

UN

THE TOWN OF WAYNE

WASTE DISPOSAL FACILITY LICENSING ORDINANCE

Article 1. Purpose

1.1 To provide the Town of Wayne 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, pursuant to Title 30, Section 1917, of the Maine Revised Statutes Annotated.

1.2 To protect surface and groundwater resources of Wayne from contaminants which can reasonably be expected to accompany the activities of waste disposal facilities and thereby to preserve the quantity and quality of this resource for present and future use.

Article 2. Definitions

2.1 Disposal: The discharge, deposit, injection, dumping, leaking, spilling, incineration or placing of any solid waste in or on any land or water.

2.2 Hazardous waste: As defined in 38 M.R.S.A., Sec. 1303(5), means a waste substance of material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S.A., Sec. 1303-A. It does not include wastes resulting from normal household or agricultural activities.

2.3 Disposal facility: Any land area, structure, location, equipment or combination thereof used for the disposal of waste.

2.4 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.

2.5 Special waste: Any waste emanating from sources other than typical domestic and commercial establishments that is not readily compatible within a waste facility at which it may be handled. A waste is considered special when it exists in such an unusual quantity or such a chemical or physical state, or any combination thereof, as to disrupt or impair effective waste management or threaten public health, human safety or surrounding natural resources when it is to be handled at a waste facility that is not appropriately located, designed, or operated to receive such waste.

2.6 Waste: This term shall include hazardous waste, solid waste, special waste, sludge, and septage.

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. The disposal of any waste is strictly prohibited except at the site of waste disposal facilities which have secured all necessary state and local license(s) and permit(s). The provisions of this ordinance shall not apply to the on-site disposal of landscape refuse generated on that site, nor to any disposal facility owned, operated, leased or used by this municipality to dispose of solid waste.

3.2 Said license shall not be transferable without prior written approval of the Planning Board where the purpose and consequence of the transfer is to transfer any of the obligations of the developer as incorporated in the license. Such approval shall be granted only if the applicant or transferee demonstrates to the Planning Board that the transferee has the technical capacity and financial ability to comply with conditions of the license and 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.

3.5 All owners of waste disposal facilities which are currently in operation shall apply for a license within 60 days of the effective date 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 Planning Board, including the following information:

- a. The name and address of the applicant and the names and addresses of any persons or entities associated with the applicant for the purpose of waste disposal.
 1. The names and addresses of any waste disposal facilities with which the applicant has had previous experience.
- b. 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 372 et seq.) of 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.

c. If not included in 4.2.b, a description of methods to control leachate generation and movement.

d. 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.

3. 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 alternative source of supply, and estimates of the cost to develop this alternate supply (as outlined in Article 8.2).

f. 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.

The Board shall, within 10 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 construct 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. For existing facilities or facilities which will not involve construction, a fee of 2% of the fair market value of the land and facility or \$1,000, whichever is greater, shall be paid.

4.4 An application to renew a license shall be submitted to the Board accompanied by a fee of \$1,000 payable to the Town, a written report on the facility's operation since the previous license was issued which demonstrates the facility's continuing compliance with the ordinance and all groundwater monitoring results from the previous license period.

Article 5. Procedures

5.1 A hearing shall be held by the Planning Board within ninety (90) days of the receipt of a complete application for a new license or thirty (30) days for a license renewal. When considering an application for a new license, the Board may extend this period to no more than 180 days if more time is necessary to conduct a thorough review of the application. At the hearing, the Planning Board shall receive evidence on all aspects 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 and aquifers, adequacy of methods to control leachate generation and movement, adequacy of methods to control methane generation and movement, compatibility of liner and wastes, and other factors relevant to the proposed facility and its operation.

5.2 Within thirty (30) days of the hearing, the Planning Board shall issue a license unless it makes one or more of the following written findings based on clear evidence that:

1. The proposed facility does not meet the specific requirements set forth in this Ordinance;
2. Adequate provision has not been made for the containment and treatment of leachate and the prevention of ground or surface water contamination;
3. Wastes proposed for disposal are not compatible with each other or with the liner;
4. The proposed use will create fire safety hazards by not providing adequate access for emergency vehicles to the site or to buildings on the site;
5. The provisions for buffers and on-site landscaping do not provide adequate protection to neighboring properties from detrimental features of the facility which cannot be avoided by reasonable modification of the plan;
6. The proposed use will 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 cannot be avoided by reasonable modification of the plan;
7. The provisions for vehicular circulation on the site and onto adjacent streets will create hazards to safety;
8. The design of the site will result in significant flood hazards or flood damage or is not in conformance with applicable flood hazard protection requirements;
9. Adequate provision has not been made to control erosion and sedimentation;
10. Adequate provision has not been made to control stormwater runoff or other drainage problems on the site;

11. Adequate provision has not been made for the transportation, storage, and disposal of hazardous materials as defined by state law;
12. The proposed facility will have an adverse impact on significant scenic vistas, significant wildlife habitat, or significant wetlands as identified in the Comprehensive Plan, which could not be avoided by reasonable modification of the plan;

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 Licenses are subject to the condition that the applicant secure and comply with all applicable federal, state, and local licenses and permits prior to and during construction and operation of the waste disposal facility.

