

BIOSOLIDS LAW

ARTICLE I

Permitting of Facilities

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ARTICLE I
Siting of Facilities
Aerobic Digestion

§ ___-1. **Title.**

This Article shall be known as and may be cited as the "Biosolids Law of the Town of Marilla."

§ ___-2. **Legislative Findings and Purposes.**

The Town Of Marilla Finds That:

- A. Aerobic and anaerobic digestion facilities, that take in waste from waste water treatment plants, industrial and chemical sources, municipal sources and septage, digestate storage facilities and land application facilities are by their very nature potentially dangerous to both the Town citizenry and to the Town's natural environment.
- B. The potential contamination of soil, surface water, groundwater, nearby creeks and streams and the potential pollution of the air are threats which are posed by such operations. This potential contamination can pose a threat to the health, safety and welfare of persons and the environment, including the crops, livestock and wildlife exposed to such contamination.
- 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, businesses and food processing facilities. Property values within the Town may be adversely affected with the expansion of such facilities.
- D. Sewage sludge and digestate waste are deleterious substances; that improperly maintained and operated aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities can emit noxious fumes, aerosols and odors; that such facilities cast dust and particles containing contaminants upon neighboring persons, animals, crops and properties; that such facilities attract rodents, scavengers, birds, vermin, insects and other animals, which transport contaminants and pathogens and become breeding places therefor.
- E. If not properly managed, sewage sludge and digestate waste can produce harmful liquids which drain off, over and into the soil; that certain sewage sludge and digestate waste may contribute to an increase in mortality or an increase in serious, irreversible or incapacitating illness; that sewage sludge and/or digestate wastes cause or significantly contribute to a substantial present or potential hazard to human health or the environment when improperly processed, stored or applied; that municipal sludge is a product of residential, commercial and industrial users and contains pathogens, hazardous chemicals and other substances from these users, some of which alone or in combination may be dangerous if not properly managed;

that such substances may include; among other things, pesticides, pathogens (bacteria, viruses, protozoa and helminth ova), carcinogenic materials, irritants, organics, biologicals, pharmaceuticals, barium, fluoride, molybdenum, silver, cobalt, iron, lead, mercury, nickel, copper, tin, vanadium, zinc, cadmium, sulfur, and a host of other regulated and non-regulated deleterious and toxic substances; that the quality and contents of sewage sludge and digestate waste can vary greatly over time and location depending upon the nature of its 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 and livestock grown on land used for the processing, storage or application of municipal sludge or digestate waste or to drink milk or consume food products originating from land where sewage sludge and/or digestate waste has been improperly processed, stored or applied; that until more definitive information is available about the safety of sewage sludge and digestate waste, there is a need for careful management of valuable farmland where the sewage sludge or digestate waste may be processed, stored or applied.
- G. The Town's manpower and financial resources are such that the Town would have serious difficulty regulating and monitoring the processing, storage or application of sewage sludge or digestate 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 processing, storage or application of sewage sludge and digestate waste coming into the Town from outside sources could result in serious health problems for Town residents and environmental damage to property within and adjacent to the Town.
- H. Operation of aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application 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 advantage of having sludge and/or waste processing, storage or application 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 proposed and actual processing, storage and land application operations a necessity.
- I. Based on the review of recent and respected academic articles, the current federal and state regulations of aerobic and anaerobic digestion facilities, digestate storage facilities and land application facilities are insufficient to address or relieve the foregoing concerns. Moreover, the regulations of the New York State Department of Environmental Conservation memorialized in 360-4 are based on federal rules first promulgated in 1992 at 40 C.F.R. 503 ("EPA 503 Rule") which, in turn, regulate the loading of only a small list of target heavy metals and nutrients on agricultural soils and do not consider the reported findings regarding numerous other chemicals (such as pharmaceuticals and personal care products) found in biosolids which are not yet required by the New York State Department of Environmental Conservation to be tested for or evaluated despite their association

with potential adverse environmental and health effects such as endocrine disruption, health impacts on livestock, movement to groundwater through facilitated transport, and other concerns.

- J. Therefore, it is the duty and intent of the Town Board to protect the inhabitants of the Town of Marilla through an exercise of its police powers by regulating the siting of aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application facilities and by requiring a robust and prudent utilization of the Town's safety and health regulatory authority 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 the Town of Marilla, 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 aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities within the Town of Marilla in order to promote a safe, uncontaminated, hygienic, wholesome and attractive environment for the entire community.
- B. Reduce the risk of pollution from aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities by restricting the scope and size of such activities.
- C. Ensure that accurate and current information about proposed or actual aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities within the Town is available to public officials and citizens.
- D. Protect the residents of the Town from undesirable effects of aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities, including:
1. Potential and actual negative impacts, including but not limited to odors, dust, aerosols, and noise.
 2. Potential and actual deterioration in property values associated with adjacent or nearby operations of such facilities that may interfere with the orderly and safe development and operations of properties.
 3. Potential and actual injury to human health and the environment.
- E. Exercise the Town's powers under the Municipal Home Rule Law, and New York State Constitution, Article IX, Section 2(c), and the Town Law for the physical and mental well-being, health and safety of its citizens and to regulate and restrict aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities pursuant to the specific authority of §27-0711 of the Environmental Conservation Law and Municipal Home Rule Law which authorizes towns to impose stricter controls on waste disposal operations than state law requires.

