

**LOCAL LAW NO. 3 OF 2023,
A LOCAL LAW REGULATING THE DISPOSAL OF SEWAGE SLUDGE**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF THURSTON, NEW YORK, AS FOLLOWS:

I. Title.

This Local Law shall be known as the “Sewage Sludge Disposal Law of the Town of Thurston.”

II. Statutory Authorization.

This Local Law is adopted under the authority of the New York State Constitution, Article I, Section 19 and Article IX, Section 2(c), Section 10 of the New York Municipal Home Rule Law, Section 130 of the New York Town Law, Section 10 of the New York State Statute of Local Governments and Section 27-0711 of the New York Environmental Conservation Law which authorize towns to impose stricter controls on waste disposal operations than state law requires to promote and protect the well-being, health and safety of their residents.

III. Legislative Findings.

A. The Town Board of the Town of Thurston finds that the health and safety of the residents of the Town of Thurston is best served by restricting the operation of sewage sludge disposal facilities within the Town of Thurston.

B. That sewage sludge frequently contains per- and polyfluoroalkyl substances – known as PFAS. PFAS are widely used, long lasting chemicals. The carbon-fluorine bond in PFAS is the strongest bond in chemistry which does not break down naturally in the environment.

C. That when sewage sludge containing PFAS is spread on cropland, the plants grown on the land absorb PFAS from the soil and groundwater and people and animals consuming the crops absorb PFAS from the crops.

D. That PFAS bioaccumulates up the food chain so that small amounts found in soil and water are concentrated in vegetation grown on the land or in the water, are more concentrated in the animals that eat the vegetation, and even more concentrated in animals that eat other animals or drink their milk.

E. That scientific studies show that exposure to PFAS in the environment is linked to harmful health effects in humans and animals.

F. That PFAS are recognized in New York as hazardous substances.

G. That the PFAS compounds found in sewage sludge come from the wastes entering the wastewater treatment plants (WWTPs) that produce the sludge. PFAS-laden wastes come from wastewater generated at industrial facilities that produce or process PFAS, from leachate from landfills that contain PFAS-laden wastes, from municipal wastewater with background levels of PFAS, from contaminated storm water, and from other sources.

H. That the typical treatment methods at WWTPs do not remove or destroy PFAS, and that PFAS compounds settle in the sewage sludge.

I. That technology exists to remove PFAS from wastewater but to our knowledge no such technology is use at any WWTP in New York.

J. That despite being widely understood to pose a serious health risk to people, wildlife and the environment, PFAS are not well regulated under New York and federal laws.

K. That on April 20, 2022, the State of Maine banned the land application of “sludge” and the “sale and distribution of compost and other agricultural products and materials containing sludge and septage” because of health concerns.

L. That on June 15, 2022, the US Environmental Protection Agency (EPA) announced lifetime health advisory levels, measured in parts per trillion (ppt), to protect people from adverse health effects resulting from exposure throughout their lives to certain individual PFAS in drinking water, including limits of 0.002 ppt and 0.004 ppt for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), respectively.

M. That on August 26, 2022, EPA issued a proposal to designate PFOA and PFOS and their salts and structural isomers as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund.

N. That on March 14, 2023, EPA proposed legally enforceable levels for six PFAS in drinking water with limits of 4 ppt for PFOA and PFOS.

O. That on March 15, 2023, the New York Department of Environmental Conservation (DEC) released final ambient water quality guidance values for PFOA, PFOS, and 1,4-Dioxane of 6.7 ppt, 2.7 ppt and 0.35 ppt respectively.

P. That on March 28, 2023, the State of West Virginia enacted the “the PFAS Protection Act” requiring remedial action for raw water sources that send their wastewater to a treatment plant and that exceed EPA’s applicable health advisory for any of four listed PFAS (PFOA, PFOS, PFBS, or GenX).

Q. That PFAS testing by Cyclopure, Inc. in March 2023 of water samples collected at 35 sites in the Town of Thurston and the adjoining towns of Cameron and Bath showed levels of PFAS greater than 1 ppt in eleven samples. The highest levels of PFAS were found in private drinking water wells located near long-standing sewage sludge land spreading operations. The four samples with the highest levels of PFAS showed total PFAS levels of 18.1, 14.9, 5.9 and 5.1 ppt. The highest levels of combined PFOA and PFOS in the tested samples were 9.6 and 7.8 ppt. These test results are significant because the recommended lifetime exposures in the EPA health advisory of June 2022 are 0.002 ppt of PFOA and 0.004 ppt of PFOS.

R. That levels of PFOA and PFOS just slightly above 9.6 and 7.8 ppt triggered remedial action by DEC to prevent potential exposure to contamination when PFOA and PFOS were detected in certain groundwater monitoring wells at levels above 10 ppt. At the Armonk Private Wells State Superfund site and WCG Labriola Landfill, an inactive landfill, DEC provided bottled water to

properties where results were above 10 ppt and also offered installation of point-of-entry treatment systems.

S. That on April 13, 2023, EPA issued an Advance Notice of Proposed Rulemaking asking the public for input regarding potential future hazardous substance designations under CERCLA for (1) Seven additional PFAS, besides PFOA and PFOS, and their salts and structural isomers, or some subset thereof, (2) Precursors to PFOA, PFOS, and the seven additional PFAS listed; and (3) Categories of PFAS. This request for input follows EPA’s September 2022 proposed rule to designate PFOA and PFOS, and their salts and structural isomers as hazardous substances under CERCLA

T. That on May 10, 2023, notwithstanding its recently adopted ambient water quality guidelines, DEC announced a draft Interim Strategy for the Control of PFAS Compounds in biosolids (i.e. sewage sludge) that requires DEC to require additional sampling if levels of PFOA and PFOS are above 20 parts per *billion* (ppb), and if levels of PFOA and PFOS are above 50 ppb requires DEC to prohibit “recycling” (meaning land application) until levels of PFOS or PFOA in the sludge are reduced to below 20 ppb. Levels in ppb are 1,000 times higher than levels in ppt.

