structures, machinery or devices, utilized to separate, process, modify, convert, treat or prepare collected solid waste so that component materials or substances or recoverable resources may be used as a raw material or energy source.

**RUNOFF** – Any rainwater, leachate or other liquid that drains over land from any part of a facility.

**SALVAGING** – The controlled removal of waste materials for reuse.

**SANITARY LANDFILL** – A land disposal site employing an engineered method disposing of solid wastes on land in a manner that minimizes environmental hazards and meets the design and operation requirements of 6 NYCRR Part 360.

**SEPTAGE** – The contents of a septic tank, cesspool or other individual sewage treatment facility which receives domestic sewage wastes.

**SLUDGE** – Any solid, semisolid or liquid waste generated or disposed from commercial, industrial municipal, or private wastewater treatment plant, water supply treatment plant, or air pollution control facility, or sewage treatment plants.

**SOLID WASTE** - All putrescible and nonputrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including, but not limited to, garbage, refuse, industrial and commercial waste, bio solid waste and digestate, sludges from sewer or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles, but not including substances in gaseous form or hazardous wastes as defined in 42 U.S.C. and the Environmental Conservation Law of the State of New York.

**SOLID WASTE MANAGEMENT**- The purposeful and systematic transportation, storage, processing, recovery and disposal of solid waste.

**SOLID WASTE MANAGEMENT FACILITY** - Any facility employed beyond the initial solid waste collection process, including, but not limited to, transfer stations, baling facilities, anaerobic digestion facilities and associated land application facilities, treatment facilities, rail haul or barge haul facilities, processing facilities, including resource recovery equipment or other facilities to reduce or alter the volume, chemical or physical characteristics of solid waste, sanitary landfills, plants and facilities for composting, compacting or pyrolyzation of solid wastes, incinerators, burial facilities, industrial waste processing or waste disposal facilities, landspreading facilities, storage areas associated with any of the foregoing and storage lagoons for sanitary landfills. This Article shall also apply to hazardous wastes treatment, storage and disposal facilities as defined in § 27-1101 of the Environmental Conservation Law or 42 U.S.C. § 6903(5).

**STORAGE** – The containment of any solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such waste.

**SURFACE WATER** – Lakes, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, and all other bodies of surface water, natural or artificial, public or private.

**TOWN** – The Town of Pendleton. Whenever this local law refers to any action which is to be taken or authorized by the “Town”, the provisions shall be deemed to refer to the Town Board unless otherwise specified.

**TRANSFER STATION** – A combination of structures, machinery or devices at a place or facility where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

**TREATMENT** – Any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste to neutralize such waste, recover energy or material resources from the waste, to render such waste safer to transport, store or dispose of, or amenable for recovery, storage or reduction in volume.

**WASTE TO ENERGY FACILITY**- Includes any industrial waste or solid waste disposal operation, recycling operation, sanitary landfill, and anaerobic digester facility.

**§ 213-6.** Coordination with other laws.

All relevant sections of Article 27 of the New York State Environmental Conservation Law and Titles 6 and 7 of the New York Codes, Rules and Regulations, Part 360, as it is amended from time to time, are deemed to be included within and as part of this Article, and any violation thereof shall be considered to constitute a violation of this Article. Nothing contained herein shall be construed as changing, modifying or amending Chapter 247, Zoning, and all requirements shall be construed as being in addition thereto and by virtue of the power granted to the town under the Town Law.

**§ 213-7.** Permit Requirements.

- A. No person shall operate or construct a solid waste management facility without a siting permit issued by the Town Board pursuant to the provisions of this Article. Prior to any construction, modification or expansion of any facility, a siting permit shall be required, following a public hearing.
- B. No person shall construct, modify or expand an industrial waste disposal, incineration, recycling facility, anaerobic digester, land application facility or storage facility, sanitary landfill or solid waste management facility without a permit issued by the Town Board to comply with state and federal regulations presently, and as may be modified in the future, pursuant to the provisions of this Article. The term or period of any such permit shall be determined by the Town Board utilizing the criteria set forth in this Article, but shall be no less than one (1) year and no more than a five (5) year period.
- C. No siting permit issued pursuant to the provisions of this Article shall be transferable to any other person, firm or corporation unless the original permit clearly provides otherwise.
- D. No person shall operate a land application facility without a siting permit issued by the Town Board pursuant to the provisions of this Article. Prior to any land application modification or expansion of a facility, a siting permit shall be required, upon an application as provided for herein and following a public hearing.
- E. Exemptions.

The following solid waste management facilities are exempt from this local law:

Disposal areas for solid waste generated from a one- or two-family residence or from a farm, when such wastes, other than hazardous wastes, are generated at and disposed of within the property boundaries of such residence or farm.

Transfer, storage incineration and processing facilities located at apartment houses, schools, parks, industries, hospitals, commercial establishments, individual residences and farms, provided such facilities are used only for solid waste generated or originating at such locations.

Solid waste management facilities owned or operated by the Town, Niagara County or under contract or agreement with the Town.

**§ 213-8.** Permit application procedures.

**A. Existing solid waste land and storage facilities.** The operator of any industrial waste disposal, land application facility, solid waste management facility, anaerobic digester, recycling or sanitary landfill facility which is operative in the Town pursuant to all pertinent provisions of the Town Solid Waste Ordinance as of the effective date of this Article shall submit an application for a siting and operating permit within three (3) months after the effective date of this Article. A complete application for existing facilities which is timely submitted shall be deemed an operation permit until such application is acted upon. If a submitted application is deemed incomplete by the Town Board, the subject applicant shall be notified of such defect and shall be given an additional period of thirty (30) days to complete the application. Failure to do so within such thirty-day extension period shall result in automatic denial of the application. If the permit applicant's activity or business of an existing facility presently complies with the requirements required to secure a permit in the first instance, then the applicant shall be issued a permit therefore if the applicant meets the other requirements contained herein. If the applicant's activity or business does not presently comply with the requirements a person must meet to secure a permit in the first instance, the applicant may be granted a temporary permit for one year, during which year the applicant must arrange the activity or business so that it does then comply with the requirements a person must meet to secure a permit in the first instance. If at the end of such year such person has not so arranged his activity or business to comply with the requirements in this chapter, then the applicant shall forthwith cease and desist engaging in or conducting the same and shall remove from such place any materials of the nature described herein. In addition to the application content requirements hereinafter enumerated, all applications submitted under this subsection shall also include:

1. A detailed report describing the plan of operation and a contingency plan setting forth in detail a proposal for corrective or remedial action to be taken in the event of equipment breakdowns, ground- or surface water or air contamination resulting from the facility's operation, fires and/or spills.
2. A Waste Management Plan and Nutrient Management Plan as appropriate detailing solids and waste material information, solids or bio solids management practices, treatment alternatives, storage, waste application including monitoring and reporting, and contingency plans.
3. A reasonable demonstration that the facility has satisfied all applicable standards of operation as enumerated in the Environmental Conservation Law of the State of New York and regulations thereunder, by demonstrating specific means for meeting such standards, unless:
  - i. A reasonable schedule of specified remedial action, with interim and final attainment dates, for achieving compliance with the dictates of Part 360 of the New York Codes, Rules and Regulations is submitted to the Town Board within thirty (30) days of notification by the Town Board that such a schedule is essential; and provided further that such schedule is approved by the Town Board; or
  - ii. A variance has been granted pursuant to § 213-12 of this Article.
4. If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact at the time the applicant applies for the temporary license, and the Town Clerk at the time of issuing such temporary license shall send the owners or each of them a notice of the issuance of such temporary license to such person, together with a copy of this chapter.

