

WASTE DISPOSAL FACILITY LICENSING ORDINANCE

OF NORTH BERWICK, MAINE

MARCH 12, 1988

Cheryl D. Wentworth
Stephen G. Shufelt
Board of Selectmen
North Berwick, Maine

Attest:

Janet E. Belmain
A true copy of an ordinance entitled "Waste Disposal Facility Licensing Ordinance of North Berwick" as certified to me by the municipal officers of North Berwick on the 29th day of February, 1988.

Janet E. Belmain
Janet E. Belmain
Town Clerk
North Berwick, Maine

WASTE DISPOSAL FACILITY LICENSING ORDINANCE

TOWN OF NORTH BERWICK

Article 1. Purposes

- 1.1 To provide the Town of North Berwick with a means of overseeing the activities of waste disposal facilities to ensure that they comply with regulations the Town deems essential to protect the health, safety, and welfare of its residents and natural resources of the Town pursuant to Title 30, M.R.S.A. § 1917, 383, 1310.
- 1.2 To protect air, surface and groundwater resources of the Town of North Berwick from contaminants which can reasonably be expected to accompany the activities of waste disposal facilities and thereby to preserve the quantity and quality of these resources for present and future use.

Article 2. Definitions

- 2.1 Board: The Planning Board, in conjunction with Department heads, Chairmen of districts, departments, and other Municipal Boards, appointed by the North Berwick Board of Selectmen.
- 2.2 Disposal: The discharge, deposit, injection, dumping, leaking, spilling, or incineration of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters. After ten days of being placed into or on any land or water, a waste shall be considered disposed of for purposes of this ordinance.
- 2.3 Expansion: Any change in size or operation of a licensed facility. Examples of expansions include but are not limited to: an increase in the volume of waste processed annually; an enlargement of the land area affected; an increase in height of the facility; implementation of new technologies that affect processing.
- 2.4 Hazardous waste: As defined in 38 M.R.S.A. § 1303 (5), means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S.A. § 1303-A. It does not include wastes resulting from normal household or agricultural activities.
- 2.5 Liquid waste: Any free-flowing, semi-solid, or liquid waste generated by a municipal, commercial, or industrial wastewater treatment facility, water supply treatment plant, air pollution control facility, manufacturing facility or any other such waste having similar characteristics and effect which is not licensed for discharge under 38 M.R.S.A. § 414.
- 2.6 Recyclable waste: Materials which are segregated from solid waste and salvaged for alternate use or re-use by the generator or a third party, including but not limited to glass, metal, cardboard, paper, plastics, and by-products of manufacturing, processing, or packaging processes.
- 2.7 Septage: Waste, refuse effluent, sludge and may other materials from septic tanks, cesspools, or similar facilities.
- 2.8 Sludge: Processed septage free of any coliforms from any licensed treatment facility.

- 2.9 Solid waste: Useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including but not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill material, and landscape refuse, but shall not include septage, sludge or agricultural wastes.
- 2.10 Special waste: Any non-hazardous waste generated by sources other than domestic and typical commercial establishments that exist in such an unusual quantity or in such a chemical or physical state, or any combination thereof which may disrupt or impair effective waste management and thus require special handling, transportation, and disposal procedures. Special wastes include:
- A. Oil, coal, wood and multi-fuel boiler and incinerator ash;
 - B. Industrial waste and industrial process waste;
 - C. Waste water treatment plant, papermill, and other sludge wastes;
 - D. Debris and residuals from non-hazardous chemical spills and clean-up from such spills;
 - E. Contaminated soils and dredge spoils;
 - F. Asbestos and asbestos-containing wastes;
 - G. Sand blast grit and paint wastes;
 - H. Hospital and other potentially infectious or pathogenic wastes;
 - I. High and low pH wastes;
 - J. Spent filter media and residue.
- 2.11 Waste: This term shall include hazardous waste, solid waste, liquid waste, special waste, sludge, and septage. This term shall not include domestic waste disposed of in subsurface wastewater disposal systems which meet the State of Maine Subsurface Wastewater Disposal Rules.
- 2.12 Waste disposal facility: Any land area, structure, location, equipment or combination thereof used for the disposal of waste. A land area or structure shall not be considered a waste disposal facility solely because:
- a. It is used by its owner for disposing of septage from his residence;
 - b. It is used by an individual homeowner or lessee to open burn leaves, brush, dead wood, and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted pursuant to Title 38, M.R.S.A. § 599 (3);
 - c. It is used by its residential occupant to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted pursuant to 38 M.R.S.A. § 599 (3);
 - d. It is used for sludge spreading under a program which meets the standards of the Maine DEP's Rules for Land Application of Sludge and Residuals and is approved and permitted by the Maine Department of Environmental Protection.