- F. This Article is intended to supplement and incorporate all applicable requirements of any federal, state or local laws, including but not limited to the Environmental Conservation Law and 6 NYCRR (including Subparts 360-4 and 360-5) into this Article such that all information and documents required to be produced to any local, state and federal regulator must be produced to the Town as part of an application and operation permit of any facility hereunder. All requirements of federal and New York State law are incorporated herein by reference as requirements of this Article and all persons must document and produce to the Town that it can satisfy these requirements, as well as the other requirements of this Article, in order to be granted a permit and to maintain a permit with the Town of Marilla. In the event of any inconsistency between this Article and other applicable local, state or federal law, the most restrictive of such requirements shall apply and control.
- G. This Article is intended to regulate and does regulate aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities that utilize municipal, hospital, septage, sewage sludge, or industrial waste and does not regulate organic agricultural digesters that utilize agricultural waste but do not utilize municipal, hospital, septage, sewage sludge, or industrial waste.
- H. This Article is not intended to be violative of the Right to Farm Act (Chapter 534), the Town Agricultural & Farmland Protection Plan, or the New York State Agriculture and Markets Law.

§ ___-3. **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:

AEROBIC DIGESTION FACILITY – Any facility which accepts domestic sewage, 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 digestate waste in the presence of air.

AGRICULTURAL WASTE – waste which includes both natural (organic) and non-natural wastes produced on a farm through various farming activities, but does not include biosolids as defined herein.

AGRICULTURE – All activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm and the on-farm production, processing and marketing of agricultural products, including but not limited to the collection, transportation, distribution, storage and land application of animal wastes; storage, transportation and use of equipment for

tillage, planting, harvesting, irrigation, fertilization and pesticide application; storage and use of legally permitted fertilizers, limes and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use and application of animal feed and foodstuffs; construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products and livestock, for the sale of agricultural products and for the use of farm labor, as permitted by local and state building codes and regulations; including the construction and maintenance of fences.

ANAEROBIC DIGESTION FACILITY- Any facility which accepts domestic sewage, 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 bio-gas and digestate waste in the absence of air.

AGRONOMIC RATE – The rate of the addition of nitrogen, phosphorus, potash and micro-nutrients designed to provide the amount of such constituents needed by the crop or vegetation grown on the land, and to minimize the amount of such constituents that pass below the root zone of the crop or vegetation grown on the land to ground water.

BEDROCK - Cemented and consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials.

BIOSOLID WASTE (also known as “BIOSOLIDS”) – Human sewage sludge and/or other solid waste that has been treated as part of the aerobic and/or anaerobic digestion process and meets local, state and federal standards for beneficial land application.

CERTIFIED APPRAISAL -- A valuation of property, certified by a duly licensed New York State appraiser, which determines the fair market value of property in accordance with all relevant professional criteria on the date of the permit application, or other required filing.

CUMULATIVE LOADING LIMIT – The maximum amount of metal, in pounds, that can be applied from biosolids to an acre of land.

DEC - The New York State Department of Environmental Conservation.

DIGESTATE WASTE - (also known as “biosolids”) - Biosolid waste in liquid, semi-solid or solid form and which is a by- product of the aerobic or anaerobic digestion process and meets local state and federal standards for beneficial land application.

DISPOSAL – The deposit, discharge, distribution, dumping, injection, leaking, placing, applying, removal, spilling, spreading, storage, or transportation of any digestate waste into or on any land or water.

DOMESTIC SEWAGE - Any mixture of domestic sewage, regardless of source or origin, or other waste that passes through a sewer system to a publicly owned treatment works for treatment, including the contents of holding tanks, portable toilets and septic systems.

DRY WEIGHT BASIS – Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100 percent solids content).

FACILITY – All contiguous land and structures or other improvements used for aerobic or anaerobic digestion, digestate waste storage or and application. Each such facility located on non-contiguous parcels of land shall constitute a separate facility.

FEED CROP – A cultivated plant or agricultural produce that is used as a source of nourishment for farm animals.

FIBER CROP – A cultivated plant or agricultural produce that is used for the manufacturing of paper, cloth or rope.

FOOD CROP – A cultivated plant or agricultural produce that is used as a source of nourishment for human beings.

INDUSTRIAL WASTE – Industrial waste means solid waste generated by manufacturing or industrial processes. Such processes may include, but are not limited to the following: electric power generation; fertilizer/agricultural chemicals; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. The forms of such wastes are exemplified by but not limited to: liquids such as acids, alkalis, caustics, leachate, petroleum (and its derivatives), and processes or treatment wastewaters; sludges which are semi-solid substances resulting from process or treatment operations or residues from storage or use of liquids; solidified chemicals, paints or pigments; and dredge spoil generated by manufacturing or industrial processes, foundry sand, and the end or by-products of incineration or other forms of combustion. This term includes oil or gas drilling, production, and treatment wastes (such as brines, oil, and frac fluids); overburden, spoil, or tailings resulting from mining; or solution mining brine and insoluble component wastes. This term shall not include agricultural food waste or vegetable oils, fats and greases from agricultural food processing facilities.

