

11/11/2010

STATE OF WISCONSIN

TOWN OF FARMINGTON

WAUPACA COUNTY

SOLID WASTE DISPOSAL FACILITY LICENSING ORDINANCE

The Town Board of the Town of Farmington, Waupaca County, Wisconsin, does ordain as follows:

I. BACKGROUND

- A. Under Wisconsin law, all new and expanded solid waste disposal facilities must obtain all State and any applicable local approvals prior to construction. Pursuant to this mandate, an applicant seeking to construct or expand a solid waste disposal facility must request notification of all local approvals from all municipalities in which all or a portion of the solid waste disposal facility is or will be located and all municipalities with boundaries within 1,500 feet of the solid waste disposal facility. A "local approval" includes any requirement for a permit, license, approval, variance, or any ordinance, resolution, or regulation applicable to the solid waste disposal facility.
- B. Within 15 days after a municipality receives a request for notification of local approvals, it must specify all local approvals that apply. Before construction or expansion of a solid waste disposal facility may commence, the applicant must apply for each local approval specified by the municipality.
- C. After the request for local approvals is made, all municipalities in which all or a portion of the solid waste disposal facility is or will be located and all municipalities with boundaries within 1,500 feet of the solid waste disposal facility may participate in negotiations with the applicant regarding subjects related to operations at the solid waste disposal facility. During this negotiation process, a municipality is entitled to waive any of its local approvals in exchange for concessions from the applicant.

II. PURPOSE AND INTENT

Based on the background stated above, the Town desires to enact a solid waste disposal facility licensing ordinance setting forth all local approvals applicable to solid waste disposal facilities. The Town finds that doing so will promote the health, safety, and general welfare of the citizens of the Town by minimizing the potentially dangerous effects of solid waste disposal facilities on the community.

III. DEFINITIONS

- A. Applicant means the Person that seeks to secure a License under this Ordinance.
- B. License means the license granted under this Ordinance.
- C. Licensee means a Person holding a valid License.
- D. Ordinance means this Solid Waste Disposal Facility Licensing Ordinance.
- E. Person includes an individual, a corporation, a business association, or a partnership.
- F. Solid Waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Chapter 283 of the Wisconsin Statutes, as amended, or source material, as defined in Section 254.31(10) of the Wisconsin Statutes, as amended, special nuclear material as defined in Section 254.31(11) of the Wisconsin Statutes, as amended, or by-product material, as defined in Section 254.31(1) of the Wisconsin Statutes, as amended.
- G. Solid Waste Disposal Facility means a facility for solid waste treatment, solid waste storage, or solid waste disposal, and includes operations such as sanitary landfills, dumps, land disposal sites, incinerators, transfer stations, storage facilities, collection and transportation services and processing, treatment and recovery facilities. This term also includes sites or structures for the treatment, storage, or disposal of hazardous waste. This term includes the land where the facility is located. This term does not include a facility for the processing of scrap iron, steel, or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes. This term does not include a facility which uses large machines to sort, grade, compact, or bale clean wastepaper, fibers, or plastics, not mixed with other solid waste, for sale or use for recycling purposes. This term does not include an auto junk yard or scrap metal salvage yard.

IV. LICENSING

- A. From and after the effective date of this ordinance, no Solid Waste Disposal Facility shall be operated or maintained in the Town without first obtaining a License issued by the Town.
- B. The fact that a Person possesses any other valid license or permit required by law does not exempt that Person from the requirement of obtaining a License under this Ordinance.
- C. The License required by this Ordinance is not assignable or transferable to any other Person, without the express prior written consent of the Town.

V. LICENSE APPLICATION PROCEDURE

- A. Any Person desiring to secure a License shall file an application with the Town Clerk. The application shall contain information requested in subsections B and C of this section, below. If the information requested in subsections B and C below has not yet been developed, the Person shall provide as much of the information in subsections B and C as is available at the time the application is filed. Such person shall have an ongoing duty to supplement the application with the additional information requested in subsections B and C as it is developed.
- B. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - 1. The Applicant's name, address, and telephone number.
 - 2. If the Applicant is a corporation, partnership, limited liability company, or limited liability partnership, the application shall include:
 - i. The name of the business entity; the date of incorporation, registration or organization;
 - ii. The state in which the entity was incorporated, registered, or organized;
 - iii. The name, address, and telephone number of the registered agent where applicable; and

- iv. The names and addresses of all officers, directors, partners, or members of the entity.
 3. The names and addresses of any other current or past Solid Waste Disposal Facilities operated by the Applicant whether in this State or any other State or District within the United States.
 4. A statement that the Applicant is familiar with and in compliance with the provisions of this Ordinance, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination, and analysis of the proposed facility.
- C. Each application shall be accompanied by:
1. Payment of a nonrefundable application fee in an amount to be determined from time to time by separate resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
 2. A legal description for the designated premises or area in the Town for construction or expansion of the Solid Waste Disposal Facility and a statement of the current zoning for the designated premises or area.
 3. A proposed plan of operation for the Solid Waste Disposal Facility, including plans for construction, operation, maintenance, closure, and long-term care.
 4. A description of the type and amount of equipment to be used at the Solid Waste Disposal Facility.
 5. A proposed plan to prevent public nuisances, such as excessive noise, odor, and vibration.
 6. A proposed plan for environmental protection.
 7. A timeline for construction and closure of the Solid Waste Disposal Facility.
 8. A description of the amount (in tons), type, and source of waste to be deposited at the Solid Waste Disposal Facility.