Article 3. Licensing

- 3.1 No person, firm, or corporation shall construct or operate a waste disposal facility within the municipality without obtaining a license from the town. Therefore, the disposal of any solid waste, liquid waste, hazardous waste, special waste, septage or sludge (hereafter referred to as "waste") is strictly prohibited except at the site of waste disposal facilities which

have secured all applicable federal, state and local licenses and permits. All recyclable wastes used for agricultural purposes will be subject to DEP standards and reviewed on an individual basis by the Planning Board.

- 3.2 Said license shall not be transferred without prior written approval of the Board where the purpose and consequence of the transfer is to transfer any of the obligations of the holder of the license as incorporated in the license. Such approval shall be granted only if the transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of the license and the proposals, plans, and supporting documents contained in the application for license.
- 3.3 The license shall be posted on the premises.
- 3.4 All licenses shall expire three (3) years from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this ordinance. It shall be the responsibility of the licensee to reapply for license renewal in a timely manner. A licensee applying for license renewal may continue to operate the waste facility while the application is pending, provided said licensee applied for license renewal in a timely manner. Upon reapplication for license renewals, licensees will be subject to comply with new technology as it pertains to specific land-fill/incinerator sites.
- 3.5 Once a site has been licensed, there shall be no expansion under that license. Any expansion shall be considered a new application, and shall be treated as such, requiring a complete process review. If expansion is intended at a future date, this intent must be stated at time of initial filing for a permit.
- 3.6 Waste disposal facilities in full operation on the effective date of this ordinance may continue in operation for a maximum period of three years while implementing the provisions of this ordinance. The owner/operator of an existing waste disposal facility shall appear before the Board within 180 days of passage of this ordinance to provide information on future plans for the facility. A license shall be issued for the normal license term of three years. Renewal of this license shall be contingent upon a showing that the facility complies with the terms of this ordinance.

Article 4. Applications:

- 4.1 The applicant shall have the burden of proof that the facility is in compliance with the requirements of this ordinance.
- 4.2 An application for a new license shall be submitted to the Board, including the following information:
 - a. The name and address of the applicant; the names and addresses of any persons or entities associated with the applicant for the purpose of waste disposal, past and present; the names and addresses of any waste disposal facilities with which the applicant is currently or has previously been involved.
 - b. A complete history of professional performance in past operations related to waste management or disposal.
 - c. A complete copy of the application submitted to the Maine Department of Environmental Protection under the requirements of the Site Location of Development Rules (chapter 400 et seq.) and DEP's Solid Waste Management

Rules (chapter 400 et seq.). This copy shall include all submissions required under Chapter 372 et seq. of the Site Location of Development Rules and Chapter 400 of the Solid Waste Management Rules.

- d. If not included in 4.2.b, a description of methods to control leachate generation and movement.
- e. If not included in 4.2.b, plans for final closure of the facility and post-closure maintenance of the site, including information on the timing of closure, cover materials to be used, frequency of maintenance following closure, and methods to control methane generation and movement.
- f. Plans for an alternate water supply to replace private wells which could be affected by the disposal facility, including proof of the availability of an alternate source of supply, and estimates of the cost to develop this alternate supply (as outlined in Article 8.2).
- g. General characterization of wastes proposed for disposal; estimate of the proportions of different types of waste proposed for disposal; compatibility of different wastes with each other; compatibility of wastes with the liner.
- h. A description of emergency response measures planned for fires, explosions, and any other event which could reasonably be expected to occur at the facility;
- i. Any plans for future expansion.

The Board shall, within no more than 45 days of receiving a license application, notify the applicant whether the application is complete. If the application is determined to be incomplete, the Board shall notify the applicant in writing of the specific information necessary to complete it. In reviewing applications determined to be complete, the Board may require additional relevant information which is necessary to determine whether the proposed facility fulfills the purpose of the ordinance and its specific standards of review, as listed in Article 5.2.