LAND APPLICATION FACILITY – A facility used for the storage or disposal of digestate waste from a solid waste management facility for agricultural use of biosolids, waste, 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 6 NYCRR Part 360-4 and elsewhere.

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.

SITING AND OPERATING PERMIT - The permit issued by the Town which allows for the siting, construction, expansion, modification or operation of an aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility within any zoning and/or use district within the Town of Marilla.

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 an aerobic or anaerobic digestion facility, digestate waste storage facility, or land application facility is operated.

PATHOGENIC ORGANISMS - Disease-causing organisms, including, but not limited to, certain bacteria, viruses, protozoa and viable helminth ova.

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.

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

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

SEWAGE SLUDGE – Any solid, semisolid or liquid waste generated or disposed from a commercial, industrial, municipal, public or private wastewater treatment

plant, water supply treatment plant, air pollution control facility, or sewage treatment plant.

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 or 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.

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; aerobic or anaerobic digestion facilities and associated storage facilities; 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 pyrolization of solid wastes; incinerators; burial facilities; industrial waste processing, medical waste processing, or waste disposal facilities; storage areas associated with any of the foregoing; and storage lagoons for sanitary landfills.

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 Marilla. 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.

UNTREATED SOLIDS - The organic materials in biosolids that have not been treated in either an aerobic or anaerobic treatment process.

VECTOR ATTRACTION - The characteristic of certain solid waste that attracts rodents, flies, mosquitos, or other organisms capable of transporting infectious agents.

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

§ ___-4. Coordination with other laws.

All relevant sections of Article 27 of the New York State Environmental Conservation Law Titles 6 and 7 of the NYCRR, Part 360 (including but not limited to 6 NYCRR Part 360-4 and Part 360-5), the Clean Water Act, 33 U.S.C. §1251 et seq., the Resource Conservation and Recovery Act, 40 U.S.C. §6901 et seq., and 40 C.F.R. Part 503, as each 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 the Town's Zoning Law, 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.

§ ___-5. Permit Requirements.

- A. No person shall site, construct, modify, expand, or operate an aerobic or anaerobic digestion facility, digestate waste storage facility, or application facility without a siting and operating permit issued by the Town Board pursuant to the provisions of this Article and all incorporated applicable local, state and federal laws and regulations. Prior to any siting, construction, modification, expansion or operation of any such facility, a siting and operating permit shall be required, following a public hearing.
- B. 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 three (3) year period.
- C. No 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. Exemptions.

The following facilities are exempt from this local law:

- 1. The exemptions listed in 6 NYCRR 360-4.2(A).

§ ___-6. Permit application procedures.

- A. Existing aerobic and anaerobic digestion facilities, digestate waste storage facilities and land application facilities. The owner or operator of any aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility which is operative in the Town as of the effective date of this Article shall submit an application for a siting and operating permit within (a) four (4) years after the effective date of this Article, or (b) six months before the expiration of its current permit, whichever is sooner. A complete application for existing facilities which is timely submitted shall be deemed a valid siting and operating permit until such application is acted upon. If a submitted application is deemed incomplete by the Town Board, the subject applicant shall be notified in writing 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 therefor if the applicant meets the other requirements contained herein. If the applicant's activity or business does not comply with the requirements a person must meet to secure a permit in the first instance, the applicant may, at the Town's sole discretion, be granted a temporary permit for up to one year, during which time 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 extension 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. All information and documents required under local, state or federal law, including but not limited to Article 27 of the Environmental Conservation Law and 6 NYCRR 360-4 Subparts and 360-5 (which are incorporated by reference) which shall be submitted to the Town and approval by the Town as part of an application for a permit under this Article. In the event of any inconsistency between this Article and New York State law, the stricter requirement shall apply.
2. A detailed report describing the plan of operation (including but not limited to anticipated volume(s) of waste involved, anticipated method of treatment of waste, method(s) of transport, frequency of operation(s), source(s) of waste involved, and relevant time period(s)), and a contingency plan setting forth in detail a proposal for temporary and/or permanent corrective or remedial actions to be taken (and the timing of said action(s)) in the short term and

the long term in the event of equipment breakdowns, soil, ground water, surface water or air contamination resulting from the facility's operation, fires, spills, and unpermitted releases of waste materials to the environment.

3. A detailed description of pathogen content (certified by a licensed New York State testing laboratory) (tested at least twice annually); an MSDS of the wastes(s) involved (if available); and a plan for pathogen treatment and/or pathogen reduction of the source material for the facility to meet levels required to be implemented before land application under this Article.
4. A detailed plan for vector control and vector attraction reduction proposed to be implemented before and after land application.
5. A waste management plan and nutrient management plan, as appropriate, detailing solid waste content information (both "base line" (certified by a qualified New York State licensed testing laboratory) and proposed after application), waste management practices for all waste, treatment alternatives considered and available, storage plans, storm soil and groundwater sampling and analysis plans, waste application plans (including monitoring and reporting), and contingency plans.
6. If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact and the details of ownership, duration of ownership, insurance, proposed time(s) of operation and financial condition and viability at the time the applicant applies for the temporary permit, and the Town Clerk at the time of issuing such temporary permit shall send the owners or each of them a notice of the issuance of such temporary permit to each such person, together with a copy of this chapter.