U. That EPA and DEC are not imposing enforceable PFAS limits consistent with scientific studies showing the harmful health impacts of exposure to PFAS or with the EPA health advisories announced in June 2022, and that more stringent requirements are necessary to protect the residents of Thurston against damage to their health and safety from PFAS.

V. That it is not feasible for the Town of Thurston to test incoming loads of sewage sludge for PFAS.

W. That the best way to avoid further substantial threats to the health and safety of the residents of Thurston from the adverse affects of-the disposal of PFAS-contaminated sewage sludge within the town is to prohibit the disposal of sewage sludge within the town.

X. That agricultural activities can be conducted in the town successfully and profitably without polluting the town’s land and water with sewage sludge.

IV. Purpose.

It is the purpose of this Local Law to promote the health, safety, and general welfare of the residents of the Town of Thurston by banning sewage sludge disposal in the town.

V. Definitions.

Unless defined herein or the context otherwise requires, the terms and words used in this law shall have the same meaning as those defined in Article 27 of the Environmental Conservation Law and Title 6, Parts 360 to 364 and 617 of the New York Codes, Rules, and Regulations. As used in this Local Law, these terms and words shall be defined as follows:

6 NYCRR means Title 6 of the New York Codes, Rules, and Regulations.

Composting means aerobic decomposition of solid organic constituents of sewage sludge or other solid waste.

DEC means the New York State Environmental Conservation Department.

Disposal means the placement, distribution, land application or other handling of sewage sludge, digestate or wastewater treatment sludge.

ECL means the New York State Environmental Conservation Law.

Land Application Facility means any facility or property at which sewage sludge is applied to land, disposed, processed, stored or otherwise used.

Person means 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.

Sewage means human excrement, industrial wastewater, storm water and other types of wastewater piped, trucked or otherwise conveyed to a wastewater treatment plant.

Sewage Sludge means any solid, semisolid or sludge-like material generated in a wastewater treatment plant by the treatment of sewage or industrial wastewater or otherwise derived from sewage or industrial wastewater or their byproducts. “Sewage sludge” shall be considered synonymous with “biosolids.” Sewage sludge shall include material remaining or produced as a result of the anaerobic digestion of sewage sludge, the composting of sewage sludge or the fermentation of sewage sludge.

Sewage Sludge Facility means a facility that handles sewage sludge, including anaerobic digestion facilities, composting facilities, fermentation facilities, land application facilities, mulch processing facilities, storage facilities and other organics recycling facilities.

Storage Facility means any facility or property used for the storage or processing of sewage sludge, digestate or wastewater treatment sludges.

Town means the Town of Thurston. Whenever this 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.

Wastewater Treatment Plant means a facility that collects sewage and industrial wastewater and treats the sewage and industrial wastewater to remove certain contaminants.

VI. Prohibitions.

No sewage sludge facility shall hereafter be constructed, allowed to commence operation or to continue operation within the Town of Thurston.

VII. Exemption.

Sewage sludge facilities that do not require licensing by the New York State Department of Environmental Conservation shall not be subject to this Local Law.

VIII. Invalidity of Permits.

No permit or permit modification issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this Local Law shall be deemed valid within the Town.

IX. Penalties for Offenses, Enforcement.

A. Any person found guilty of a violation of any of the provisions of this Local Law shall be punished by a fine of not less than five thousand dollars nor more than ten thousand dollars for the first offense and not less than ten thousand dollars nor more than twenty five thousand dollars for the second and each subsequent offense, plus the cost of the removal of any solid or liquid waste disposed of in violation of this Local Law, the cost of the restoration of any land on which solid or liquid waste is disposed of in violation of this Local Law as nearly as possible to its former condition, and the cost of remedying any effects of the violation of this Local Law on nearby properties or resources, including, without limitation, air, trees, crops, water bodies, wetlands and groundwaters.

B. The Town of Thurston may enforce this Local Law through an action brought in New York State Supreme Court. In such an action, the Town of Thurston shall be entitled to recover all costs of litigation, including, without limitation, expert witness and attorney's fees.

C. Any Town resident shall have the authority to enforce the provisions of this Local Law through an action brought in New York State Supreme Court. In such an action, a Town resident shall be entitled to recover all costs of litigation, including, without limitation, expert witness and attorney's fees.

X. Coordination with State Law

A. All relevant sections of Article 27 of the ECL and 6 NYCRR, Parts 360 to 364 and 617, are deemed to be included within and as part of this Local Law, and any violation thereof shall be considered to constitute a violation of this Local Law.

B. The provisions of this Local Law shall be interpreted in such a manner as being consistent with state law, except that the more stringent requirements of this Local Law shall apply.

C. This law is not intended to be violative of the Right to Farm provisions of the New York State Agriculture and Markets Law, which do not apply to activities that threaten public health and safety.

XI. Severability.

If any part of the Local Law shall be judicially declared to be invalid, void, unconstitutional, or unenforceable, all unaffected provisions hereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted.

XII. Effective Date

This Local Law shall take effect upon the date it is filed in the Office of the Secretary of State of the State of New York.