- 4.3 An application for a new license shall be accompanied by a fee of 2% of the estimated construction cost of the waste disposal facility. Construction cost, defined as the cost to design, engineer, and construction of the waste disposal facility including all on- and off-site improvements, shall be estimated by the design engineer and approved by the Board or its agent. Such fee shall be used by the Board to hire engineers, geologists, planners and/or any other experts necessary to assist with proposal review. Any accumulated interest on the fee may also be used by the Board for such purposes. The unexpended balance on the account shall be returned to the applicant after a final decision on the application is rendered. An application for a license for an existing facility or for a facility which will not involve construction shall be accompanied by a fee of 2% of the fair market value of the land and facility.
- 4.4 An application to renew a license shall be submitted to the Board accompanied by a fee of \$2,000.00, payable to the Town, a written report on the facility's operation since the previous license was issued demonstrating the facility's continuing compliance with the ordinance, any documents showing changes in other state or federal licenses, and any groundwater monitoring results from the previous license period.
- 4.5 Once a facility has been licensed, it shall not expand under that license. Any expansion shall be considered a new application and shall undergo a complete process review.

Article 5. Procedures:

- 5.1 A hearing shall be held by the Board within 180 days of the receipt of a complete application for a new license or 90 days for a license renewal or modification. When considering an application for a new license, license renewal, or license modification, the Board may extend this period to no more than 360 days if more time is necessary to conduct a thorough review of the application. At the hearing, the Board shall receive evidence on the location and operation of the proposed facility, including but not limited to: location and design, volume of traffic generated, condition of screening, proximity of residences to the site, proximity of drinking water wells, adequacy of methods to control leachate generation and movement, adequacy of methods to control methane generation and movement, compatibility of liner and wastes, emission control, and other factors relevant to the proposed facility and its operation.
- 5.2 Within thirty (30) days of the hearing, the Board shall issue, renew, or modify a license only if, based on clear evidence, it makes the following written findings:
1. The proposed facility meets the specific requirements set forth in this Ordinance;
 2. Adequate provision has been made, utilizing best available proven technology, for the containment and treatment of leachate and the prevention of ground and surface water contamination;
 3. Wastes proposed for disposal are compatible with each other and with the construction of waste facility;
 4. The proposed use will provide adequate access for emergency vehicles to the site and buildings on the site;
 5. The provisions for buffers and on-site landscaping adequately protect neighboring properties from detrimental features of the facility which cannot be avoided by reasonable modification of the plan;
 6. The proposed use will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, glare, or other causes which could be avoided by reasonable modification of the plan;
 7. Adequate provision has been made for routing truck traffic through the town in a manner which will not create safety hazards;
 8. The design of the site will not result in significant flood hazards or flood damage and is in conformance with applicable flood hazard protection requirements;
 9. Adequate provision has been made, utilizing best available technology, to control erosion and sedimentation;
 10. Appropriate provision has been made to control stormwater runoff or other drainage problems on the site;
 11. Adequate provision has been made for the transportation, storage, and disposal of hazardous materials as defined by state law;
 12. The proposed facility will not have an adverse impact on significant scenic vistas, significant wildlife habitat, or significant wetlands as identified in the Comprehensive Plan;
 13. The closure plan and long-term maintenance plan provide adequate protection that the waste disposal facility will not create future health or safety hazards.

The Board shall issue a written report stating its findings of fact, its decision, the reasons for its decision, and, if a license is issued, any conditions attached to the license. Upon consideration of the factors listed above, the Board may attach such reasonably necessary conditions to a license as it finds necessary to fulfill the purposes of this ordinance.

- 5.3 Except where otherwise stated in this ordinance, a license shall not take effect until the applicant has secured and complied with all applicable federal, state, and local licenses and permits.

Article 6. Performance Standards

- 6.1 The facility shall comply with all operational and performance standards included in the Maine DEP's Solid Waste Management Rules (chapter 400 et seq.).
- 6.2 The facility shall provide a landscaped buffer strip to visually screen the use, where no natural vegetation can be maintained due to varying site conditions, the landscaping may consist of fences, walls, tree planting, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use such as: loading and unloading operations, outdoor storage areas, waste collection and disposal areas. The buffer areas shall be maintained and vegetation replaced to ensure continuous year-round screening.
- 6.3 Finished height of each landfill cell shall not exceed 3 feet above original topography.
- 6.4 Access to the disposal site shall be strictly controlled, and all access roads to public or private ways shall be secured when the facility is not open for operation to ensure that unauthorized or unsupervised disposal does not occur.
- 6.5 The operator shall continuously supervise the unloading of refuse to ensure that only permitted wastes are handled at the facility. The operator shall maintain a record of every vehicle which brings waste to the facility, including the following information:
- a. name of driver;
 - b. name of person, firm, or corporation which owns the vehicle;
 - c. license plate of vehicle;
 - d. type/characterization of waste; and
 - e. source and origin of waste.