B. Proposed aerobic or anaerobic digestion facilities, digestate waste storage facilities and land application facilities; and expansion and modification to existing facilities.

1. Any person who proposes to site, construct or operate an aerobic or anaerobic digestion facility, digestate waste storage facility or a land application facility in any zoning district of the Town or who proposes to site, construct, expand, modify or operate any phase of any existing such facility, shall submit a complete application for a siting and operation permit to a duly authorized agent of the Town. The proposed date to commence any such siting, construction, modification, expansion or operation cannot occur less than 90 days after the date of receipt and acknowledgement of the application by the Town. No such activities shall take place without prior Town Board's review and approval pursuant to the procedures set forth in § ____-8 herein. The following acts are deemed to be modifications and expansions which require permits:

- a. Increase of the facility operation by acquisition, purchase, lease or otherwise of additional land which was not the subject of or included in any prior application submitted under this Article.
 - b. Increase in the total quantity of waste received during any quarter at the facility by twenty percent (20%) 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 previously-approved operating capacity of such facility for such time period), or where there has been a material change in the type, kind or quantity of waste previously approved.
 - c. Movement of aerobic or anaerobic digestion operations, digestate waste storage operations, or land disposal operations to a portion of property already owned, leased or otherwise held by the facility which was not the subject of any operation included in any prior application submitted and approved under this Article.
 - d. Expansion of the facility operation by the installation of additional processing equipment which increases the design capacity of the facility or which changes the facility process, or where such expansion or construction increases the height of an existing facility or increases the outside dimensions of the facility.
2. In addition to the application content requirements hereinafter enumerated in § ___-7, all applications submitted under this subsection shall also include the following:
- a. All Information and documents required under local, state and federal law (including but not limited to § 27 of the Environmental Conservation Law and 6 NYCRR Subparts 360-4 and 360-5) (incorporated by reference), which must be provided to the Town and approved by the Town as part of any application for a permit under this Article. In the event of inconsistency between this Article and New York State law, the more restrictive shall apply.
 - b. As applicable, a detailed engineering plan, stamped and sealed, and specifications reflecting the proposed siting, construction, expansion, modification or operation.
 - c. A detailed description of pathogen content (certified by a New York State licensed testing laboratory) and a detailed plan for pathogen treatment and/or pathogen reduction to be implemented before land application.
 - d. A detailed plan for vector control and/or vector attraction reduction to be implemented before and after land application.

- e. A waste management plan detailing solids and waste content information, proposed waste management practices for all waste treatment alternatives considered and available, storage plans, soil and groundwater sampling and analysis plans, planned application quantities and rates, monitoring and reporting plans, and contingency plans.
- f. A nutrient management plan submitted to establish estimated waste quantities and waste application rates based on soil characteristics, sludge characteristics, nutrient loading, and potential or planned crop growth.
- g. A detailed report describing a 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; soil, ground water, surface water or air contamination resulting from the facility's operation, fires, spills, and unpermitted releases of waste materials to the environment.
- h. Evidence of compliance with all Town ordinances, Public Service Law; the New York State Agriculture and Markets Law regulating agricultural activity; the Environmental Conservation Law of the State of New York; 40 U.S.C.; local, state and federal wetlands and flood control laws; and the respective regulations thereunder.

§ ____-7. Permit application contents and permitting fees.

- A. All applications for a permit for the siting, construction, modification, expansion or operation 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 including all information and documents required under state and federal law, including but not limited to § 27 of the Environmental Conservation Law and Subparts 6 NYCRR 360-4 and 360-5; and such information and documents 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. Whether the applicant has ever been convicted of a felony or misdemeanor.
3. A description of the exact type of business the applicant intends to conduct, including the nature of the materials to be handled and wastes to be generated, including any applicable MSDS information.
4. Each application shall contain an emergency contact telephone number for the property owner and facility operator (updated annually).
5. Engineering plans (sealed and stamped), reports and specification prepared by a person or firm registered to practice professional engineering in the State of Ne
6. The location of all boundaries certified by a person or firm legally qualified to practice land surveying in New York State. If the boundaries of the area under permit do not change, the original survey obtained may be utilized for any permit renewal within ten (10) years of the original survey.
7. The applicant shall provide in his application a soil map from the Natural Resource Conservation Service (United States Department of Agriculture), hydrogeological report (including groundwater depth during the various times of the year), survey of area drainage and proposed location of monitoring wells.

Baseline and annual analytical testing (consistent with Erie County Health Department Standards and certified by a qualified New York State licensed laboratory) of representative domestic/private water wells (if accessible by permission of the property owner upon which each such well is located, which permission shall be sought) upgradient, downgradient and on a lateral gradient from the facility for constituents set forth in this Article and any other constituents of concern to the Town, as identified during the permitting process, and a 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 actions, with interim and final attainment dates, for achieving compliance with the dictates of this Article, Part 360 of the NYCRR (including but not limited to Subparts 360-4 and 360-5), and 40 U.S.C. and the Code of Federal Regulations, is submitted to the Town Board within thirty (30) days of notification by the Town Board that such a schedule is required; and provided further that such schedule is approved by the Town Board; or
- ii. A variance has been granted pursuant to Town Law.