Article 6. Performance Standards

6.1 The facility shall comply with all operational and performance standards included in the Maine Department of Environmental Protection's Solid Waste Management Rules (chapter 400 et seq.) enacted on or before 2/1/87, and as amended.

6.2 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 dumping does not occur.

6.3 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: 1) name of driver; 2) name of person, firm or corporation which owns the vehicle; 3) license plate of vehicle; 4) type/characterization of waste; 5) source and origin of waste.

Article 7. Closure Plans

7.1 All solid waste disposal facilities applying for a license shall submit a closure plan with their application. The plan shall be approved by the Maine Department of Environmental Protection, and must meet the soil conservation standards of the Soil and Water Conservation District, and shall include as a minimum all requirements specified in DEP's Solid Waste Management Rules as enacted on or before 2/1/87, and as amended.

7.2 The owner shall be responsible for compliance with the closure plan and continued maintenance of the site following the facility's closure.

Article 8. Performance Guarantees

8.1 The Planning 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. Requiring 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.
- b. Requiring 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. Requiring provision for an independent consultant to conduct on-site inspection during construction, at the developer's expense, to ensure proper execution of plans as approved, including any conditions imposed by the Board.
- d. Requiring tests conducted on the waste disposal at the facility, said tests to be conducted by an expert chosen by the municipality at intervals determined by the Planning Board and to be paid for by the owner or operator of the facility.

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. As an alternative, the Board and the applicant may agree upon who the applicant will use for technical resources.

8.2 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 (1) liability insurance, or (2) establishment of a trust fund, which shall be equivalent in coverage or dollar amount to the cost of installing or extending a public water supply to serve the area susceptible to contamination by landfill leachate and meeting the requirements listed in 9.2.a and 9.2.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 estimate the cost of providing this area with a public water supply.

a. Liability insurance shall provide coverage equivalent in amount to the cost of providing a public water supply as set forth in 8.2. 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 public water supply for the susceptible area shall be divided by the total estimated volume handled by the facility over its lifetime to determine a per unit of volume contingency fee. The owner shall deposit monthly into the trust fund the per unit of volume fee multiplied by the total volume received during the previous month.
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 an alternate water supply shall be re-evaluated annually and the per unit of volume contingency fee adjusted accordingly as a condition of the license renewal.

8.3 For all facilities proposing on-site disposal, the owner shall establish a closure/post-closure trust fund adequate in terms and amount to assure 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. 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 license renewal.
- 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 investment. Real estate investments are prohibited.

8.4 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 9. Right of Entry

9.1 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 relating to the disposal of waste, take photographs, or other actions necessary to ensure compliance with the license.

9.2 An agent or representative of the Town shall be permitted to independently sample monitoring wells installed around the landfill.

Article 10. Enforcement

10.1 All provisions of this ordinance are enforceable by duly authorized Police officers, the Code Enforcement Officer, the Municipal Officers or their agent.

10.2 Any person who violates any provision of this ordinance is subject to fines, fees and costs as provided in Article 12, license revocation or suspension as provided in Article 11 and any other remedies available at law or equity including, but not limited to, injunctive relief.

Article 11. Revocation of a License

11.1 Any license issued herein may be suspended or revoked, subsequent to notification procedures listed in 11.2, 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 to the 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.

11.2 Whenever the Municipal Officers or Code Enforcement Officer determine that there has been a violation by virtue of one of the conditions listed in 9.1.a - 9.1.d, 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 or revocation pursuant to the provisions of this ordinance.

11.3 If the violator does not meet the terms of the citation, the Municipal Officers, Code Enforcement Officer, or Police shall notify the license holder in writing of the suspension or revocation of the license.

11.4 The person, firm or corporation whose license has been revoked/suspended is entitled to a public hearing conducted by the Board of Appeals if the licensee requests a hearing within 7 days of the revocation/suspension. The Board of Appeals shall schedule the hearing within 14 days of receiving the request. At least 7 days prior public notice of the hearing shall be given. The hearing shall be conducted pursuant to 30 M.R.S.A., Sec. 2411, as amended.

Article 12. Penalties

12.1 Civil penalties: 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 \$500 and a maximum fine of \$2,500 for a first offense. Subsequent violations shall be punished by a minimum fine of \$1,000 and a maximum fine of \$25,000. Each day such violation exists shall constitute a separate offense. 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.