Article 7. Performance Guarantees

- 7.1 The Board may, as a condition of the license, establish any reasonable requirements to ensure that the owner has the ongoing technical ability to meet state air and water pollution control standards, such as:
- a. Require the owner to employ a capable engineer or other professional who is sufficiently knowledgeable and experienced in the disciplines necessary to ensure that state air and water pollution control standards are met continuously during operation of the facility.

- b. Require a training program for the appropriate personnel to ensure proper installation, operation, and maintenance of pollution control equipment, and proper operation of the facility.
- c. Require provision for an independent consultant to conduct on-site inspection at any time, at the developer's expense, to ensure proper execution of plans as approved, including any conditions imposed by the Board.

If an independent consultant is required by the Board, the developer shall establish an account, in an amount to be determined by the Board, to provide for the hiring of engineering, geological, or other expertise to monitor and inspect construction of the facility. The unexpended balance on the account shall be returned to the applicant.

7.2 The owner must submit with his application proof of adequate provision for accidental occurrences during the active life of the facility and for a reasonable period following closure. This provision can consist of either (a) liability insurance, or (b) establishment of a trust fund, which shall be equivalent in coverage or dollar amount to the cost of installing or extending an alternate or replacement water supply to serve the area susceptible to contamination by landfill leachate and meeting the requirements listed in 8.2.a and 8.2.b. A certified geologist shall identify and map the area susceptible to contamination by the waste disposal facility based on local groundwater flow patterns, directions of flow, volume of water present and other relevant factors. Geologists and engineers shall identify and provide proof of the availability of an alternate water source adequate in amount to supply the susceptible area, and shall provide an estimate of the cost of providing this area with a replacement water supply.

- a. Liability insurance shall provide coverage equivalent in amount to the cost of providing a public water supply as set forth in 7.2. This coverage shall meet the following criteria:
 1. Coverage must be provided for sudden and accidental occurrences during active life and for a reasonable period following closure.
 2. Coverage must be provided for non-sudden and accidental occurrences during active life and for a reasonable period following closure.
 3. If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least twelve months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public in the following manner:

At least sixty days, but no more than ninety days, prior to the date upon which the policy will expire or be cancelled, give written notification to all owners of property abutting the facility and to the chief elected official of the Town, that insurance for the facility will expire or be cancelled, give date of expiration or cancellation, and that claims against the insured must be filed within 12 months from the date of expiration or cancellation, specifying where and how claims can be filed.

- b. A trust fund shall meet the following criteria:
 1. The total cost to provide a replacement water supply for the susceptible

area shall be divided by the total estimated volume of waste to be handled by the facility over its lifetime to determine a per unit of volume contingency fee. Prior to opening the facility, the owner shall deposit a minimum of 10% of the total cost of the replacement water supply in the trust fund. After opening the facility, the owner shall deposit monthly into the trust fund the fee per unit of volume multiplied by the total volume received during the previous month, until such time as the total amount necessary to provide the replacement water supply has accumulated in the fund.

2. The trust fund shall be administered jointly by the owner and the town.
3. The trust shall be handled by a trust company which manages no less than \$200 million worth of funds. Funds in the account shall be invested in SEC-approved securities only, using the "prudent man" standard of investment. Real estate investments are prohibited. Accumulated interest shall be re-invested in the fund.
4. The cost of installing a replacement water supply shall be re-evaluated annually and the per unit of volume contingency fee adjusted to reflect changes in actual costs and inflation as a condition of the license.
5. The trust fund shall be reserved for 20 years after final closure of the facility. At that time, a portion of the trust fund shall be allocated for a detailed assessment of the facility's present and estimated future impact on groundwater quality, based on a comprehensive groundwater quality testing program. Fund administrators shall formulate a long-term groundwater management plan based on the results of assessment and the recommendations of the qualified geologist or engineer experienced in hydrogeology who conducted the assessment and shall distribute or maintain the funds in accordance with the aforementioned plan.

7.3 For all facilities proposing on-site disposal of waste, the owner shall establish a closure/post-closure trust fund adequate in terms and amount to assure a closing of the site at the end of its useful life in accordance with all state and federal requirements and maintenance of the site subsequent to its closure. The total amount of the trust fund shall be based upon a registered Professional Engineer's estimate, approved by the Board or its agent, of closure costs and post-closure maintenance costs. The owner or operator shall pay into this fund according to the following requirements:

- a. The total estimated closure cost and an endowment sufficient in amount to generate in interest the annual post-closure maintenance cost, plus a 10% contingency, shall be divided by the total estimated volume handled by the facility over its lifetime to determine a per unit of volume closure fee. The owner/operator shall deposit monthly into the trust fund an amount equal to the per unit of volume closure fee multiplied by the volume deposited in the landfill during the previous month, until such time as the total amount necessary for closure and long-term maintenance has accumulated in the fund. Estimated closure and post-closure maintenance costs and total landfill capacity shall be reassessed annually and adjusted to reflect current conditions as a condition of the license.
- b. The trust fund shall be administered jointly by the town or an agent approved by the town and the owner.
- c. The trust shall be handled by a trust company which manages no less than \$200 million worth of funds. Funds in the account shall be invested in SEC-approved securities only, using the "Prudent man" standard of invest-

ment. Real estate investments are prohibited.