8. A proposed detailed plan for the closure of the facility compliant with state and federal law to be implemented when use of the facility or the useful life of the facility permanently terminates.
9. A proposed plan for the monitoring of all activities on each parcel of the facility by personnel of the Town of Marilla or persons authorized by the Town of Marilla 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 Engineer, Code Enforcement Officer or the Town's consulting engineers, or other qualified person approved by the Town.
10. All methods and actions to be utilized are to satisfy the dictates of all applicable standards of design and operations, as enumerated or incorporated in this Article and/or by 6 NYCRR (including but not limited to 360-4 and 360-5) (which are incorporated herein). In the event of inconsistency between this Article and New York State law, the more restrictive shall apply. Results shall be submitted to the Town simultaneously with any submission or production to any other local, state or federal regulatory agency. The applicant promptly shall submit to the Town, with the application thereafter during the period of the permit, a copy of all correspondence regarding the facility between the landowner and/or applicant/permittee and/or any applicable federal, state or local regulatory agency and a copy of all applicable federal, state and local permits or permit applications or any correspondence or filings related thereto.
11. In the application, the applicant shall agree that if granted the permit applied for, the applicant will conduct the activity or business pursuant to this Article and other local, state or federal law as the regulations set forth herein and that, upon his failure to do so, such permit may be revoked forthwith; and
12. 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 permit, and the Town Clerk at the time of issuing such permit shall send the owners or each of them a notice of the issuance of such permit to such person, together with a copy of this chapter.
13. In the case of an aerobic or anaerobic digestion facility, digestate storage facility or land application 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 Subparts 360-4 and 360-5 detailing material data on the solids and waste to be applied, solids or biosolids management plan, treatment alternatives considered, storage plan, application plan (including monitoring and reporting), and contingency plans. Applicant shall also provide a detailed description of pathogen content (certified by a New York State licensed testing laboratory), a plan for pathogen treatment and/or pathogen reduction to be implemented before land application,

as well as a detailed plan for vector control and/or vector attraction reduction to be implemented before and after land application.

14. 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.
15. 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.
16. Each permit application shall be accompanied by a permit application fee of (a) five hundred dollars (\$500.00) in the case of a land application permit, and (b) two thousand five hundred dollars (\$2,500.00) in the case of a storage permit; and, throughout the permitting process and during the life of any permit, the applicant shall also be responsible for and shall promptly pay all costs and expenses reasonably incurred by the Town to review and process the application, to comply with this Article, and as provided under the Environmental Quality Review Act (SEQRA) and regulations promulgated thereunder.
17. In addition to the application fee provided above and the cost of SEQRA compliance, the applicant shall acknowledge and be responsible for the costs and expenses incurred by the Town and/or the applicant or permittee for the testing and analysis of materials deposited in or placed upon any facility, or of any soils, or any surface or ground waters on or adjacent to said facility during the permitting process and during the life of any permit granted under this Article. Such tests shall be conducted at laboratories or facilities approved by the State of New York and the Town Board.
18. Each applicant shall demonstrate that the facility will not have adverse impact upon the environment of the Town of Marilla, the health and safety of Town residents, businesses, and visitors, and local land use and planning, and the Town Board, Planning Board and Conservation Advisory Board shall approve an application only after careful consideration of the above criteria and requirements.

§ ___-8. Town Board Action.

- A. CONSULTATIONS: Upon determination by the Code Enforcement Officer that an application under this Article is complete, the Town Board shall refer the complete application to the Town Planning Board and/or Conservation Advisory Board for study and recommendations upon receipt of said complete application, and each shall report to the Town Board within ninety (90) 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 required 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 permits for a proposed aerobic or anaerobic digestion facility, digestate waste storage facility or land application facility or the proposed modification or expansion of any such 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).

- B. SCHEDULING OF PUBLIC HEARING: Within sixty (60) days of receiving recommendations from the Town Planning Board and/or the Conservation Advisory Board pursuant to this local law, the Town Board shall hold a public hearing. The Town Board may schedule additional public hearings if it chooses.
- 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 therefor.
- 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 environmental conditions and on human health and safety within the Town and the surrounding community.
 2. With regard to non-agricultural digesters and storage facilities, the 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.

3. Protection of on-site and nearby soils, and surface and ground waters from contamination in violation of this Article.
4. Protection against airborne dust or aerosols containing the parameters listed in section ____-15(A)(8)(a) below.
5. Protection of residents, and neighboring properties against contamination or other objectionable features in violation of this Article.
6. Adequacy of the proposed plans for emergency, corrective or remedial actions.
7. Existing facilities. Within (a) four (4) years of the effective date of this Article or six (6) months before the expiration of its existing permit (whichever is shorter), a permit shall be issued for an aerobic or anaerobic digestion facility, digestate waste storage facility or land application 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 other New York State law, the NYCRR (including but not limited to Subpart 360-4 and 360-5), 40 U.S.C. and 40 C.F.R. Part 503, 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. A permit shall be issued for a proposed aerobic or anaerobic digestion facility, digestate waste storage facility, or land application facility only if the proposed construction thereof is demonstrated to be in accordance with the standards of operation as set forth in the Environmental Conservation Law and other New York State law, the NYCRR (including but not limited to Subpart 360-4 and 360-5), 40 U.S.C. and 40 C.F.R. Part 503, and this Article and all Town laws; otherwise, such permit shall be denied.