**B. Proposed solid waste land and storage facilities and modification to existing facilities.**

1. Any person who proposes to construct an industrial waste disposal, recycling, sanitary landfill, anaerobic digester, or solid waste management facility in any zoning district of the town or who proposes to expand or modify any phase of any existing facility, land application facility or facility for the storage of digestate from anaerobic digester process shall submit a complete application for a

siting and construction permit to the Town Board not less than ninety (90) days in advance of the date on which it is proposed to commence any such siting or construction, modification or expansion. No such modification or construction shall take place without prior Town Board approval pursuant to the procedures set forth in § 213-9 herein. The following acts are deemed to be modifications which require permits:

- a. Expansion of the facility operation by acquisition, by purchase, lease or otherwise of additional land which was not the subject of or included in any application submitted under this Article.
  - b. Increase in the total quantity of industrial waste received during any quarter at the facility by fifty percent (50%) or more over the total quantity of waste received during the comparable quarter of the preceding year, except where such increase is not in excess of the approved design capacity of such facility for such time period or change in the type, kind or quantity of industrial waste previously approved.
  - c. Movement of a waste disposal, recycling or landfill operation to a portion of property already owned, leased or otherwise held by the facility which was not the subject of any included in any application submitted under this Article.
  - d. Expansion of the facility operation by the installation of additional processing equipment which increases the approved design capacity of the facility or which changes the facility process or such expansion or construction which modifies the height of an existing facility or changes the outside dimensions of the facility.
2. In addition to the application content requirements hereinafter enumerated in § 213-9, all applications submitted under this subsection shall also include the following: .
- a. As applicable, a detailed engineering plan and specifications reflecting the construction of the proposed facility.
  - b. A Waste Management Plan detailing solids and waste material information, solids or bio solids management practices, treatment alternatives, storage, soil sampling and analysis, application quantities and rates, monitoring and reporting, and contingency plans.
  - c. Nutrient Management Plan submitted to establish estimated waste quantities and waste application rates based soil characteristics, sludge characteristics, nutrient loading, and potential crop growth.
  - d. A contingency plan setting forth in detail a proposal for corrective or remedial action to be taken in the event of equipment breakdowns, ground- or surface water or air contamination attributable to the facility's operation, fires, spills and releases of waste materials.
  - e. Compliance with all Town ordinances,, Public Service Law, The New York State Agriculture and Markets Law regulating agricultural activity, and the Environmental Conservation Law of the State of New York.

**§ 213-9. Permit application contents and permitting fees.**

- A. All applications for a permit for the siting, construction and modification or expansion of a facility shall include an application to the Town Board upon a form prescribed by said Town Board.
- B. The applications shall be accompanied by any other data the Town Board reasonably requires to determine the feasibility of issuance or denial of a permit and such information as may be required by the New York State Environmental Quality Review Act (SEQRA).
- C. All applications shall contain the following:
  1. The full name of the person seeking a permit and whether that person is an individual, corporation, partnership, joint venture, or other legal entity; if the applicant is not an individual, the application shall set forth the names of all parent corporations, shareholders, partners, joint ventures, or other beneficial owners of the entity seeking a permit, unless the applicant is a

publicly held corporation, and the names of all officers of an applicant that is a corporation, and officers and shareholders of any parent corporations.

2. That the applicant is over 21 years of age.
3. Whether the applicant has ever been convicted of a felony or misdemeanor.
4. A description of the exact type of business the applicant intends to conduct, including the nature of the materials to be handled.
5. Each application shall contain an emergency contact telephone number.
6. Engineering plans, reports and specifications prepared by a person or firm registered to practice professional engineering in New York State.
7. The location of all property boundaries certified by a person or firm legally qualified to practice land surveying in New York State.
8. The applicant shall survey and record and include in his application background sound-level data in the vicinity of the facility at the time of application and a topographic map, hydrogeological report, survey of area drainage and proposed location of monitoring wells if required by the DEC.
9. A proposed detailed program for the closure of the facility to be implemented when use of the facility or the useful life of the facility permanently terminates. Such proposal shall set forth a restoration plan which must satisfy the following minimum criteria:
  - a. No slope shall be left with a grade steeper than one (1) foot of a vertical rise to three (3) feet of horizontal distance, and the normal angle of repose should not be exceeded in any case;
  - b. All stumps, boulders and other debris resulting from the excavating and appurtenant activities or related operations shall be disposed of by approved methods, and if disposed on site, such debris shall be covered with a minimum of two (2) feet of soil.;
  - c. Topsoil shall be spread over the excavated area to a minimum depth of six (6) inches or as required by Part 360 of the New York Codes, Rules and Regulations, whichever is greater;
  - d. The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation and engineering practices;
  - e. Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners;
  - f. Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted;
  - g. Within six (6) months after termination and closure of the facility operation, all equipment, buildings, structures and other unsightly evidence of the operation and/or constructions shall have been removed from the premises or disposed of by approved methods, and all restoration shall have been completed;
  - h. An enumerated list of wastes to be received, treated or disposed of, the quantities of such wastes to be received, their places of origin, method of transportation to be utilized for their shipment to the facility and the proposed method for their recycling or disposal shall be provided. The applicant shall identify all highways to be used for access to the facility;
  - i. A proposed program shall be provided for the monitoring of all activities of the facility by personnel of the Town of Pendleton or persons authorized by the Town of Pendleton