9. A plan for the likely routes and hours of travel in the Town for traffic to and from the Solid Waste Disposal Facility.
10. Copies of any initial site reports, feasibility reports, and plans of operation that have been or will be submitted to state or federal agencies.
11. The names, addresses, and telephone numbers of any third parties likely to use the Solid Waste Disposal Facility.
12. A statement of the anticipated hours and days of operation of the Solid Waste Disposal Facility.
13. A statement of the likely maximum depth below and height above surface topography of operations at the Solid Waste Disposal Facility from the commencement of operations through closure.
14. A description of the likely active fill area at the Solid Waste Disposal Facility.
15. A statement of all auxiliary uses at or near the Solid Waste Disposal Facility.
16. A description of any likely recycling operation at or near the Solid Waste Disposal Facility.
17. A plan to provide physical and personal security at or near the Solid Waste Disposal Facility.
18. A plan for environmental testing and monitoring at and near the Solid Waste Disposal Facility, including well testing.
19. A description of any anticipated need for additional or improved public services, including roadways, sewers, and water caused by the construction or expansion of the Solid Waste Disposal Facility.
20. A proposed plan to provide financial, environmental, and legal protections for the Town, its officers, its employees, its agents, and neighboring residents.

21. A proposed plan to respond to any emergency occurring at or caused by the Solid Waste Disposal Facility.
 22. If the Solid Waste Disposal Facility is owned by a corporation, copies of its financial statements and federal tax returns for the previous five (5) years.
 23. A statement of proposed insurance coverage to be provided by the Applicant to the Town, its officers, its employees, its agents, and other persons in the Town.
 24. A plan to prevent waste discharge and littering at the Solid Waste Disposal Facility and on the travel routes identified in Section V.D.9, above.
 25. The names of any other municipalities that have issued similar licenses or permits to the Applicant.
 26. Any other information requested by the Town Board or its engineers.
- D. Upon receipt of the application, the Town Clerk shall distribute a copy to the Town Board. The Town Board may refer the application to the Town engineer and the Town attorney for further review. No License shall be granted until all application materials have been reviewed by the Town Board, the Town engineer, and the Town attorney. The costs associated with these reviews shall be paid by the applicant.
- E. After review, the Town Board shall either grant or deny the License. A License may be granted with conditions. The Town Board shall deny the License unless it is satisfied that the Applicant will comply with all conditions established in the License. The Town Board may also consider any other applicable statutes, regulations, or ordinances when deciding whether to grant or deny a License.
- F. If a License is granted by the Town Board, the Town Clerk shall issue the license within ten (10) business days. If the Town Board denies the license, the Town Board shall notify the applicant in writing of the reasons for denial. Such notice shall be sent to the applicant within ten (10) business days of the decision.

VI. EXPIRATION, REVOCATION, AND RENEWAL OF LICENSE

- A. A License issued hereunder shall be for a term of one year from the date of issuance, unless earlier revoked by the Town Board for cause. Licenses shall not be extended or automatically renewed. Licensees desiring to continue operating a Licensed Solid Waste Disposal Facility at the end of their License term shall submit a new application for a new License not less than 90 days prior to the expiration of the existing License.
- B. No Applicant or Licensee shall be issued or reissued a license if the Applicant or Licensee:
 - 1. Fails to specifically agree in writing to the conditions established in the License.
 - 2. Fails to comply with any written agreement with the Town or any conditions in the License.
 - 3. Fails to pay the required application fees or fails to reimburse the Town for any fees or expenses the Applicant or Licensee is responsible for under this ordinance.
- C. In the event that any State licenses or permits applicable to the Solid Waste Disposal Facility or the Applicant are revoked, any License issued under this Ordinance shall be automatically revoked without further action by the Town.
- D. The Town Board may revoke any License issued hereunder for cause upon thirty days' notice to the Licensee and an opportunity for the Licensee to be heard. In the event that the Licensee is unable to meet with the Town Board within thirty days of notice, the Town Board may, in its discretion, temporarily suspend the License, or allow continued operation under the License pending such meeting. Cause shall include, but is not limited to, failure to comply with the terms of this ordinance or any license issued hereunder, or failure to comply with any other ordinance or applicable state or federal statute, regulation, or code.