- d. The trust shall remain active for a minimum of 20 years following closure to cover long-term maintenance costs. At the end of the twenty years, an assessment shall be made of the integrity of the cap and the need for future maintenance. Fund administrators shall formulate a long-term management plan based on the results of the assessment and the recommendations of the the qualified engineer experienced in hydrogeology who conducted the assessment, and shall distribute or maintain the funds in accordance with the aforementioned plan.

- 7.4 The requirements of Article 8 may be waived if the Board makes written findings that alternative performance guarantees proposed by the applicant are adequate, appropriate, and fulfill the purposes of this ordinance.

Article 8. Right of entry

- 8.1 Any duly authorized representative or agent of the Town may, upon presentation of appropriate credentials, at any reasonable time, enter and inspect the facility, obtain samples of any waste, inspect and copy records, reports, information, or test results realting to the disposal of solid waste, take photographs, or other actions necessary to ensure compliance with the ordinance.
- 8.2 An agent or representative of the Town shall be permitted to independently sample monitoring wells installed around the landfill.

Article 9. Enforcement

- 9.1 All rprovisions of this oridnance are enforceable by duly authorized Police Officers, the Code Enforcement Officer, the Municipal Officers or their agents.
- 9.2 Any person who violates any provision of this ordinance is subject to fines as provided in Article 11.

Article 10. Revocation of a license

- 10.1 Any license issued herein may be suspended, subsequent to notification procedures listed in 10.2, or by order of the Police, Code Enforcement Officer, or Municipal Officers for the following causes:
 - a. Violation of this ordinance.
 - b. Violation of any provision of any state or local law, ordinance, code or regulation which relates directly tot he provisions of this ordinance.
 - c. Violation of any license conditions.
 - d. Falsehoods, misrepresentations, or omissions in the license application.
 - e. Failure to construct or operate the facility in accordance with the plans.
 - f. Failure to meet air and water pollution control standards.
- 10.2 Whenever the Municipal Officers or Code Enforcement Officer determine that a violation has occurred by virtue of one of the conditions listed in 10.1.a - 10.1.f, they shall give written notice of such violation to the person, firm or corporation responsible.
 - a. The citation shall include a description of the violation and shall allow reasonable time for remedial action.

- b. The citation may contain an outline of remedial action, which, if taken, will effect compliance.
- c. The citation shall state that unless corrections are made within the allotted time, the violator is subject to prosecution and/or license suspension pursuant to the provisions of this ordinance.

- 10.3 If the violator does not meet the terms of the citation, the Municipal Officers, Code Enforcement Officer, or Police shall, after due notice, a public hearing, and a finding that any of the conditions or the provisions of this ordinance have been violated, notify the license holder in writing of the suspension of the license.
- 10.4 The Municipal Officers, Code Enforcement Officer, or Police may issue an emergency suspension of a license if continued operation of a facility poses a clear and present danger to the public health, safety, and welfare. An emergency suspension may be issued for a maximum of 14 days until such time as a hearing before the Board may be held.
- 10.5 The person, firm or corporation whose license has been suspended is entitled to appeal to Superior Court.

Article 12. Penalties

- 12.1 Any person, firm, or corporation violating any of the provisions of this ordinance or any conditions of the license, shall upon conviction be punished by a minimum fine of \$1,000 and a maximum fine of \$10,000 for a first offense. If not corrected within 30 days, a violation shall be considered a continuing violation and shall be fined a minimum fine of \$5,000 and a maximum of \$50,000 per day. Reasonable attorney's fees and court costs incurred by the Town in prosecuting a violation shall be awarded to the Town if the Town is the prevailing party.

Article 13. Severability

- 13.1 The provisions of this ordinance shall be severable and if any portion of it shall be held invalid, the remainder of this ordinance and its application thereof shall not be affected.

Article 14. Conflicts

- 14.1 If any provision of this ordinance conflicts with any provisions in another municipal ordinance or state statute, the stricter provision shall apply.

Article 15. Appeal

- 15.1 An aggrieved party may appeal any decision under these regulations to Superior Court.