- whereby such monitoring personnel or persons shall be allowed access to the facility at regular stated times and also any other time deemed necessary by the Town Inspector;
- j. All methods and actions to be utilized are to satisfy the dictates of all applicable standards of operations, as enumerated by 6 NYCRR 360 and herein. Results shall be submitted to the Town. The applicant shall submit, with the application and any renewal application, a copy of all correspondences between the landowner/applicant and applicable federal, state or local regulatory agencies and a copy of all applicable federal, state and local permits;
  - k. In the application, the applicant shall agree that if granted the license applied for the applicant will conduct the activity or business pursuant to the regulations hereinafter set forth and that upon his failure to do so, such license may be revoked forthwith; and
  - l. If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact at the time the applicant applies for the temporary license, and the Town Clerk at the time of issuing such temporary license shall send the owners or each of them a notice of the issuance of such temporary license to such person, together with a copy of this chapter.
10. In the case of an incineration facility, there shall be submitted, where relevant and in addition to the above requirements, a detailed plan of air pollution abatement and the following:
    - a. A description of the waste to be transported into the facility;
    - b. A description of the burning process, prevailing winds and their effect on adjacent commercial and residential areas;
    - c. A detailed plan for vermin control;
    - d. A detailed plan or drawing of the physical facility, which plan or drawing shall include the height of any structures and compliance with Chapter 132, Fire Prevention and Building Construction;
    - e. A statement showing the proposed transportation route of any vehicles transporting waste to the facility; and
    - f. A proposed plan for disposition and transportation or the burying of any waste product produced by incineration.
  11. In the case of a land application facility or solid waste storage facility, there shall be submitted, where relevant and in addition to the above requirements a Waste Management Plan and Nutrient Management Plan and reports as required in 6 NYCRR Part 360-4 detailing material data on the solids and waste, solids or bio solids management practices, treatment alternatives, storage, application including monitoring and reporting, and contingency plans.
  12. All applications shall be accompanied by evidence of authority to sign the application and shall be signed as follows:
    - a. Corporation: by a duly authorized principal executive officer of at least the level of Vice President, accompanied by a certified copy of the authorizing corporate resolution;
    - b. Partnership: by a general partner; or
    - c. Sole proprietorship: by the proprietor.
  13. Applications shall be sworn to by or on behalf of the applicant in respect to all statements of fact therein or shall bear an executed statement by or on behalf of the applicant, pursuant to the New York State Penal Law § 210.45, to the effect that false statements made therein are made under penalty of perjury.
  14. Each permit application shall be accompanied by an application fee of one thousand (\$1,000.00) dollars plus the applicant shall incur all costs for review thereof as provided under the Environmental Quality Review Act (SEQRA) and regulations promulgated thereunder.

15. In addition to the application fee provided above and the cost of SEQRA compliance, the applicant shall acknowledge and be responsible for the costs incurred in any testing of materials deposited in or placed upon any facility, or any surface or ground waters adjacent to said facility. Such tests shall be conducted at laboratories or facilities approved by the Town Board.
16. Each applicant shall demonstrate that the facility will not have adverse impact upon the environment of the Town of Pendleton, town-wide fire protection, town-wide sewer, water and public utilities, local traffic conditions, local land use and planning, and the Town Board, Planning Board and Conservation Board shall approve an application only after careful consideration of the above criteria and requirements.

**§ 213-10. Town Board action.**

- A. **SCHEDULING OF PUBLIC HEARING:** Within forty-five (45) days of receiving a completed application under this local law the Town Board shall schedule a public hearing. The Town Board may schedule additional public hearings if it chooses.
- B. **CONSULTATIONS:** The Town Board may in its discretion refer the application to the Town Planning Board and/or the Town Conservation Board for study upon receipt of said application, and they shall report to the Town Board within thirty (30) days of such referral. In addition, The Town Board may in its discretion refer the application to the county, regional or state agencies and to private engineers and consultants for their review and comment, and may also require additional tests or environmental studies, which shall be paid for by the applicant, to assist the Town Board in evaluating the proposed action. In conjunction with the consideration of any permit called for under this Article, the town shall contemporaneously conduct any proceeding required by Article 8 of the Environmental Conservation Law.  
When determining the feasibility of issuing town siting and construction permits for the placement of a proposed solid waste management facility, sanitary landfill facility or the proposed modification of an existing facility, the Town Board shall not issue said permit unless the submitted engineering data and construction plans have been approved by the Town Engineer, Code Enforcement Officer or the town's consulting engineers and after the Town Board and the applicant have complied with the dictates of the Environmental Quality Review Act of the State of New York (SEQRA).
- C. **ADVERTISEMENT OF PUBLIC HEARING:** The time and place of the public hearing shall be advertised in the official paper of the Town at least twenty (20) days prior to the date of the hearing. The Town Board may also post the site of the proposed action and use other means to advertise the public hearing.
- D. **DECISION:** Within sixty (60) days after the final public hearing or such longer period as may be agreed upon, in writing, by said Town Board and applicant, the Town Board shall render its decision: approval, approval with modification and/or conditions, or disapproval. If an application is disapproved, the Town Board shall notify the applicant of such decision and state, in writing, its reasons therefore.
- E. **CRITERIA FOR DECISION.** The Town Board, in rendering its decision, shall consider the following:
  1. The overall impact of the proposed action on the community;
  2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls;

3. Adequacy, type, and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation;
4. Protection of nearby surface and ground waters from contamination;
5. Protection of residents and adjacent or neighboring properties against noise, glare, odors, unsightliness, contamination or other objectionable features; and
6. Adequacy of the proposed plan for emergency, corrective or remedial actions.
7. Existing facilities. A siting and operating permit shall be issued for an industrial waste disposal, recycling, incineration facility, solid waste management facility or sanitary landfill facility in operation as of the effective date of this Article, only if it has been demonstrated that said facility has complied with the standards of operation as set forth in the Environmental Conservation Law and Part 360 of the New York Codes, Rules and Regulations and this Article and all town laws; otherwise, such permit shall be denied and the facility shall thereafter accept no new waste but shall have ninety (90) days to cease operations and complete restorative measures.
8. Proposed facilities. An operation and siting permit shall be issued for a proposed solid waste management facility only if the proposed construction thereof is demonstrated to be in accordance with the terms of a Department of Environmental Conservation issued construction and operating permit and certification of the proposed construction has been submitted in accordance with the dictates of the Environmental Conservation Law and regulations promulgated thereunder and the criteria set forth in this Article.