§ ____-9. Bonds and insurance.

- A. As a condition of the issuance of any permit under this Article, the Town shall require 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 siting and operation of the facility pursuant to the details of the application, the dictates of this Article and all other local, state and federal laws.

2. Restoration bond to ensure that all restoration and/or remediation work is completed pursuant to the plan submitted with the application, the dictates of this Article and all other local, state and federal laws.
 3. Penalty bond to ensure that all fines and penalties levied and judgments secured pursuant to this Article or other local, state and federal laws 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 regard for the size of the facility and the amount of aerobic or anaerobic digestion waste or digestate waste being received, deposited, processed, treated, stored or applied therein; but it shall not be less than the greater of (a) One Million Dollars (\$1,000,000) or (b) three (3) times the total fair market value of the land (as determined by Certified Appraisal) 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 with a minimum coverage limit of at least Two Million Dollars (\$2,000,000) per occurrence. The Town reserves the right to require that it be named as an 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.

§ ____ -10. Reissuance of permits or extension of facilities.

- A. Any permit holder who intends to continue siting, construction, modification, expansion or operations beyond the period of time permitted in such original permit must file for reissuance of such permit at least six (6) months prior to its expiration. Filing for reissuance shall be made by the permit holder on a form 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.
- 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 and all local, state and federal laws, and all regulations thereunder; and
- 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.

§ ____-11. Modification, suspension and revocation of permit.

A. If the continuation of a permit may result in injury to any person or the environment, any permit issued pursuant to this Article shall be modified, suspended or revoked, in whole or part, during its term, upon a minimum of ten (10) days' notice and opportunity for a hearing, for cause including, but not limited to, the following:

1. Violation of any part of this Article, the terms of a permit issued pursuant to this Article or other local, state or federal laws or any regulations thereunder;
2. The Town Board shall also consider any previous violations of this Article, any local, state or federal law; or the terms of any permit;
3. Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts; or by making materially false or inaccurate statements or information in any 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, businesses or other persons of the Town of Marilla.

In the case where, in the Town Board's judgment, the continuation of a permit pursuant to this Article would result in immediate and irreparable injury to the Town, any person or the environment, any permit issued pursuant to this Article may be modified, suspended or revoked upon less than ten (10) days' notice by application to a court or tribunal of competent jurisdiction.

B. The Town Board may revise or modify the terms of an issued permit if it determines good cause exists for such revision.

§ ____-12. 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, construct, expand, modify or operate a facility, shall (i) have its permit revoked and be barred from re-applying for a permit for at least three (3) years; and (ii) be guilty of a violation and shall be punishable by a fine of up to two hundred and fifty dollars (\$250.00) or up to 15 days in jail, or both. Each day of continued violation shall be deemed a separate violation of this local law.

This local law may be enforced by the Code Enforcement Officer of the Town. Any such enforcement official is authorized to issue an appearance ticket, any information, or any other appropriate accusatory instrument, in the manner provided by any pertinent ordinances or local laws of the Town, to the owner or operator of the facility as well as to any other person who is violating the provisions of this Article.

- B. Civil remedies. Nothing in this local law shall be deemed to impair or diminish any cause of action or remedy which the Town or any other person may have under any other local law, under any statute, ordinance or regulation or under local, state or federal statutory or common law; provided, however, that, in the case of a conflict, those terms or rules of law shall control which are the most restrictive upon the 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 and expenses of the Town in connection therewith.

§ ____-13. Agent for the town.

The Town Board may hire a person with suitable qualifications approved by the Town as the on-site agent for the Town of Marilla at the applicant's expense. Said agent shall have the following duties:

- A. To monitor the facility and determine whether an operator is complying with this Article, all siting and operating permits and zoning requirements and the requirements of all Town laws and ordinances.
- B. To inspect, to test, and/or have tested all waste received, treated, processed, stored, applied or placed upon any facility, or to test any soils, surface or ground waters at or adjacent to said facility and report on his or her findings to the Town Board at such times as the Town Board requires regarding the operation of the Facility, which reporting shall occur at least one (1) time per year.

§ ____-14. 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 Town Board, members of the Erie 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 or inspect for compliance herewith.

- C. 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, and its compliance with this Article and the laws of the State of New York, including but not limited to 6 NYCRR 360-4 and 360-5.
- D. The permittee shall file with the Town Clerk, on the annual renewal date, a list of the employees authorized to perform the permitted activities.

§ ____-15. Special Conditions.