VII. INDEMNIFICATION AND INSURANCE

- A. By applying for and accepting a License under this Ordinance, a Licensee agrees to and does indemnify and hold harmless the Town, its officers, agents, and employees for any and all liability, responsibility, actions, costs, and expenses,

including professional fees and attorneys' fees, arising as a result of the operation, maintenance, cessation of operations, or closure of the Solid Waste Disposal Facility or any activities licensed hereunder.

- B. Prior to issuance of a License under this Ordinance, the Applicant shall name and maintain the Town as an additional insured on a pollution legal liability insurance policy in a face amount of not less than ten million dollars (\$10,000,000), per claim and in the aggregate. The Applicant shall maintain such insurance coverage until forty (40) years after final closure of the solid waste disposal facility or until proof of financial responsibility for all post-closure and long term care at the solid waste disposal facility is terminated by the DNR, whichever is later.
- C. Prior to the issuance of a License under this Ordinance, the Applicant shall name and maintain the Town as an additional insured on the following policies in the following amounts:
1. Commercial General Liability including contractual liability covering the Applicant's indemnification obligation with the following limits:
 - i. \$2 million Combined Single Limit, general aggregate.
 - ii. \$2 million Combined Single Limit, each occurrence, products and completed operations.
 - iii. \$2 million per offense, personal injury.
 - iv. \$2 million Combined Single Limit, each occurrence, bodily injury and property damage.
 2. Worker's Compensation, as required by law
 3. Business automobile liability of \$1 million Combined Single Limit for bodily injury and property damage.
 4. Umbrella/excess liability insurance of \$10 million per occurrence and annual aggregate, over the Commercial General Liability and Business Automobile Liability limits identified above.

VIII. LICENSING STANDARDS

A. The Town Board shall not grant a License unless it is satisfied that the Solid Waste Disposal Facility will comply with all conditions set forth in its License. Conditions may be imposed relating to the following:

1. Hours and days of operation.
2. Traffic flow patterns.
3. Noise.
4. Odors.
5. Dust.
6. Design of the Solid Waste Disposal Facility.
7. Screening.
8. Setbacks.
9. Signage.
10. Fencing.
11. Insurance.
12. Indemnity.
13. Compensation to the Town for impact of the Solid Waste Disposal Facility, including expenses of licensing the Solid Waste Disposal Facility.
14. Property value protection plans for residents affected by Solid Waste Disposal Facility.
15. Tipping fees.
16. Disposal privileges for the Town.

17. Post-closure use of Solid Waste Disposal Facility property.
18. Maintenance, repair, and resurfacing of roadways used to deliver Solid Waste to the Solid Waste Disposal Facility.
19. Litter and discharge at Solid Waste Disposal Facility and on roadways used to deliver waste to the Solid Waste Disposal Facility.
20. Prevention and control of rodents, birds, and insects.
21. Erosion, runoff, and surface water.
22. Well and groundwater testing at and near Solid Waste Disposal Facility.
23. Daily cover.
24. Payment for costs of responding to emergencies at or caused by the Solid Waste Disposal Facility, including emergencies caused by transport of Solid Waste to Solid Waste Disposal Facility.
25. Prevention of public nuisances.
26. Depth below and height above surface topography of operations.
27. Plans for security at or near the Solid Waste Disposal Facility.
28. Payment for additional or improved public services, including roadways, sewers, and water necessitated by construction or expansion of the Solid Waste Disposal Facility.
29. Emergency response procedures.
30. There will be establishment of standing committee for the purpose of monitoring the Solid Waste Disposal Facility including, without limitation, provision for the independent inspection of the Solid Waste Disposal Facility.
31. Any other conditions the Town finds reasonably necessary.

IX. PENALTY

Any person who shall violate any provision of this Ordinance shall upon conviction thereof forfeit not less than \$1000 nor more than \$5000 together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. This section is in addition to any other enforcement, revocation, nonrenewal, or other provisions of this Ordinance. The Town Board reserves the right to adjust the preceding forfeiture amounts by adopting a resolution after due notice to the public.

X. INTERPRETATION AND SEVERABILITY

- A. In their interpretation and application, the provisions of this Ordinance shall be considered minimum requirements. Where the provisions of this Ordinance impose greater restrictions than any statute, other regulation, ordinance, or covenant, the provisions of this Ordinance shall prevail. Where the provisions of any statute, other regulation, ordinance, or covenant impose greater restrictions than the provisions of this Ordinance, the provisions of such statute, regulation, ordinance, or covenant shall prevail.
- B. If any provision of this Ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of this Ordinance.

XI. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as provided by law.

Adopted this 11 day of Nov, 2010.

Attest: Deedy Bunker

TOWN OF FARMINGTON

By: [Signature]
Town Chairperson