**§ 213-11. Bonds and insurance.**

- A. As a condition of the issuance of any permit, the Town may request the following bonds or insurance issued by a bonding, surety or insurance company acceptable to and in an amount sufficient to reimburse the Town against any damages or expenses incurred by the Town in enforcing this local law or in remedying any violation thereof, including but not limited to the following:
  1. Performance bond to ensure proper performance of the work and siting of the facility pursuant to the details of the application, the dictates of this Article and any other local or state law.
  2. Restoration bond to ensure that all restoration work is completed pursuant to the plan submitted with the application, the dictates of this Article and any other local law or ordinance.
  3. Penalty bond to ensure that all fines and penalties levied and judgments secured pursuant to this Article are promptly tendered and satisfied.
- B. In determining the minimum amount of such bond and/or undertaking, the Town shall determine the amount of such undertaking having due record for the size of the facility and the amount of solid waste being deposited, treated, stored or processed therein; but it shall not be less than three (3) times the total assessed value of the land upon which the facility is located as shown on the current assessment roll of the Town. Said undertaking shall be kept in full force and effect at all times.
- C. Proof of liability insurance covering injuries to person and property. The town reserves the right to require that it be named insured on any policy required hereunder.
- D. The terms and conditions of all such bonds shall be clearly set forth in detail on the permit including the amounts of such bonds and insurance.

**§ 213-12. Variances.**

- A. The Town Board, upon written application from any person who is subject to the dictates of this Article, may, in its discretion, grant a variance from one (1) or more specific provisions of this Article, only if said applicant:
  - 1. Identifies the specific provisions from which a variance is sought;
  - 2. Demonstrates that compliance would, on the basis of conditions unique and peculiar to applicant's particular situation, tend to impose a substantial, financial, technological or safety burden on the applicant or the public;
  - 3. Demonstrates that the proposed activity which is the basis of the requested variance will have no significant adverse impact on the health, safety, welfare and natural resources of the Town of Pendleton and will be consistent with the purpose of this Article, the provisions of the New York State Environmental Conservation Law and any rules and regulations promulgated thereunder; and
  - 4. Demonstrates that a prior application has been made to a public authority or body which contains part or all of the information and data required under this Article; provided, however, that the applicant provides the Town Board with the prior application and underlying documents, in which case the Town Board may accept such data or information as an application under this Article. The Town Board shall request such additional data as may be necessary to make a determination under this Article.
- B. In granting a variance, the Town Board may impose specific conditions to ensure that the subject activity will have no adverse impact on the health, safety, welfare and natural resources of the Town of Pendleton.

**§ 213-13. Reissuance of permits or extension of facilities.**

- A. Any permit holder who intends to continue construction or operations beyond the period of time covered in such original permit must file for reissuance of such permit at least ninety (90) days prior to its expiration. Filing for reissuance shall be made by the permit holder on forms prescribed by resolution of the Town Board and available from the Town Clerk, or if no such forms are prescribed, then on the same form as was previously filed. The provisions of this Article relative to submittal and processing of initial applications shall apply to reissuance applications under this section to the extent indicated by the Town Board.
- B. Upon review of a request for reissuance, the Town Board shall determine whether the application is in compliance with or has substantially complied with all terms, conditions and requirements of the expiring permit of this Article.
- C. When the Town Board after a public hearing determines in the affirmative, the permit may be reissued.
- D. When the Town Board determines in the negative or if other circumstances exist which indicate noncompliance with any provisions of this Article or original permit, the Town Board shall take appropriate action to secure compliance, including, but not limited to, a denial of reissuance.

**§ 213-14. Modification, suspension and revocation of permit.**

- A. Upon a minimum of sixteen (16) days notice and opportunity for a hearing, any permit issued pursuant to this Article may be modified, suspended or revoked, in whole or part, during its term, for cause including, but not limited to, the following:
  - 1. Violation of any part of this Article or the terms of a permit issued pursuant to this Article.
  - 2. The Town Board shall also consider any previous violations of this Article or the terms of the permit;

3. Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts; Materially false or inaccurate statements or information in an application for a permit; or
  4. The continuation of such permit would not be in the interest of the health, safety and welfare of the residents of the Town of Pendleton.
- B. The Town Board may revise or modify a schedule of compliance of terms in an issued permit if it determines good cause exists for such revision.

**§ 213-15. Penalties for offense.**

- A. Any person who violates any provision of this local law or any permit issued hereunder, including, but not limited to, a false statement or exhibit submitted as part of an application to site and construct or operate a facility, shall be guilty of a Class A. misdemeanor and shall be punished by such fine or imprisonment, or both, as shall be provided by the New York State Penal Law. Each day of continued violation shall be deemed a separate violation of this local law.

This local law may be enforced by any police officer or by an officer of the Town or by any employee of the Town if so authorized by resolution of the Town Board. Any such enforcement official is authorized to issue an appearance ticket, an information, a misdemeanor complaint or any other appropriate accusatory instrument, in the manner provided by the Criminal Procedure Law of the State of New York, or by any pertinent ordinances or local laws of the Town, to the owner or operator of the solid waste management facility as well as to any other person who is violating the provisions of this local law.

- B. Civil remedies. Nothing in this local law shall be deemed to impair or diminish any cause of action or remedy which the Town may have under any other local law, under any statute, ordinance or regulation or under the common law; provided, however, that in the case of a conflict, those terms or rules of law shall control which are more restrictive upon the solid waste management facility. In addition thereto, the Town may enforce this local law by court injunction.
- C. Liability for expenses. Any person adjudged in a criminal or civil proceeding to have violated this local law shall be liable to the Town for all expenses incurred by the Town in connection with the proceeding, including the reasonable attorneys' fees of the Town in connection therewith.

**§ 213-16. Agent for the town.**

The Town Board may, in its discretion, appoint a person with suitable qualifications as the on-site agent for the Town of Pendleton. Said agent shall have the following duties:

- A. To monitor the facility and determine whether an operator is complying with all siting permits and zoning requirements and the requirements of all town laws and ordinances.
- B. To report to the Town Board at such times as the Board requires as to the operation of the facility.
- C. To test all materials deposited in or placed upon any facility or any surface or ground waters adjacent to said facility.

**§ 213-17. Regulations.**

- A. The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- B. The area of the permittee's activity or business shall not be used as a place for the burning of wastes or trash.
- C. The Town Board, the Constable, members of the Niagara County Sheriff's office, members of the New York State Police, the Code Enforcement Officer, any governmental agencies with

jurisdiction over the permitted activity, and any person or persons appointed by the Town Board shall be granted access to the area of activity or business of the permittee at all reasonable hours to inspect the same and test for compliance herewith.

- D. The permittee shall file with the Town Clerk, on the yearly renewal date, documentation that the permittee’s employees have been trained to perform the permitted activities.
- E. The permittee shall file with the Town Clerk, on the annual renewal date, a list of the employees authorized to perform the permitted activities.