- A. Sewage sludge and/or digestate waste processing, treatment, storage, discharge, disposal, and land application; operational requirements. The following requirements shall apply:
 1. All land application facilities shall comply with all applicable requirements of 6 NYCRR 360-4 and 360-5, (which are incorporated by reference herein). In the event of inconsistency between this Article and New York State law, the more restrictive shall apply.
 2. Digestate waste destined for land application shall undergo pathogen treatment prior to application in accordance with 40 CFR 503 Subpart D. In the event 40 CFR 503 Subpart D requires site restrictions because of the class of pathogen treatment, the site restrictions required shall be the more restrictive of those included in (a) 40 CFR 503, (b) 6 NYCRR 360, or (c) this Article.
 3. Digestate waste destined for land application must not exceed the following contaminant concentrations:

Parameter	Average Monthly Concentration	
	mg/kg, dry-weight	Maximum Concentration
Mercury (Hg)	10	57
Cadmium (Cd)*	21	85
Nickel (Ni)	200	420
Copper (Cu)	1,500	4,300
Lead (Pb)	300	840
Chromium (Cr)	1,000	1,000
Zinc (Zn)	2,500	7,500
Arsenic (As)	41	75
Selenium (Se)	100	100
Molybdenum(Mo)	40	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 Subpart 360-4 or 360-5, a facility cannot continue to operate until the permittee has implemented an identification and abatement program and compliance has been achieved to assure that the waste has continuously met the quality parameters of this subsection for a period of at least six months.
4. All digestate waste must be stabilized to reduce pathogens before land application by one of the methods listed below. Land application of digestate waste that has been stabilized by chlorine oxidation is prohibited.
- a. Aerobic digestion. This is conducted by agitating the waste with air or oxygen to maintain aerobic conditions at a mean cell residence time of at least 60 days at 15° C or greater, to 40 days at 20°C or greater, with a volatile solids reduction of at least 38%.
 - b. Air drying. Liquid waste must be allowed to drain or dry on sand beds, or on paved or unpaved basins, in which the digestate waste must not exceed a depth of nine inches. The waste 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 waste is digested in the absence of air at a mean cell residence time of at least 60 days at 20° C. or at least 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 waste to produce a pH of 12 throughout the waste for at least two hours of contact. Such waste 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 and the NYSDEC.

5. For land application of digestate waste, one of the following vector attraction reduction requirements must be met:
 - a. Injection. Digestate waste shall be injected below the surface of the land and no significant amount of the waste shall be present on the land surface within one hour after the waste is injected.
 - b. Incorporation. Digestate waste applied to the land surface shall be incorporated into the soil within six hours after application;
 - c. Lime stabilization. The pH of waste shall be adjusted to meet the requirements of Subsection A(4)(d) of this section.

6. 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 must not be harvested for 18 months after land application.
 - b. Food crops with harvested parts below the surface of the land must not be harvested for 40 months after land application.
 - c. Food crops, feed crops, and fiber crops shall not be harvested for forty-five (45) days after application of digestate waste where these crops grow above the soil with harvested parts which do not touch the digestate waste.
 - d. The animal grazing requirements of Subsection A(22) must be complied with.
 - e. Turf grown on land where waste is applied shall not be harvested for one year after application of the digestate waste 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. Public access requirements of Subsection A(22) must be complied with.

7. The land applier of digestate waste 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.

8. Annual waste, soil and groundwater testing at the Facility is required.
- a. Waste, soil and groundwater must be sampled and analyzed in accordance with the following:

Parameters		
Group A	Group B	Group C
Nitrogen	Arsenic	Extended Parameters (See Table 2 under 6 NYCRR 360-5)
Total Kjeldahl	Cadium	
Ammonia	Chromium	
Nitrate	Copper	
Total Phosphorus	Lead	
Total Potassium	Mercury	
pH	Molybdenum	
Total Solids	Nickel	
Total Volatile Solids	Selenium	
	Zinc	

- b. The minimum number of analyses required with permit application and during operation are as follows:

Waste Applied (dry tons/year)	Number of Analyses Groups A&B (per year)	Group C
Greater than 1,000	12	2
200 to 1,000	6	1
Less than 200	1	0

- c. Analyses for other pollutants may be required by the Town Board, on a case-specific basis, based on information from the pretreatment program and other sources, including reputable 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 and the Town, 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 and the Town.
 - 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 Group C analyses required if the waste quality is consistently below the quality standards and is not accumulating.
9. The minimum horizontal distance [i.e. "Buffer Zones"] from the perimeter of the site to be used for land application of waste must meet or exceed the following:

Item	Minimum Horizontal Separation Distance in Feet
Drainage swale	50
Property line	100
Surface water body	200
Residence, place of business or public contact area*	1,000
School	1,000
Food Processing Business Regulated by the NYS Dept. of Agriculture	1,000
Water well or supply	400
State Regulated Wetland	200

The actual horizontal distances for each facility must be certified, documented in writing and filed in the Town Clerk's Office and available for public inspection promptly upon completion of application activities.

NOTE: *The landowner or operator's residence is excluded from this separation distance requirement. In addition, this requirement does not apply to lands where an adjacent owner consents to the activity within the separation distance.

10. During land application, the fields must be flagged or otherwise marked so the buffer zones are apparent to the land applier and to the public. Such flagging shall occur a minimum of seventy-two [72] hours prior to application of digestate waste. Should anyone challenge such buffer zone marking, then a deposit of \$250.00 shall be paid by the challenger to the Town and the Code Enforcement Officer for the Town of Marilla shall determine if the buffer zone requirements have been met.