**§ 213-18. Special conditions.**

A. Septage discharge, disposal, and land application; operational requirements. The following requirements shall apply:

- 1. Septage destined for land application must not exceed the following contaminant concentrations:

<b>Parameter</b>	<b>Average Monthly Concentration</b>	<b>Maximum Concentration</b>
	<b>PPM, dry-weight basis</b>	
Mercury (Hg)	10	57
Cadmium (Cd)*	21	85
Nickel (Ni)	200	420
Copper (Cu)	1,500	3,000
Lead (Pb)	300	840
Chromium (Cr)	1,000	1,000
Zinc (Zn)	2,500	7,500
Arsenic (As)	41	75
Selenium (Se)	28	100
Molybdenum(Mo)	54	75

Note: If the monthly average cadmium concentration exceeds 5 ppm, dry-weight basis, the cadmium/zinc ratio must not exceed 0.015.

- a. If a waste contains heavy metals or other pollutants at concentrations greater than those set forth in this subsection, an operating facility cannot continue to operate until the septage manager has implemented an identification and abatement program and compliance has been achieved to assure that the septage has continuously met the quality parameters of this subsection for a period of at least six months.
- 2. All septage must be stabilized to reduce pathogens before land application by one of the following methods, or the site restrictions in Subsection A(4) must be implemented. Land application of septage that has been stabilized by chlorine oxidation is prohibited.

- a. Aerobic digestion. This is conducted by agitating the septage with air or oxygen to maintain aerobic conditions at residence times ranging from 60 days at 15° C. to 40 days at 20°C., with a volatile solids reduction of at least 38%.
  - b. Air drying. Liquid septage must be allowed to drain or dry on underdrained sand beds, or paved or unpaved basins, in which the septage must not exceed a depth of nine inches. The septage must remain in the drying bed a minimum of three months. During at least two of the three months, the ambient air temperatures must average, on a daily basis, above 0° C.
  - c. Anaerobic digestion. The septage is digested in the absence of air at residence times ranging from 60 days at 20° C. to 15 days at 35° C. to 55° C., with a volatile solids reduction of at least 38%.
  - d. Lime stabilization. Sufficient lime must be added to the septage to produce a pH of 12 throughout the septage after two hours of contact. Such septage must be thoroughly mixed with the lime.
  - e. Composting. Using the within-vessel, aerated static pile or windrow composting methods, the temperature of the waste is raised to 40° C. or higher and remains at 40° C. or higher for five consecutive days. For at least four consecutive hours during the five days, the temperature in the compost pile must exceed 55° C.
  - f. Other methods. Other methods or operating conditions may be acceptable if pathogens and vector attraction of the waste are reduced to an extent equivalent to the reduction achieved by any of the above methods and it is approved by the Town.
3. For land application of septage, one of the following vector attraction reduction requirements must be met:
- a. Injection. Septage shall be injected below the surface of the land and no significant amount of the septage shall be present on the land surface within one hour after the septage is injected;
  - b. Incorporation. Septage applied to the land surface shall be incorporated into the soil surface plow layer within six hours after application; or
  - c. Lime stabilization. The pH of septage shall be adjusted to meet the requirements of Subsection A(2)(d) of this section.
4. For land application of septage that has not been stabilized to reduce pathogens by one of the methods referenced in Subsection A(2), the following site restrictions shall be implemented:
- a. Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface shall not be harvested for 18 months after application of septage.
  - b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of septage when the septage remains on the land surface for four months or longer prior to incorporation into the soil.
  - c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of septage when the septage remains on the land surface for less than four months prior to incorporation into the soil.
  - d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of septage.
  - e. Animal grazing requirements of Subsection A(20).

- f. Turf grown on land where septage is applied shall not be harvested for one year after application of the septage when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the Town.
- g. Public access requirements of Subsection A(20).
- 5. The land applier of septage must sign a certification statement stating that: "The information that will be used to determine compliance with this local law has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification, including the possibility of fine and imprisonment." Written permission from the landowners must be obtained for all lands where land application will occur. A multiparty certificate indicating who will be responsible for each applicable operation requirement must be complete and followed.
- 6. Annual septage testing is required.
  - a. Septage must be sampled and analyzed in accordance with the following:

<b>Parameters</b>	<b>Septage</b>
<b>Group A</b>	<b>Group B</b>
Total Kjeldahl Nitrogen	Arsenic
Ammonia	Cadium
Nitrate	Chromium
Total Phosphorus	Copper
Total Potassium	Lead
Ph	Mercury
Total Solids	Molybden
Total Volatile Solids	Nickel
	Seleniu
	Zinc

- b. The minimum number of analyses required are as follows:
 

<b>Septage Applied (dry tons/year)</b>	<b>Number of Analyses Groups A&amp;B (per year)</b>
Greater than 1,000	12
200 to 1,000	6
Less than 200	1
- c. Analyses for other pollutants may be required, on a case-specific basis, based on information from the pretreatment program and other sources, including scholarly articles.
- d. All analyses must be performed by a laboratory certified by the New York State Department of Health for that type of analysis, using methods acceptable to the Department as outlined below, unless use of an alternate laboratory or method is authorized by the New York State Department of Environmental Conservation. Copies of the original laboratory results must be included with the permit application.

- e. The analysis requirement may be satisfied in part or in whole by recent samples analyzed for and reported to the New York State Department of Environmental Conservation, if approved by the Department.
  - f. All samples must be representative of the waste to be land applied.
  - g. After the wastes have been monitored for 2 years at the frequency outlined in this subsection, the Town may reduce the annual number of analyses required if the waste quality is consistently below the quality standards.
7. The minimum horizontal distance [i.e. “Buffer Zones”] from the perimeter of the site to be used for land application of septage must meet or exceed the following:

Item	Minimum Horizontal Separation Distance in Feet
Drainage swale	100
Property line	200
Surface water body	1000
Residence*	2000
School	2000
Food Processing Business	2000
Regulated by the NYS Dept. of Agriculture	
Water well or supply	1000
Wetland	500

NOTE:

\*The landowner or operator's residence is excluded from this separation distance requirement. In addition, this requirement does not apply to lands where adjacent owners consent to the activity within the separation distance.

- 8. During land application, the fields must be flagged or otherwise marked so the buffer zones are apparent to the land applier. Such flagging shall occur a minimum of seventy-two [72] hours prior to application of septage. Should anyone challenge such buffer zone marking, then a deposit of \$500.00 shall be paid by the challenger to the Town and the code enforcement officer for the Town of Pendleton shall notify the applicant that such application shall not occur until the applicant has obtained a surveying of such buffer zone marking by a licensed land surveyor. Should the buffer have been properly marked in the first instance, then the challenger shall pay for the cost of such survey. In the event that the challenger is successful, then the deposit shall be returned to the challenger and the applicant shall be responsible for the costs of the survey.
- 9. Land application must not occur on land with a slope exceeding 15%. Land-applying septage with a total solids content of less than 15% is prohibited on land with a slope greater than 8%, unless applied by subsurface injection along paths parallel to contours.
- 10. The hydraulic loading must not exceed 16,000 gallons per acre in a twenty-four-hour period.
- 11. The annual cadmium application rate must not exceed 0.45 pound per acre (one-half kilogram per hectare), and the cumulative loading limit of metals must not exceed the following:

**Cumulative Loading Limit in  
 Pounds per Acre  
 Agricultural Soils**

<b>Metal</b>	<b>Group 3</b>	<b>Groups 4-10</b>	<b>Nonagricultural Lands</b>
Cadmium (Cd)	3	4	10
Nickel (Ni)	30	45	150
Copper (Cu)	75	112	250
Zinc (Zn)	150	223	500
Lead(Pb)	300	300	300
Chromium (Cr)	300	446	*
Arsenic (As)			36
Selenium (Se)			89

**NOTE:**

\* In addition to the above metals, total chromium (Cr) and mercury (Hg) may be limited based upon their potential effect on groundwater quality.

12. The heavy metal loading must not exceed 20% of the cumulative metal loading limit in any one year.
13. In addition to all other requirements contained within this local law, a detailed soil analysis shall be provided annually for each landspreading facility, including the types and classifications of soil present, the PH levels of their plow layers, and the ambient level of each of the following substances: Mercury, Cadmium, Nickel, Copper, Lead, Chromium, Zinc, Arsenic, Selenium, Molybdenum Manganese and such other substances as the Town may require.
14. Land application and subsequent vegetation must be in accordance with soil conservation practices that minimize run-off and soil loss through erosion. Land application must be controlled to prevent contravention of groundwater and surface water standards provided by the New York State Department of Environmental Conservation. The available nitrogen loading must not exceed the nitrogen needs of the crop grown.
15. Septage shall not be deposited in a manner that will allow the material to drain or become washed into any body of water, stream, or watercourse. Dikes, berms, or other pollution protection devices or techniques must be used as required by the Town to prevent run-off entering surface waters.
16. Land application facilities and practices in floodplains must not result in washout of the solid wastes. Land application is prohibited in floodplain areas designated as floodways as defined in the Environmental Conservation Laws and regulations of the State of New York.
17. Land application is prohibited in areas where bedrock lies less than two feet below the ground surface.
18. Soil pH must be adjusted to 6.5 standard units or higher prior to periods of septage application.

19. Septage must not be applied on snow, frozen or saturated ground, or during rainfall, except septage may be applied on snow or frozen ground by direct injection below the land surface. Storage and/or disposal facilities must be available for periods during the year when waste cannot be applied.
  20. Public access to the land application facility is prohibited for at least 12 months after the last application of septage, and must be controlled during that period by the use of fences and gates, signs, or posted signs. Dairy cattle must not graze for at least 12 months after the last application, and other animals must not graze for at least one month after the last application.
  21. No crop for direct human consumption may be harvested on septage-amended soil for at least 18 months after the last application.
  22. Land application is permitted only when the beneficial value of the septage as a supply of nutrients or as a soil conditioner can be demonstrated.
  23. Land application of septage must not occur in areas where the seasonal high groundwater is within 24 inches of the ground surface. Land application of septage must not occur in areas where an aquifer or wellhead protection area is within 60 inches of the ground surface, or over a primary aquifer.
  24. Land application is allowed only on soil having a permeability of 0.06 inch to 6.0 inches per hour and within one or more of the following soil texture classes: sandy loam, sandy clay loam, loam, silt loam, silt, sandy clay and clay loam.
  25. An annual report must be submitted to the Town no later than March 1 of each year and must include, as a minimum:
    - a. The location of the landspreading fields used;
    - b. The crops grown on each field;
    - c. The total quantity of septage applied, including land application dates and quantity applied during each application on each field;
    - d. The loading rates (hydraulic, nutrient, and cumulative heavy metal) for the sites used;
    - e. All analytical results required by this section, including copies of all laboratory reports;
    - f. A description of any problems, complaints, etc. arising as a result of the land application operation, the corrective actions taken; and
  26. The Town and all property owners contiguous to the land application site must be notified in writing at least 72 hours prior to the first land application of each year. All buffer zone markings, described in A (8) above, shall have been put in place prior to such notification.
- B. Septage and/or sludge storage facilities.  
Surface impoundments, lagoons, open tanks, or storage facilities, other than surface impoundments, used to hold sewage sludge, septage or other solid waste, constructed of concrete, steel, or other material shall not be permitted within the Town. Unless exempted pursuant to § 213-7 (E) above.

**§ 213-18. Repealer; construal of provisions.**

All ordinances and local laws or parts thereof in conflict herewith are preempted by this Article; provided, however, that the provisions of this Article shall not be interpreted as violating any requirements or restrictions wherever it is possible to conform with the provisions of both this Article and any other law or ordinance. This Article shall be construed as being in addition to Chapter 247, Zoning, and the Environmental Conservation Law of the State of New York (ECL).

**§ 213-19. Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment is rendered.

**§ 213-20. When effective.**

This local law shall become effective immediately upon its filing with the New York Department of State.

**ARTICLE III  
Recycling**

**§ 213-22. Legislative intent.**

The Town Board of the Town of Pendleton finds that the reduction of the amount of solid waste and the conservation of recyclable materials are important public concerns. The separation and collection of newspaper, paper, cardboard, glass, cans, plastic containers and other materials for recycling from the residential, commercial, industrial and institutional establishments in the town will protect and enhance the town's physical and visual environment, as well as promote the health, safety and well-being of persons and property within the town by minimizing the potential adverse effect of landfilling, facilitating the implementation and operation of other forms of solid waste management, conserving natural resources and assisting the town in complying with the mandates of the New York State Solid Waste Management Act of 1988. The promotion and use of recyclable materials, goods produced from recyclable materials and goods which facilitate recycling will further serve the same purposes by encouraging and facilitating recycling.

**§ 213-23. Definitions.**

For the purposes of this Article, the following terms, phrases, words and derivatives shall have the following meanings:

**ADMINISTRATOR**-The person or persons designated by resolution of the Town Board to monitor and enforce this Article. The Town Board shall act as Administrator unless a separate designation is made.

**HAZARDOUS WASTE**-May include, but is not limited, to the following products and their empty containers; insecticides, herbicides, petroleum products, caustic chemicals, paint and batteries.

"Hazardous wastes" generally display one (1) or more of the qualities of ignitability, corrosivity, reactivity or toxicity.