Should the buffer have been properly marked in the first instance, then the challenger shall forfeit the \$250.00 deposit to the Town. In the event that the challenger is successful, then the deposit shall be returned to the challenger and/or operator applicant shall operate outside of the buffer zone.

11. Land application must not occur on land with a slope exceeding 15%. Land-applying waste 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. The above slopes shall be determined by geographical survey or instrumentation.
12. The hydraulic loading must not exceed 16,000 gallons per acre in a twenty-four-hour period.
13. 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
By Agricultural Soils**

Metal	Ag Soil Groups 1-3	Ag. Soil Groups 4-10
Cadmium (Cd)	3	4
Nickel (Ni)	30	45
Copper (Cu)	75	112
Zinc (Zn)	150	223
Lead (Pb)	267	267
Chromium (Cr)	300	446

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

14. The heavy metal loading must not exceed 20% of the cumulative metal loading limit in any one year.
15. In addition to all other requirements contained within this Article, a detailed soil analysis shall be provided annually for each land application 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.
16. Land application and subsequent vegetation maintenance must be conducted 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.
17. Digestate waste shall not be deposited in a manner that will allow the material to drain or become washed into any body of surface water, stream, or other watercourse. Dikes, berms, or other pollution protection devices or techniques must be used to prevent run-off entering surface waters.
18. 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, and the United States (including the Federal Emergency Management Agency).
19. Land application is prohibited in areas where bedrock lies less than two feet below the ground surface.
20. Soil pH must be adjusted to 6.5 standard units or higher prior to periods of land application.
21. Digestate waste must not be applied on snow, frozen or saturated ground, or during rainfall. Permittee must provide written assurance that storage and/or disposal facilities are permitted and available for periods during the year when waste cannot be applied.
22. Public access to the land application facility is prohibited for at least ninety (90) days (on land with a low potential for public exposure, such as agricultural land, forest land, and a reclamation site located in an unpopulated area) and 12 months (on land with a high potential for public exposure, such as a public contact area or a land reclamation site in a populated area) after the last application of waste, and must be controlled during that period by the use of fences and gates, signs, and/or posted signs. Dairy cattle must not graze for at least two (2) months after the last application, and other animals must not graze for at least one (1) month after the last application.

23. No crop for direct human consumption may be harvested from soil for at least 18 months since the last land application. See paragraph 15(A)(6)(a) above.
24. Land application is permitted only when the beneficial value of digestate waste as a supply of nutrients or as a soil conditioner can be demonstrated.
25. Land application of digestate waste must not occur in areas where the groundwater is within 24 inches of the ground surface at the time of application. Land application of waste 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.
26. 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, silty clay loam, loam, silt loam, silt, sandy clay and clay loam.
27. An annual report regarding the previous year must be submitted to the Town no later than March 1 of each year and must include, as a minimum:
 - a. A description of compliance with the Article;
 - b. The location of the fields used for the application and the method of application;
 - c. The crops grown on each field;
 - d. The total quantity of digestate waste applied, including land application dates and quantity applied during each application on each field;
 - e. The loading rates (hydraulic, nutrient, and cumulative heavy metal) for the sites used;
 - f. All analytical results required by this Article and New York State law, including copies of all laboratory reports; and,
 - g. A description of any problems, complaints, etc. arising as a result of the land application operation, the corrective actions taken.
28. 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 (10) above, shall have been put in place prior to such notification.
29. Any property interest in real property utilized as a land application facility which is sold, transferred, mortgaged or otherwise encumbered must include this information in any disclosure document required by law.

B. Septage or sludge storage facilities.

1. Septage or sludge storage facilities must comply with the applicable local, state and federal requirements (including but not limited to this Article and the Environmental Conservation Law, and 6 NYCRR 360-4 and 360-5). Surface impoundments, lagoons, open tanks, or other storage facilities, other than surface impoundments used to hold sewage sludge, waste or other solid waste, constructed of concrete, steel, or suitable material suitable to the State of New York and the Town, shall not be permitted within the Town, unless exempted pursuant to § ____-5 (D) above.

2. Septage or sludge storage facilities must comply with the buffer zone requirements set forth in __-15(A)(9), except that the buffer zone requirement from a surface impoundment (as defined in Part 360-4) from any residence, or public contact area shall be at least 1500 feet. The actual horizontal distances for each Facility from other possible receptors listed in ____-15(A)(9) and this paragraph must be certified, documented in writing and filed in the Town Clerk's Office and available for inspection.

3. All information and documents required pursuant to 6 NYCRR 360-1.9, 360-4.9 and 360-4.10 (and the requirements incorporated therein) must be provided to the Town and approved by the Town as part of any storage application and/or thereafter in connection with any storage design and operation.

4. Where there is inconsistency between this Article and any other local, state or federal law, the more restrictive shall apply and control.

5. Any property interest in real property utilized as a septage or sludge storage facility facility which is sold, transferred, mortgaged or otherwise encumbered must include this information as provided in any disclosure document required by law.

§ ____-16. 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 the Zoning Law of the Town of Marilla, the Environmental Conservation Law of the State of New York (ECL) (including but not limited to 6 NYCRR 360-4 and 360-5), and 40 U.S.C., and the regulations thereunder.

§ ____-17. 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.

§ ____-18. **When effective.**

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

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