**NONRECYCLABLES** - That portion of the waste stream not included under "recyclables," and not treated separately as hazardous waste under § 27-0903 of the New York Environmental Conservation Law; source, special nuclear or by-product material as defined in the United States Atomic Energy Act of 1954; or low-level radioactive waste as defined in § 29-0101 of the New York Environmental Conservation Law.

A. "Nonrecyclables" include, but are not limited to, the following:

1. **GARBAGE**- Putrescible solid waste, including animal and vegetable waste resulting from handling, storage, sale, preparation, cooking or serving of foods. "Garbage" originates primarily in home kitchens, storage areas, markets, restaurants and other places where food is stored, prepared or served.
2. **RUBBISH**- Rags, sweepings, rubber, leather, excelsior, crockery, shells, clothing, straw, dirt, filth, ashes, wastepaper and similar waste material.
3. **LARGE HOUSEHOLD FURNISHINGS** -Large and/or bulky articles actually used in the home and which equip it for living (such as chairs, sofas, tables, beds, carpets and large appliances).

4. **CONSTRUCTION AND DEMOLITION DEBRIS**- Waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include, but are not limited to, spoils, paving material and tree or brush stumps.
- B. The Pendleton Town Board may change the classification of "nonrecyclables" as defined herein in the event that it determines that reclassification is cost effective or that economic markets exist for that product. The Pendleton Town Board shall notify all generators of the change in classification.

**PERSON**- Any individual, firm, partnership, company, corporation, association, joint venture, cooperative enterprise, trust, municipality, other governmental agency or any other entity or any group of such persons which is recognized by law as the subject of rights and duties. In any provisions of this Article prescribing a fine, penalty or imprisonment, the term "person" shall include the officers, directors, partners, managers or persons in charge of a company, corporation or other legal entity having officers, directors, partners, managers or other persons in charge.

**RECYCLABLES** - Any materials which can be collected, separated and/or processed, treated, reclaimed, used or reused to produce a raw material or product, which materials include, but are not limited to, the following:

- A. Paper, clean and unsoiled, including newsprint, newspapers, news advertisements, supplements, comics and enclosures, corrugated boxes, cardboard, cardboard cartons and similar corrugated materials..
- B. Unbroken glass, glass bottles or types of containers, but not including dishes, crockery, ceramics, window glass, safety glass or pyrex-type glass.
- C. Metals limited to bimetal cans, tin-plated steel cans, aluminum containers and aluminum household items.
- D. Plastic containers normally found in the household, including containers used primarily for laundry products, dishwashing detergents, milk, water and similar items, including PET (Polyethylene Terephthalate) and HDPE (High Density Polyethylene) and other plastic resin types.
- E. Such other items and materials as may later be included pursuant to agreement between the town and its refuse collection contractor.

**WASTE MATERIAL**- Includes all recyclables and non-recyclables which make up the waste stream eligible for curbside pickup under this Article. "Waste material" does not include dead animals, fecal matter or material treated separately as hazardous waste under § 27-0903 of the New York Environmental Conservation Law or source, special nuclear or by-products material as defined in § 29-0101 of the New York Environmental Conservation Law.

**§ 213-24. Establishment of curbside program.**

- A. Upon the effective date of this Article, there is hereby established a program for the separation, preparation for collection and collection of waste materials. The program shall be under the supervision of the Town of Pendleton, its administrators and its collection agent or contractor.
- B. The Town Board and its administrator will determine recyclables and units required to recycle and notify town residents at least thirty (30) days before said declaration will be incorporated into the town program.
- C. All waste material to be collected by the town shall be separated, prepared for collection and collected in accordance with §213-21 and 213-22 of this Article.

D. The Town of Pendleton, its administrator and its collection agent or contractor shall have no obligation to pick up and remove any waste material not prepared for collection in accordance with this Article.

E. The Town of Pendleton, its administrator and its collection agent or contractor shall have no obligation to pick up and remove any waste material which was not used in the residence or business or other establishment and subject to the town's contractor for garbage and recycling.

F. The Town of Pendleton, its administrator and its collection agent or contractor shall have no obligation to pick up or remove any waste material which is to be provided for pursuant to the town's contract for waste removal with the contractor or otherwise provided for by a town-administered pickup and removal program. Certain businesses, industries and residences may not be provided for in Town of Pendleton pickup and removal programs.

**§ 213-25. Preparation of recyclable material for collection.**

No person shall dispose of waste material for collection by the town except as follows:

- A. Waste material shall be prepared for collection in accordance with Subsection A(1) through (4) of this section.
  - 1. Each person shall provide separate, sealable galvanized steel cans or other suitable sanitary sealable containers or heavy duty plastic bags for nonrecyclables, unless stipulated otherwise in this Article. Such cans or containers shall not exceed thirty (30) gallons' capacity and when filled shall not exceed sixty (60) pounds in weight. All cans or containers shall be placed at the curb or roadside for collection.
  - 2. Recyclable aluminum cans and items, glass bottles and plastic items shall be separated from non-recyclables and placed in the recyclable collection container.
  - 3. Recyclable metal cans, aluminum, cans, glass and plastic containers and other items so separated shall be rinsed of contents and placed in the recyclable collection container. Caps on plastic containers shall be removed and disposed of as garbage.
  - 4. Newsprint shall be separated from non-recyclables and either placed in the recyclable container or properly secured into bundles not to exceed twenty-five (25) pounds in weight and placed at the curb or in the recyclable container or roadside next to the recyclable container for collection. Effort is to be made to keep the newsprint clean and dry and contamination free.
- B. Other items to be included for recycling are to be prepared as set forth from time to time by resolution of the Town Board, according to such expansions of the curbside collection program as may be established by the town from time to time.
- C. One (1) recyclable container shall be provided by the town to each unit and shall conform in color, logo, shape and material and other specifications to the material established from time to time by the Town Board. Replacements may be purchased from the town at an amount to be determined by the Town Board.

**§ 213-26. Collection.**

Waste materials shall be collected in a manner consistent with the terms of the Town of Pendleton collection contract.

**§ 213-27. Ownership of recyclables placed for collection.**

- A. When any person properly places any recyclable materials at or near any curb, sidewalk, street or road for the purposes of collection by the Town of Pendleton or its contractor, those recyclable materials shall thereupon immediately become the property of the Town of Pendleton or its authorized agent. No person not acting under authority of the Town of Pendleton or its

authorized agent shall collect, pick up, remove or cause to be collected, picked up or removed, any recyclable materials so placed for collection; each such unauthorized collection, pickup or removal shall constitute a separate violation of this Article.

- B. Notwithstanding the provisions of Subsection A, where the town or its agent or contractor has refused to collect certain recyclables because they have not been placed or treated in accord with the provisions of this Article, the person responsible for initially placing those materials for collection may and shall promptly remove those materials from any curb, sidewalk, streetside or roadside and assume possession, control and responsibility for the proper disposal of same.
- C. Nothing herein shall prevent any person from making arrangements for the private collection of recyclables; provided that recyclables to be privately collected shall not be placed curbside on or immediately preceding the day for municipal collection of such recyclables.
- D. The Town of Pendleton, its administrator and its authorized agent shall not be required to collect any waste material which has not been separated and secured pursuant to the provisions of this Article or the applicable regulations of the Town of Pendleton.

**§ 213-28. Importation of waste materials.**

- A. No person shall cause to be imported into the Town of Pendleton waste material for garbage collection.
- B. No persons shall cause to be imported into the Town of Pendleton recycling material for collection.

**§ 213-29. Penalties for offenses. 6**

A violation of this Article, other than § 213-23A, shall constitute a violation punishable, upon conviction thereof, by a fine not exceeding two hundred fifty dollars (\$250.) or by imprisonment for not more than fifteen (15) days, or both, for each offense. A violation of § 213-23A or 213-24 shall constitute a misdemeanor punishable upon conviction thereof by not more than six (6) months imprisonment or a fine not exceeding one thousand dollars (\$1,000.) or both.

**§ 213-30. Applicability.**

The provisions of this Article apply to commercial, industrial and institutional waste generators. In the event that a commercial, industrial or institutional waste generator does not have materials collected pursuant to law or contract, said generator shall be responsible for components or solid waste which must be source-separated which is left for collection by any person as defined herein or delivered to the generator prior to being disposed of in any manner at a Solid Waste Management facility.

**§ 213-31. When effective.**

This Article shall take effect upon filing with the Secretary of State, however, its provisions are suspended until such date that a contract is implemented by the Pendleton Town Board for recycling in the Town of Pendleton.

**ARTICLE IV**

**Dumping**

**§ 213-32. Restrictions.**

- A. It shall be unlawful for any person, persons, firm or corporation to place, store, deposit or dump or cause to be placed, stored, deposited or dumped, for the purpose of abandonment or otherwise, old junk, metal, bricks, glass or glass bottles, stones, plaster, lumber, automobiles, automobile bodies or parts thereof, metal tanks, barrels, metal containers, swill, garbage or waste materials of any nature on any public or privately owned lot, tract of land, street, lane, alley or park within the corporate limits of the Town of Pendleton.

B. No person, persons, firm or corporation shall deposit or dump or cause to be deposited or dumped anywhere in the town any of the aforementioned materials which may be collected from any place or premises situated outside of the corporate limits of the Town of Pendleton.

**§ 213-33. Penalties for offenses.**

Any person, persons, firm or corporation violating the provisions of this Article shall, upon conviction thereof, be punished by a fine of not less than two thousand five hundred dollars (\$2,500.), or imprisonment for a term not to exceed fifteen (15) days, or both, for each such offense. Each such violation of this Article may also be separately prosecuted pursuant to the Penal Law and Environmental Conservation Law of the State of New York. Each day such violation continues shall constitute a separate violation and shall be punished separately pursuant to this Article.

***END OF LOCAL LAW 01-14***

**RESOLUTION 91 - 14**

**STANDARD WORKDAY AND REPORTING RESOLUTION**

Motion by Councilman Leible , seconded by Councilman Fischer, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
 Nays 0

Resolved that the Town Board of the Town of Pendleton hereby establishes the following as standard workdays for elected and appointed officials and will report the following days worked to the New York State and Local Employee’s Retirement System based on the record of activities maintained and submitted by these officials to the Town Clerk.

Title	Name	Hours per Workday	Term (dates)	Time Keeping System	Days/Month(based on Record of Activity)	Not submitted
<b>ELECTED</b>						
Supervisor	James Riester	8	01-01-2014-12-31-2015	N	8.67	
Town Clerk	Terry J Pienta	8	01-01-2014-12-31-2015	Y	N/A	
Highway Superintendent	Jeff Stowell	8	01-01-2014-12-31-2015	N	23.66	
Justice	Timothy P Murphy	8	01-01-2012-12-31-2015	N	2.2	
Councilman	David Leible	8	01-01-2012-12-31-2015	N	5.00	
Councilman	David Fischer	8	01-01-2014-12-31-2017	N	5.00	
Councilwoman	Aimee Jarvis	8	01-01-2014-12-31-2017	N	5.00	
<b>APPOINTED</b>						
Bd of Appeals	Lee Daigler	8	01-01-2011-12-31-2015	N	.75	
Conservation Board	Valerie Janik	8	01-01-2010-12-31-2011	N	3.25	
Deputy Highway Superintendent	Ken Smith	8	01-01-2010-12-31-2010	Y	N/A	
Town Attorney	Claude Joerg	8	01-01-2014-12-31-2015	N	7.5	
Assessor	Kelli Coughlin	8	10-01-2013-09-31-2019	N	20.00	

**RESOLUTION 92 - 14**

**AUTHORIZATION FOR PENFLEX TO PREPARE REFERENDUM**

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
Nays 0

Resolved to authorize Penflex to prepare the resolution and the referendum for the Wendleville Volunteer Fire Company's Retirement Program (LOSAP) to increase the time served from 20 years of service to 30 years of service to be placed on the November election ballot.

**RESOLUTION 93 - 14**

**SET PUBLIC HEARING FOR TRANSFER OF FUNDS**

Motion by Councilman Leible, seconded by Councilwoman Jarvis, the following resolution was

ADOPTED: Ayes 5 Riester, Leible, Morrison, Fischer, Jarvis  
Nays 0

Resolved to set a Public Hearing for August 11<sup>th</sup> at 7:55 P.M. for the transfer of \$160,038.00 from the Building and Land Improvement Fund to the General Operating Account for the Town's share of the Trail Expansion Grant awarded to the Town through the New York State Department of Transportation.

**PUBLIC REMARKS/COMMENTS**

Several residents expressed their displeasure at the decision not to repave the Pendale subdivision, the residents had been promised that the road would be repaved in 2014 and there are significant holes in the roads that need patching if the entire road is not going to be repaved. The residents question if a salt shed is necessary, and couldn't those funds be used towards the roads instead.

**BOARD MEMBERS DISCUSSION**

It was determined that a Work Session was not necessary for the month of July. The next meeting will be August 11<sup>th</sup> at 8:00 P.M. A Public Hearing will be held at 7:55 P.M.

Motion by Councilman Leible, seconded by Councilman Morrison to adjourn at 8:49 P.M. Motion carried.

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Terry J. Pienta, Town Clerk